Cooperative Agreement

Between
Committee for Purchase From People Who Are Blind or Severely Disabled
and
SourceAmerica

Redacted Version

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Cooperative Agreement
between
the Committee for Purchase From People
Who Are Blind or Severely Disabled
and
Central Nonprofit Agency (CNA)

This Agreement is entered into by and between the Committee for Purchase From People Who Are Blind or Severely Disabled, operating as the U.S. AbilityOne Commission ("Commission"), and SourceAmerica, the Central Nonprofit Agency ("CAN") for the purpose of establishing the governing relationship and roles and responsibilities of each party in its respective role within the AbilityOne Program.

The United States AbilityOne Commission, the operating name for the Committee for Purchase from People Who Are Blind or Severely Disabled (the "Commission"), is the independent Federal agency that administers the AbilityOne Program by authority of the Javits-Wagner-O'Day Act ("JWOD Act"), codified in 41 U.S.C. §§ 8501-8506.

SourceAmerica is a nonprofit agency whose mission is to create meaningful employment opportunities and expand choices for people with significant disabilities. SourceAmerica, hereinafter referred to CNA, has historically served as a Commission-designated central nonprofit agency within the AbilityOne Program as identified in 41 C.F.R. § 51-3 and FAR 8.701 to represent Nonprofit Agencies ("NPAs") employing persons with significant disabilities, and thereby facilitate the distribution of orders by the Federal Government for commodities and services on the Procurement List among qualified NPAs employing persons with significant disabilities under the Program.

SECTION A – BACKGROUND AND OBJECTIVES

1. PUBLIC PURPOSE.

The public purpose of this Agreement is to establish key expectations and guidance for the Commission and CNA in relation to the implementation and management of the AbilityOne Program. The Javits Wagner O'Day Act (the "JWOD Act") established the U.S. AbilityOne Commission to both provide and increase employment and training opportunities for persons who are blind or have other significant disabilities through the delivery of products and services to the Federal Government. The JWOD Act also requires the Commission to designate CNAs to facilitate the distribution of federal government orders by allocation or other means.

In 2013, the Government Accountability Office (GAO) reviewed the AbilityOne Commission and program and made recommendations to the Commission to address their findings. The Commission has been working to address the recommendations. Additionally, in December 2015, Congress passed the Consolidated Appropriations Act, 2016, Public Law 114-113, that included certain directives for the AbilityOne Commission to address within 180 days of the Act's passage, namely 1) to enter into written agreements with the CNAs to provide auditing, oversight, and reporting provisions; and 2) to stand up an Office of Inspector General for the agency.

The Commission has met with the CNAs as well as afforded them the opportunity to provide input through the form of a response to a Request for Information to address specific programmatic functions delegated to the CNAs through formal promulgated regulations. Additionally, the Commission met with NPAs participating in the AbilityOne Program as stakeholders to ascertain specific requirements the NPAs have for participating in the program that the CNA provides to them.

2. CENTRAL NONPROFIT AGENCY DESIGNATION.

Pursuant to 41 U.S.C. § 8503(c) and the Consolidated Appropriations Act, 2016, the Commission by execution of this Agreement hereby designates SourceAmerica as the CNA to facilitate the distribution, by direct allocation, subcontract, or any other means, of orders of the Federal Government for products and services on the Procurement List (PL) among qualified NPAs for people with significant disabilities. As a designated central nonprofit agency, SourceAmerica, herein agrees to comply with the terms and conditions of this Agreement as well as the Consolidated Appropriations Act, 2016, the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51.

3. DESCRIPTION OF SERVICES.

The CNA shall provide management, labor, supervision, materials, equipment and supplies to furnish CNA program services to the NPAs as outlined in the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51. The CNA shall plan, schedule, coordinate, and ensure effective and efficient performance of services provided. The CNA shall provide the services in a manner that promotes the Federal Government's policies and the Commission's specific objectives as set forth in this Agreement, the JWOD Act, 41 U.S.C. Chapter 85, and implementing regulations, 41 C.F.R. Chapter 51. This is a performance-based agreement that includes performance expectations and consequences consistent with the Congressional mandate of the Consolidated Appropriations Act. These performance-based specifications express the

Government's requirements in the form of the minimum quality standard to be met and consequences for deficient performance.

The overall purpose of this Agreement is to implement Public Law 114-113 2016, Consolidated Appropriations Act, 2016, by establishing the governing relationship between the Commission and the CNA to ensure effective stewardship and to increase employment and training opportunities for persons who have other significant disabilities through the delivery of products and services by the NPAs to the Federal Government in accordance with and in furtherance of the JWOD Act.

High value is associated with sustaining and increasing current employment levels and developing and executing new lines of business that also increase new employment opportunities.

Key performance indicators of this agreement are:

- Employment Growth
- Program Administration, Oversight, and Integrity
- NPA Support, Assistance, and Development
- Training and Strategic Communications

SECTION B – CONSIDERATION AND FEES

1. CONSIDERATION FROM THE COMMISSION.

a) Upon designation as a CNA by the Commission, the CNA may charge fees to qualified and approved nonprofit agencies participating in the AbilityOne Program for facilitating their participation in the AbilityOne Program in accordance with the terms and conditions of this Agreement, 41 CFR §51, and Commission policies governing the AbilityOne Program. The fees charged by the CNA, pursuant to this Agreement, are Program Fee.

b) The CNA agrees to accept Program Fee payments from third party qualified NPAs as full consideration in accordance with the terms and conditions of this Agreement, the provisions of the Javits-Wagner-O'Day Act and the regulations and policies issued by the Commission. Furthermore, notwithstanding Section D.2., the CNA waives the right to collect Program Fee from the Commission.

c) The CNA shall enter into written agreements with the qualified NPAs participating in the AbilityOne Program not later than 270 days after the Commission approves the NPA template agreement (or as part of designation as a qualified NPA).

d) Prior to establishing written agreements with qualified NPAs and within 90 days after execution of this Agreement, the CNA shall provide the Commission with a template of the proposed agreement with the qualified NPAs. The template shall at a minimum and as directed by the Commission include applicable terms and conditions set forth in this agreement. The Commission shall review and approve the terms and conditions of the written agreement template to be executed with the qualified NPA. The Commission will support the implementation of this provision by requiring that NPAs execute the agreements to participate in the AbilityOne Program.

e) The CNA shall submit a milestone schedule for completing agreements with qualified NPAs participating in the AbilityOne Program from which the CNA receives Program Fee.

f) The agreement between the qualified NPAs and the CNA shall state the terms under which payment of fees shall be remitted to the CNA from the date of execution of the NPA agreements forward. Notwithstanding the foregoing, nothing herein shall prevent the CNA from charging customary fees including, but not limited to, conference and training fees, loan and interest charges, sponsorships, advertising fees, etc.

2. FEE STRUCTURE.

The intent of this fee structure is to implement the provisions of the JWOD Act and 41 C.F.R. § 51-3.5 by defining a more transparent process for the delivery of CNA services to the qualified NPAs. The flexibility in the fee structure is intended for the CNA to generate revenue within their approved business plan, to incentivize the expansion of employment opportunities and to assist in start-ups. All fees collected under this Cooperative Agreement are considered Program Fee.

a) The parties agree to an Award Fee Simulation (Pilot test) (Attachment 3) for the first two (2) years of this Agreement. Based on results of the Simulation, at least 90 days before the start of the third year, an Award Fee structure will be negotiated for the final third year of this Agreement.

b) Use of Fee Collected. The CNA shall use the Program Fee collected only for the intended purposes, under terms and conditions of this Agreement and in furtherance of the AbilityOne Program, unless otherwise expressly instructed in this Agreement or by the Commission.

3. CENTRAL NONPROFIT AGENCY AUTHORITY TO CHARGE PROGRAM FEES FROM NONPROFIT AGENCIES.

a) The CNA and the qualified NPAs participating in the AbilityOne Program shall agree that after execution of the NPA agreements, NPAs shall make Program Fee payments upon the CNA's submittal of payment requests to the NPAs in accordance with the terms and conditions of the written agreement between the CNA and the qualified NPAs pursuant to Section B.1.(c) and (d) of this Agreement. Prior to execution of the NPA agreements, the CNA may collect Program Fees from the NPAs in accordance with existing practices.

b) The CNA shall calculate Program Fee based on nonprofit agency sales to the Government under the AbilityOne Program and in accordance with regulations and policies set forth by the Commission governing the AbilityOne Program.

c) The total Program Fee charged by the CNA shall not exceed the fee ceiling approved by the Commission.

d) Documentation of fee payment requests shall be provided by the CNA to the Commission in accordance with reporting requirements set forth in this Agreement at Section B.4 in accordance with the Consolidated Appropriations Act or upon written request by the Commission.

e) The CNA shall notify the Commission of any qualified NPA failure to make payment of the Program Fee to the CNA. Upon the second notice by the CNA to the Commission of NPA failure to pay Program Fee within 120 days, in a 12-month period, the CNA shall propose corrective action or otherwise direct the qualified NPA to take corrective action.

4. PAYMENT OF PROGRAM FEE.

(a) General. As required by Section B.1(f) of this Agreement and 41 CFR §51-4.3(b)(9), the qualified NPAs shall pay the CNA, consistent with the terms and conditions of separate written agreements between the CNA and qualified NPAs. As noted above, prior to execution of the NPA agreements, the CNA may collect Program Fees from the NPAs in accordance with practices existing prior to the execution of this Agreement.

(b) Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in Commission regulations and policies, this Agreement, and this clause, the amount of payments and limitations on payments shall be specified in the Agreement's description of the basis for payment.

(c) CNA request for Program Fee payment. The CNA may submit requests for payment of unpaid Program Fee payments via a monthly statement of balances to the NPAs. Unless otherwise authorized by the Agreement Officer, the CNA shall book all Program Fee balances based on required submissions of NPA AbilityOne sales which includes:

(1) The date of the invoice;

(2) The contract number and/or other identifier of the contract or order under which the request is made;

(3) Such information and documentation as is required by the contract's description of and sales amount that forms the basis for payment; and

(4) A certification, at least annually, by the NPA official authorized to bind the NPA, that all AbilityOne sales information is accurate and complete.

(d) Content of CNA's request for Program Fee payment. In accordance with the Consolidated Appropriations Act, the CNA's request for Program Fee payment to the NPA shall contain the following:

(1) The name and address of the CNA;

(2) The date of the request for Program Fee payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made;

(4) Such information and documentation as is required by the contract's description of and sales amount that forms the basis for payment; and

(5) A certification by a CNA official authorized to bind the CNA, as to the accuracy of the CNA's request.

5. COMMERCIAL LINES OF BUSINESS

The Commission authorizes use of Program Fee for commercial efforts to the extent that the commercial efforts are intended to have a direct benefit to the Program mission and do not otherwise detract from the CNA's performance or are considered unallowable under this Agreement.

SECTION C - PERFORMANCE WORK STATEMENT (PWS)

1.0: OBJECTIVE

The CNA shall provide management, labor, supervision, materials, equipment and supplies to furnish CNA program services as outlined in this Agreement and the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51. The CNA shall plan, schedule, coordinate, and ensure effective and efficient performance of all services provided. All work must be performed in a manner that promotes the Federal Government's policies and the Commission's specific objectives as set forth in this Agreement, and the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations. This is a performance-based agreement that includes performance expectations and consequences consistent with the Congressional mandate of the Consolidated Appropriations Act. These performance-based specifications express the Government's requirements in the form of the minimum quality standard to be met and consequences for deficient performance.

The overall purpose of this Agreement is to implement, Consolidated Appropriations Act, 2016, Public Law 114-113 by establishing the governing relationship between the Commission and the CNA to ensure effective stewardship of the AbilityOne Program and to increase employment and training opportunities for persons who have other significant disabilities through the delivery of products and services to the Federal Government in accordance with the Javits-Wagner-O'Day Act.

High value is associated with sustaining and increasing current employment levels and developing and executing new lines of business that also increase new employment opportunities.

Key performance indicators of this agreement are:

- Employment Growth
- Program Administration, Oversight, and Integrity
- NPA Support, Assistance, and Development
- Training and Strategic Communications

2.0: GENERAL REQUIREMENTS

This section describes the statutory and regulatory requirements for the AbilityOne Program. The following sub-sections provide details of requirements for both the Commission and the CNA designated by the Commission to assist in the administration of the AbilityOne Program.

A. Commission Responsibilities

The Commission will perform responsibilities outlined in the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51. The following Commission responsibilities are highlighted for emphasis:

1. Establish and maintain the Procurement List containing the products and services provided by the qualified NPAs participating in the AbilityOne Program which federal agencies are required to purchase;

2. Determine suitability of products and services furnished by qualified nonprofit agencies for Federal Government procurement to be added to the Procurement List;

3. Determine fair market price for products and services added to the Procurement List;

4. Establish ceilings for the fees to be collected by the CNA for services rendered under this Agreement;

5. Work with the CNA in developing a communication protocol involving cooperative efforts to communicate projects and products and services determined suitable for performance under the AbilityOne Program;

6. Coordinate with the CNAs to address issues concerning government-wide policies affecting the implementation of the AbilityOne Program;

7. Assign appropriate Commission staff to monitor the ongoing work and to respond to questions about the Cooperative Agreement. When appropriate, the Commission staff will act as a liaison among the public and private parties, provide a Commission response date for questions and make day-to-day adjustments if the response date is not met;

8. Determine the adequacy of performance by the CNA in accordance with the terms and conditions of this Agreement;

9. Ensure compliance with all Agreement requirements and notify the CNA in writing of unsatisfactory performance of the terms and conditions of this Agreement; and

10. Provide, where necessary, non-financial assistance to achieve the objectives and purposes of the AbilityOne Program.

B. CNA Responsibilities

The CNA shall perform the responsibilities outlined in the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51, consistent with available resources. The following CNA responsibilities, are highlighted for emphasis:

1. Evaluate the qualifications and capabilities of the qualified NPAs and provide the Commission with pertinent data concerning the qualified nonprofit agencies, their status as qualified NPAs, their manufacturing or service capabilities, and other information concerning them required by the Commission for making suitability determinations to add products or services to the Procurement List;

2. Oversee and assist qualified NPAs to achieve successful contract performance and contract compliance in furnishing a product or a service to the Government;

3. Provide technical assistance to the qualified NPAs not limited to the following areas:

   a. Federal procurement issues include, but are not limited to, assisting NPAs with (1) preparing their price proposals to support recommended Procurement List transactions; and (2) resolving disputes regarding performance and payment issues;
   b. Quality assessment;
   c. Business process engineering;
   d. Rehabilitation engineering; and
   e. Development of Performance Improvement Plans.

4. Within the policy guidelines of the Commission (by direct allocation, subcontract, or any other means), facilitate distribution of orders from Federal Government agencies among the NPAs with an emphasis on employment growth;

5. Recommend to the Commission, with supporting documentation and analysis required by Commission procedures, products or services which may be suitable for provision to the Government by qualified NPAs;

6. Recommend to the Commission, with supporting documentation and information required by Commission procedures, initial fair market prices for products or services proposed for addition to the Procurement List based upon historical data, market research and discussions the CNAs facilitate between the qualified NPAs and the federal agency customers;

7. Recommend and provide assistance with reallocation and/or transfers of projects, products and/or services on the Procurement List to another qualified NPA.

C. Joint Responsibilities.

Both parties agree to define activities to be performed jointly by the Commission and the CNA.

3.0: CNA PERFORMANCE REQUIREMENTS

The CNA shall satisfy the following performance objectives and associated tasks in accordance with the terms and conditions of this Agreement, the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51.

OBJECTIVE 3.1 EMPLOYMENT GROWTH

Employment growth for persons who are blind or with significant disabilities is the most important objective of this Agreement. The employment growth plan shall identify inherent risks and risk mitigation/recovery activities to be taken in the event changes outside the CNA's control occur. At a minimum, the CNA must provide an employment growth plan that provides new lines of business and employment growth expectations in conjunction with the Business Plan. The CNA, in consultation with NPAs, federal and state customers, disability community (including veterans), and appropriate education institutions (e.g. Gallaudet, American Public University, disability rehabilitation programs, etc.), shall conduct market research and analysis to inform the employment growth plan. At a minimum, the employment growth plan shall incorporate the market analysis results and findings and address the following:

1. Sustaining existing employment. Sustaining existing employment shall result in no net employment loss in lines of business existing at the time of this Agreement, annually thereafter and incorporated herein as agreed upon by the parties or by amendment to this Agreement, absent unforeseen changes by the federal customers to phase out or insource certain lines of business or unforeseen declines in a particular industry, measured in terms of direct labor hours (DLH), for both persons blind/significantly disabled and total DLH separately (as reported in annual representations and certifications). The plan shall have clear objectives with measurable progress towards sustaining net employment levels.

2. Hiring new employees for existing and new lines of business. Each year the CNA shall establish an employee growth target for existing and new lines of business. At a minimum, the strategic growth plan shall include the annual employee growth targets

resulting in net employment growth (people) in existing and new lines of business (as measured in terms of people and FTEs). The plan shall have clear objectives with measurable progress towards increasing net employment levels.

3. Placing employees in upwardly mobile jobs in indirect labor, supervision, management or competitive employment positions (as reported in annual representations and certifications). Such integrated placements will not be factored into the 75% direct labor hour ratio that NPAs must maintain to participate in the AbilityOne Program, but may be considered when evaluating the CNA's performance.

4. Procuring (for internal use) the products and services offered by NPAs participating in the AbilityOne Program (measured by number of NPAs reporting such purchases).

5. Barriers to Employment Growth. The CNA shall provide a forecasting report that shows current market demand, future customer needs, and new customer acquisitions. In this report, the CNA shall identify and prioritize the top five (5) barriers to employment growth and the specific action plans that will be addressed within the next twelve (12) months or the duration of a shorter term.

6. A pipeline report that will show customer procurements for the succeeding twelve months.

The CNA shall also provide quarterly employment growth plan updates that capture progress being achieved relevant to the strategic growth plan. The CNA shall submit quarterly dashboard reports to the Commission identifying actual results (in terms of full time equivalents (FTEs), direct labor hours, and actual people) of annual net employment growth strategies.

OBJECTIVE 3.2 ABILITYONE PROGRAM ADMINISTRATION, OVERSIGHT, AND INTEGRITY

3.2.1: Central Nonprofit Agency (CNA) Governance. Administration, oversight, and integrity of the AbilityOne Program are critical performance elements. To ensure integrity, the CNAs shall avoid actions that are contrary to the terms and conditions of this Agreement, the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51, or actions that are otherwise inappropriate or provide the appearance of impropriety. As a representative of qualified NPAs, it is essential that the CNA shall not create an actual conflict of interest or appearance of conflict of interest relative to the NPA doing business with the government by unnecessarily competing with the NPA.

The CNAs shall implement a business ethics program (including conflict of interest policies) in accordance with Section F.3 of this Agreement to effectively reduce the risk of outside influences directing CNA decisions and implement rules to ensure independence and transparency of its board and executive officers in terms of composition and actions. The CNA shall comply with and shall require that all qualified NPAs comply with the AbilityOne regulations, policy, and guidance on conflicts of interest. The CNA shall establish policies and procedures to assure that 1) Boards and officers understand and uphold their fiduciary responsibilities while avoiding any instances that reflect a conflict of interest; 2) assets are managed properly; and 3) the designated responsibilities under the AbilityOne Program are implemented in accordance with the JWOD Act and all other applicable laws, regulations, policies, procedures and guidance. The CNA shall train all existing and new CNA employees who support the Program on business ethics and conflicts of interest policies, at least annually.

The CNA shall disclose, in writing to the Commission, all litigation and all allegations, findings or knowledge of violations of Federal law (such as fraud, bribery, or gratuity violations) by the CNA and/or its NPAs involving the AbilityOne Program within five (5) business days of initial notice to the CNA, to the extent permitted by law. In the case of violations of Federal law, the CNAs shall also provide the Commission with an explanation of how the violation occurred as that information becomes available and the steps the CNA is taking to prevent further similar violations. In addition, the CNAs shall report in writing any potential conflict of interests affecting the Procurement List and AbilityOne Program to the Commission within five (5) business days of learning of the actual or perceived conflict of interest.

3.2.2: CNA Board Governance. The CNA shall require executive and board members to disclose and certify annually, and to the extent practicable prior to any Board decision, all personal interests may be affected by CNA and AbilityOne Program business and transactions. The CNA shall submit a Board of Directors disclosure report to the Commission, no later than August 15 each year, or within 30 days of any change to the CNA's board membership. To avoid the appearance of an impropriety, no board member can vote and/or approve any action impacting AbilityOne Procurement List new opportunities, allocations, and/or re-allocations of contracts that creates a personal conflict of interest without the express written approval of the Commission upon full disclosure of the nature of the conflict of interest. Current CNA board members must be in compliance within thirty (30) days of the Agreement effective date. The CNA shall maintain records indicating recusal of board members and the reason for the recusal.

To avoid the appearance of an impropriety and improper influence, the CNAs must provide a transition plan to the Commission to restructure the Board of Directors to meet the following requirements no later than May 31, 2017. The CNA board shall:

1. Not be composed of current CNA employees other than the CEO in a non-voting *ex Officio* capacity;
2. Have no greater than [redacted] composition of Directors from current AbilityOne Program NPAs;
3. Not be composed of less than [redacted] people who are disabled, and shall actively seek participation by people with disabilities;
4. Ensure board officer positions (Chair, Vice-Chair)) are not filled by AbilityOne Program NPA executives;
5. Ensure that no CNA executive(s) (i.e. VPs and above) serve as board members of AbilityOne program NPAs;
6. Ensure that no CNA executive(s) (i.e. VPs and above) serve as board members of associations representing AbilityOne program NPAs;
7. Ensure that no executives and/or board members of associations representing AbilityOne Program qualified NPAs serve as board members of the CNA, other than a member of the NCSE Executive Team. This requirement does not preclude the founding National Nonprofit Agencies (NNAs) from sitting on the CNA Board;
8. Form an audit committee to oversee the CNA's financial affairs, and audits are conducted by an independent auditing firm that is overseen by the audit committee; and
9. Upon written request from the Commission, provide to the Commission, for Commission review only, the Meeting Minutes of any public session of a regularly scheduled Board of Directors Meeting.

3.2.3: Establish and Maintain Internal Controls. The CNA shall establish the necessary internal controls in accordance with other laws, regulations, and guidance governing nonprofit institutions as well as to satisfy the requirements under the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51. The CNA shall assess and evaluate its internal controls to ensure that the controls are effective and updated when necessary to successfully carry out its responsibilities and avoid potential for waste, fraud, or abuse. The CNA shall also inform the Commission of the results of this assessment not protected by attorney-client privilege or otherwise and demonstrate to the Commission that the controls it has in place are sufficient to meet all the laws, regulations, and guidance governing nonprofit institutions as well as to satisfy the requirements under the Consolidated Appropriations Act and the JWOD Act, and implementing regulations.

3.2.3.1: Internal Control Reporting. Annually, the CNA shall provide to the Commission, a report that lists the CNA's internal control audits related to the AbilityOne Program including, but not limited to, the description/ scope of the audit; number of

material findings; and management action plans to address such findings. The CNA shall submit to the Commission the necessary reports in accordance with this Agreement as well as Commission policy.

3.2.3.2: Single Audit. The CNA shall arrange for a single audit and act upon all recommendations. The CNA shall provide the Commission with a copy of each audit, associated corrective actions, and pertinent related correspondence on an annual basis.

3.2.3.3: Records Management. The CNA shall preserve all records containing appropriate documentation directly related to the AbilityOne Program and relative to critical decisions and essential CNA/NPA transactions associated with its responsibilities pursuant to 41 U.S.C. § 8503(c), 41 C.F.R. § 51-3. See Section F.9 of this Agreement. The CNA shall maintain said records for a period of three (3) years.

3.2.3.4: Records Inspection. The CNA shall make its records and documentation available pursuant to Section F.9 of this Agreement. Nothing herein shall require the CNA to produce data and documents that are privileged or otherwise protected from production under the law.

3.2.4: CNA General Management and Administration. The CNA shall integrate and coordinate all activities required to provide CNA services. The CNA shall participate in semi-annual In-Process Reviews (IPR) of program performance with special emphasis on employment growth and financial management updates. The CNA shall submit the necessary reports and documentation to the Commission not later than 30 days prior to the scheduled IPR.

3.2.4.1: Memoranda of Agreement (MOAs), Memoranda of Understanding (MOUs). Any MOAs, MOUs, or similar agreements with Federal agencies related to the AbilityOne Program require Commission approval prior to final completion and execution. The CNA shall obtain Commission approval at least ten (10) business days in advance of entering into any such MOAs, MOUs, or similar agreements. Annually, the CNA shall submit a report of all current MOAs/MOUs with Federal agencies directly related to the AbilityOne Program.

3.2.4.2: Financial and Accounting System. The CNA shall establish and maintain a financial and accounting infrastructure that meets appropriate Generally Accepted Accounting Principles (GAAP), appropriate internal controls, and government financial system requirements, including separate cost centers for pursuit of AbilityOne Program and commercial activities.

3.2.4.2.1: Costs for Services. For all services provided to the Commission, the CNA shall maintain appropriate documentation to provide transparency and isolate appropriate cost elements associated with providing the services. The CNA shall prepare and maintain documentation that explains and itemizes prices charged.

3.2.5: Equitable Allocations or Recommendations. In accordance with Commission policies, the CNA shall conduct fair, transparent and equitable allocation or recommendations of products and services on the Procurement List to qualified NPAs with impartiality (excluding evaluation factors, such as past performance) and without improper preferential treatment. In making both allocation and recommendation decisions, the CNA shall follow Commission policies. The CNA shall submit an allocation and recommendation report to the Commission on an annual basis. No later than December 31, 2016, the CNA shall submit the proposed structure and content for the allocation report, in accordance with Commission policies. The Commission will review and approve the report format. Upon approval, the CNA must provide the initial allocation and recommendation process report to the Commission no later than December 31, 2017, and every three years thereafter.

3.2.6: Prime Contractor. Effective immediately, after completion of this Agreement, the CNA may perform as the Prime Contractor only when qualified NPAs do not have the capacity to perform the service or when the government customer requests this arrangement with Commission approval. The intent of this provision is for CNAs to support NPAs' ability to do business with the government and not to unnecessarily compete with the NPAs. The CNA shall not charge a Program Fee to any NPAs serving as subcontractors, as related to the subcontract work, when the CNA is approved to serve as the Prime Contractor and bills a management or overhead fee as the Prime Contractor.

OBJECTIVE 3.3 SUPPORT AND ASSIST NPAS WITH ABILITYONE REGULATORY AND FEDERAL BUSINESS REQUIREMENTS

3.3.1: Represent NPAs to the U.S. AbilityOne Commission. As set forth in the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51, the CNA shall represent the NPAs in matters before or brought to the Commission or as directed by the Commission.

3.3.1.1: NPA Qualification. The CNA shall evaluate and recommend NPA initial qualification to the Commission in accordance with 41 C.F.R. § 51-4.2. This includes, but is not limited to, evaluating whether an NPA meets the definition of a qualified NPA. The CNA shall provide assistance to NPAs to ensure that proposed NPAs have valid Commercial and Government Entity (CAGE) codes, Data Universal Numbering System

(DUNS) numbers, and are registered in the federal System for Award Management upon being determined to meet the initial AbilityOne Program qualifications.

3.3.1.2: NPA Recommendation. The CNA shall recommend to the Commission, with the supporting information required by Commission procedures NPAs for designation as mandatory sources or supply for products or services on the Procurement List. The CNA will follow its process for recommendation established in accordance with the requirements specified in Section 3.2.5. above.

3.3.1.3: NPA Regulatory Assistance. The CNA shall monitor, report, and assist NPAs in maintaining qualification in accordance with 41 CFR § 51-4.3. The CNA shall provide training to NPAs regarding compliance with the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51. The CNA shall develop a qualified NPA oversight protocol and deliver it to the Commission for review and approval within 120 days after execution of this Agreement. The CNA shall conduct assistance visits with the NPAs at required intervals or as may otherwise be necessary and provide the Commission with the findings and recommendations of such visits within seven (7) business days. The CNA shall also provide its FY regulatory review list to the Commission no later than September 1 of each year and an end of the year analysis for their regulatory reviews by January 31 of each year. If the CNA finds an NPA out of compliance, the CNA shall require the NPA to develop a corrective action plan and require that necessary actions are completed by the NPA.

3.3.2: Representations and Certifications. The CNA shall assist the AbilityOne participating NPAs in the information gathering and filing of the NPAs' annual and project level representations and certifications (Reps & Certs) in accordance with 41 CFR § 51-3.2 and 3.6.

3.3.2.1: Submission of Form 401 or 402. The CNA shall, at the time designated by the Commission, submit a completed, original copy of the appropriate Initial Certification (Committee Form 401 or 402) for the NPA concerned within five (5) business days of designation or receipt of the Initial Certification from the NPA, whichever is later. This requirement does not apply to a nonprofit agency that is already authorized to furnish a commodity or service under the JWOD Act.

3.3.2.2: Submission of Annual Representations and Certifications. The CNA shall review the Representations & Certifications submitted by NPAs to identify any errors, omissions, or anomalies as compared to prior submissions, assistance visit reports, and guidance from the Commission; and attempt to resolve them with the NPA within the first thirty (30) days of submission. The CNA shall, as part of the terms of the written agreement with the NPAs, include a provision in which the NPAs agree to provide

accurate, timely and ongoing submissions for the Representations and Certifications form. The CNA shall forward to the Commission, by December 1 of each year, original completed copies of the annual Representations & Certifications signed by the NPAs, data extract containing all information within the annual Representations & Certifications and a summary report that contains the following information:

i. Total number of Producing NPAs for the fiscal year (reconciled and agreed by the Commission) that are required to submit Representations & Certifications to "maintain qualifications" to participate in the AbilityOne Program.

ii. List of NPAs that did not submit the required Annual Representations & Certifications by the November 1 deadline.

1. List of NPAs that certified potential inaccurate/inconsistent/falsified data on the Annual Representations & Certifications Form.

iii. Number of NPAs reporting below the required ratio (year-end cumulative), identifying any NPAs with Commission approved ratio exemptions.

iv. Narrative summary of Data Analysis

1. Report Appendix: Representations & Certifications Data Analysis Extract – highlighting any identified data potential inaccuracies/inconsistencies/falsifications that need to be resolved with the NPA.

3.3.2.3: Risk and Financial Assessment. Upon the Commission's direction and consistent with available resources, the CNA shall obtain a third party financial assessment of an NPA to ensure that the NPA has the financial, management and business capability to fulfill the contractual obligations as a qualified NPA designated to perform work on the Procurement List. The CNA shall provide a report regarding the financial assessment findings, as required.

3.3.3: Procurement List-related Operations

3.3.3.1: Understanding NPA Capabilities and NPA Evaluation. The CNA shall understand capabilities of qualified NPAs in order to develop and recommend products and services which may be suitable for provision to the Government by the NPAs. When an NPA has submitted a proposal, the CNA shall evaluate an NPA's technical capability to furnish products and services to the Government.

3.3.3.2: NPA Recommendation and Supporting Documentation. The CNA shall obtain, review, and analyze the qualifications and capabilities of the NPAs before making recommendations of an NPA to the Commission. NPA qualifications and capabilities

information includes but is not limited to the technical capabilities presentation, NPA Recommendation Process information and project development plans. The CNA shall obtain, review and submit procurement information to the Commission in support of its recommendation. Procurement information includes, but is not limited to, current contractor, market research, performance work statement, product specifications and solicitations. The CNA shall make documents and information related to the NPA Recommendation Process available within ten (10) business days of a written request from the Commission. In carrying out the responsibilities of this agreement and meeting the delivery requirements, the CNA shall require the NPAs to certify that the NPA information and documentation are complete, accurate, and timely, in accordance with the Commission manuals

3.3.3.3: Complex Projects Feasibility Analysis. The CNA shall conduct an analysis of all complex projects in terms of their feasibility for addition to the Procurement List. The results of the feasibility analysis will be reported to the Commission in accordance with the Commission's guidance for complex projects.

3.3.3.4: Proposed Additions to the Procurement List. As related to proposed additions to the Procurement List, both the CNA and NPAs shall certify that the proposed additions to the Procurement List and all supporting documentation, are accurate, complete and comply with all Program regulations, policy and procedural requirements, when submitted to the Commission. All proposed additions to the Procurement List shall be submitted through the Procurement List Information Management System (PLIMS). The CNA shall ensure that all proposed additions to the Procurement List are submitted to the Commission through PLIMS no later than 120 days prior to the expiration of the final option year of the current contract.

3.3.3.5: Changes to the Procurement List. Assist the Commission with maintaining the Procurement List by submission of changes and updates to Procurement List information including supporting documentation and information required by Commission procedures.

3.3.3.6: NPA Performance Quality Assistance. The CNA shall monitor and assist NPAs in maintaining contract performance and provide technical assistance to NPAs as necessary and consistent with available resources. Technical assistance includes, but is not limited to, federal procurement subject matter expertise, quality assessment, development of performance improvement plans (PIP), business process reengineering and rehabilitation engineering. If either the NPA or the CNA receives notice of unsatisfactory performance from the customer, the CNA shall assist in resolution. The

CNA shall establish, maintain and execute a Performance Improvement Plan (PIP) system as appropriate that supports strict agreement compliance by the NPAs. The CNA shall notify the Commission within three (3) business days of initiating or terminating a PIP. If the PIP or other corrective action is unsuccessful, the CNA shall recommend reallocation of the product or service to another qualified NPA.

3.3.4: Fair Market Price (FMP)

3.3.4.1: Recommended FMP Submission. The CNA shall submit to the Commission all material documentation used in the compilation, negotiation, and preparation of recommended- FMP, including actions to review and update, in accordance with Commission policies and procedures, and within ten (10) business days after negotiations conclude and before contract is signed. In carrying out the responsibilities of this Agreement and meeting the delivery requirements, the CNA shall require that the NPAs certify that required information and documentation are complete, accurate, and timely, in accordance with the Commission manuals.

3.3.4.2: Cost and Price Point of Contact. The CNA shall designate and maintain a primary Point of Contact for all PL Price and Price-related matters.

3.3.5: Project-level Information. The CNA shall review the requested project-level information provided by the NPAs to identify any errors, omissions, or anomalies and make available to the Commission and the Contracting Activity for inspection within ten (10) business days of request by the Commission.

3.3.6: CNA Due Diligence Review. The CNA shall perform reasonable due diligence consistent with available resources to review and verify that the NPAs comply with their Program obligations. The CNA shall follow its procedure to use comparative data and trend analysis to identify and correct anomalies and errors, as appropriate. Although the CNA will use good faith efforts in this regard, the CNA cannot warrant or certify the completeness, accuracy, adequacy or timeliness of any information or documentation provided to the CNA or the Commission by existing or potential NPAs.

Objective 3.4 Training and Strategic Communications

3.4.1: Training

3.4.1.1: NPA Training. The CNA shall develop and offer training programs, independently or in cooperation with the other CNA(s), that include the requirements of the JWOD Act, the Commission's regulations, and AbilityOne Program policies and procedures. The CNA shall provide training development and assistance for NPAs to

understand the requirements under the AbilityOne Program, and to enhance NPAs' ability to successfully compete for future contracts. The CNA shall provide training to the NPAs on the Federal Procurement process and negotiation techniques, including refresher training, on an annual basis.

3.4.1.2: AbilityOne Workforce Training. The CNA shall develop and provide training programs, independently or in cooperation with the other CNA(s), that develop the knowledge, skills and upward mobility potential of individuals who have significant disabilities employed at AbilityOne qualified NPAs. Such training may include the use of business software programs, leadership skills, or specific technical certifications.

3.4.1.3: CNA Staff Training. The CNA shall ensure that a sufficient number of CNA staff members have the necessary knowledge, skills and abilities to effectively perform CNA technical duties, to include knowledge of the federal procurement process, cost and price analysis, and Agreement administration.

3.4.1.4: Training Reports. The CNA shall provide training and employee development reports to the Commission at the end of each quarter. The training reports shall include, but are not limited to, the number of employees trained, type of training provided, source of training, duration of training, future training opportunities, and training results.

3.4.2: Strategic Communications Support and Collaboration

3.4.2.1: Scope of Strategic Communications. For the purposes of this Agreement, the term "Strategic Communications" is used to describe both the Strategic Communications function, the Government Affairs and Public Policy function of the CNA, and Commission Government Affairs function. However, no hierarchical relationship is implied. The Government Affairs and Public Policy function may be referred to separately in this Agreement. The scope of Strategic Communications refers to CNA activities in this area paid for with fees charged under this Agreement (also referred to as "AbilityOne Program-related activities" in this Section).

Within this scope, the CNA shall consider Strategic Communications to include Program-related communication activities conducted by other functions within the organizations including but not limited to business development meetings with federal customers at senior levels as described in this section. Strategic communications includes internal and external communications, including communications with key AbilityOne Program stakeholders in senior level positions and roles (e.g., CNA Board of Directors, CNA senior staff CEO/all VP levels and Directors and CNA Senior Leaders in geographic or

other structural positions any of whom are meeting with military or civilian commanders, Federal Senior Executive Service, Executive Leaders, Flag Officers, Political Appointees, including the Executive Branch/Administration) as well as the scope and nature of the meeting (e.g., discussions on policy, budget or advocacy, MOA/MOUs related to the AbilityOne Program, program/project plans/initiatives or other AbilityOne Program matters, as identified by the Commission).

Within Section 3.4.2, the following six elements shall be considered minimum elements for the purposes of the Quality Assurance Surveillance Plan (QASP):

1. Provide Written Notice to the Commission Prior to Significant Meetings or Events;
2. Public Relations;
3. Website and Social Media Support;
4. Advertising and Market Research;
5. AbilityOne Program Publications; and
6. Plans

Within the Quality Assurance Surveillance Plan Strategic Communications section, performance refers to products and services consistent with recognized standards of research, planning, implementation, evaluation and outcomes established by professional associations.

The Commission acknowledges that Strategic Communications Public Relations, Marketing Support, Conference Support, and other Strategic Communications Support and Collaboration including as related to media, agency officials and other senior government personnel are part of the CNA's work under this Agreement and may be performed by the CNA using Program Fee.

3.4.2.2: The scope of Strategic Communications also includes, but is not limited to the following, to the extent that they are directly related to the Program:

1. All communications activities including public relations, as well as tools that support general education of Federal customers;

2. Marketing and positioning of the AbilityOne Program, at the high level, including price, product / message, promotion, and placement;

3. Inventory of products and services, including a portfolio of solutions, how to position them, and geography / reach;

4. Reputation management and relationship management, including supporting tools;

5. Research that is informing and directional;

6. Industry analysis;

7. Tracking, reporting and, as needed, analyzing the status and progress of issues including key legislative, regulatory, association and other government affairs actions, activities, proposals, processes and programs on both the state and Federal level that have implications for the AbilityOne Program. Government Affairs and Public Policy reporting should encompass, as needed and as appropriate, all branches of government – executive, legislative and judicial; and

8. Within this Section, where the Commission specifically requests support from the CNA, it shall be understood that the Commission will direct that support unless otherwise agreed by the parties.

3.4.2.3: Collaboration and Alignment. The CNA and the Commission will share information and work collaboratively to create and optimize transparency, alignment, two-way communication, awareness, understanding and preference for the AbilityOne Program among internal and external audiences. The CNA shall consult with the Commission on research, planning, execution and measurement of tactical and strategic activities within AbilityOne Program-related Strategic Communications, as well as Government Affairs and Public Policy, on an as-needed basis or as scheduled by the Commission.

The CNA shall consult with the Commission on messaging, and recommend and implement strategies and tactics to provide clear, consistent, cohesive and aligned AbilityOne Program Strategic Communications, and Government Affairs and Public Policy, including Commission priorities and messaging provided on a monthly, quarterly or annual basis. The CNA shall support and participate in AbilityOne Program team meetings for Strategic Communications, and Government Affairs and Public Policy, as scheduled by the Commission. Unless otherwise indicated, the Commission points of contact for consultations and submitting reports are (1) Strategic Communications -- Commission Public Affairs Specialist, and (2) Government Affairs and Public Policy – Commission Government Affairs Advisor.

3.4.2.4: Providing Written Notice to the Commission Prior to Significant Meetings or Events. To the extent practicable, the CNA shall ensure the Commission has notice in writing at least ten (10) days in advance, including agenda, of significant meetings. In the event of a Commission concern about the Commission or AbilityOne Program position being presented, the parties shall communicate and reach a resolution prior to the significant meeting. Significant meetings and events include meetings with key stakeholders, Congressional members and staff, White House and Executive Office of the President, and members of the disability community. The CNA acknowledges and agrees that it is not authorized to represent or advocate on behalf of the Commission or the AbilityOne Program to Congressional members and staff, White House and Executive Office of the President or other key stakeholders. The parties shall meet monthly and/or report on the Strategic Communications Committee to discuss monthly activities. The Strategic Communications Committee, on a quarterly basis, will discuss significant meetings on policy, budget or advocacy, MOA/MOUs related to the AbilityOne Program, program/project plans/initiatives or other AbilityOne matters, or other similar issues as identified by the Commission.

"Significant meetings" generally refer to the position and level of the participants and include but are not limited to CNA Board of Directors, CNA VPs and above whom are meeting with military or civilian commanders, federal Senior Executive Service, Executive Leaders, Flag Officers, Political Appointees, including the Executive Branch/Administration. The "disability community" generally refers to a group or organization of disability consumers, advocacy and/or activist groups such as member organizations (e.g. National Federation of the Blind (NFB), National Disability Leadership Alliance (NDLA)). The CNA shall not communicate a Commission position that has not been coordinated with the Commission.

3.4.2.5: AbilityOne Program Meetings, Event and Conference Support. Consistent with available resources, the CNA shall provide support and resources for effective AbilityOne Program outreach to NPAs, members of the disability community, and government customers.

3.4.2.6: Public Relations. As requested by the Commission, the CNA shall support planning of special Commission events and related media coverage; special media campaigns as requested by the Commission; and make a reasonable effort to develop a speaker's bureau of current and/or former AbilityOne Program employees who may serve as ambassadors for the AbilityOne Program at special events. The CNA shall provide the Commission with advance notification of any potential speaking engagements involving Commission members or staff at least ten (10) days before such individuals are contacted.

The CNA shall coordinate messaging, media relations and crisis communications with Commission Public Affairs in a timely manner that provides the Commission with advance and appropriate situational awareness.

3.4.2.7: Website and Social Media Support. The CNA shall provide technical support and assistance to the Commission in refreshing and maintaining content and development on the www.abilityone.gov website. The CNA shall recommend appropriate social media channels and assist the Commission in promoting communication through those channels. The CNA shall monitor and track utilization of social media and submit monthly reports to the Commission that include web analytics and metrics, consistent with best industry practices or such others as may be determined by the Commission. The CNA shall perform other website and social media activities, as determined by the Commission in accordance with the annual Strategic Communications Plan. The Commission will consult with the CNA on AbilityOne.gov deliverables. The Commission intends for the CNA to maintain the current level of support.

3.4.2.8: AbilityOne Information Toll Free Number. The CNA shall maintain a log of all inquiries and project leads coming through the "800" phone numbers (currently handled by SourceAmerica) and share that information with the Commission and other CNA(s) on a monthly basis.

3.4.3: Advertising and Market Research

3.4.3.1: Advertising and Supporting Materials. The CNA shall coordinate with the Commission on advertising to include timing, content and placement on a schedule that provides the Commission advance notice to avoid unnecessary duplication and expenditure of resources. Where appropriate, the CNA shall reference the AbilityOne Program in all of its Program-related advertising to explicitly link the CNA and the AbilityOne Program-related activities. The CNA shall submit a proposed annual calendar of all AbilityOne Program ad placements no later than 30 days before the annual period begins and subject to quarterly review. The CNA shall, to the extent practicable, submit all AbilityOne Program-related ads for review and/or approval at least 30 days before the ad creative is due. Approved formats shall be deemed "pre-approved" for additional use until specified otherwise by the Commission. The CNA shall consult with the Commission when obtaining paid display advertising for or about the AbilityOne Program, to include the CNA's role as an Authorized AbilityOne Enterprise. The CNA shall maintain and distribute public service advertising about the AbilityOne Program in consultation with Commission. The CNA shall provide signs, posters or other large scale graphics as needed for promotional purposes.

3.4.3.2: Market Research and Analysis. The CNA shall conduct awareness, understanding and/or customer satisfaction surveys in consultation with the Commission to support Commission communication initiatives and measurements. The CNA shall provide both notice to the Commission and an opportunity to review survey questions and methodologies at least 30 days before any AbilityOne program-related survey is conducted. The CNA shall provide the Commission with all results of all AbilityOne program-related surveys no later than 30 days after the survey results are available.

3.4.4: AbilityOne Program Publications such as Annual Report, Magazine, and Procurement Guide Book. Each year the CNA shall provide the necessary support and resources to ensure the timely design and production of no less than one (1) and no more than six (6) major publications to communicate information about the AbilityOne Program to key audiences. The Commission will provide substantive requirements and timelines to the CNA at least 180 days prior to the publication deadline. Additional publications may be identified by the Commission for support, consistent with available resources.

3.4.5: Trademark and Licensing Agreement

3.4.5.1: Licensing and Sublicensing of AbilityOne® name, trademark, and logo. The Commission is the sole owner of the registered trademark "AbilityOne®"; which, along with the AbilityOne logo are the official recognition marks of the AbilityOne Program. The Commission hereby grants to the CNA a world-wide, non-exclusive, royalty-free use of the trademark and logo while the CNA is acting in its responsible role as a CNA in the AbilityOne Program. Additionally, the CNA is authorized to further grant a world-wide, non-exclusive, royalty-free use of the trademark and logo as a Sub-License to qualified NPAs in the AbilityOne Program. In particular, although not limited to, the Licensee or Sub-Licensee will use the trademark and logo as follows:

(a) In a tagline following the CNA's name as follows: "(CNA Name), An Authorized AbilityOne® Enterprise";
(b) In a tagline following the NPAs (Sub-Licensee's) name as follows: "(Nonprofit Agency name), An Authorized AbilityOne Provider";
(c) In any professional manner wherein the CNA is performing its delegated responsibilities as a designated CNA; and
(d) In connection with Licensee's/Sub-Licensee's manufacturing, packaging, processing, advertising, promoting, distributing and selling of goods and services on the Procurement List of the Committee and which are sold to the Federal Government.

The CNA shall adhere to all terms of the license granted under this Agreement and use the trademark and logo in such a way as to professionally promote the AbilityOne Program and the CNA's status as a central nonprofit agency designated by the Commission pursuant to 41 U.S.C. § 8503(c). The CNA agrees that such use of the trademark and logo will be accomplished so that there is no appearance of the Commission or Government endorsement or authorization of, or affiliation with the CNA and the NPA Sub-Licensee, other than as such affiliation is specified herein between the Commission and the CNA or NPA Sub-Licensee. More specifically, the CNA or NPA Sub-Licensee shall not use the trademark and logo in communicating with Members of Congress or their staffs, Executive agency senior leaders or their staffs, or other individuals or entities not affiliated with the AbilityOne Program in any manner that could appear that the Commission authorized, approved or agrees with the contents of the communication without advance approval by the Commission.

As authorized by this subsection, the CNA shall further grant sub-license for use of the registered trademark "AbilityOne" with each of the qualified NPAs; when discovered by the CNA, report infractions of use by any Sub-Licensee to the Commission (to the extent the CNA is aware) and take corrective action as needed. The CNA shall monitor and supervise the use of the registered trademark and logo, reporting any inappropriate use discovered by the CNA to the Commission (to the extent the CNA is aware).

The Commission retains all rights, authorities and use of the AbilityOne or AbilityOne Program name, trademark and logo. The CNA hereby acknowledges and agrees that the Commission is the sole owner of the trademark and logo, the goodwill pertaining thereto, and that nothing contained herein shall constitute an assignment of the trademark or logo, or grant to the CNA of any right, title or interest therein, except the right to use it as set forth herein.

The execution of this Agreement supersedes any and all authorities granted in previous license agreements, effective upon the effective date of this Agreement and the separate written agreements between the CNA and qualified NPAs.

3.4.5.2: AbilityOne Brand Book. Subject to Commission direction and approval, the CNA shall implement all brand book revisions and provide updates to the Commission on a quarterly basis.

3.4.6: Reports

3.4.6.1: Quarterly Activities Report: The CNAs shall provide quarterly activities reports on (1) Strategic Communications, and (2) Government Affairs and Public Policy. Reports shall be submitted to the Commission's Public Affairs Specialist, on dates to be identified by the Commission. As may be required by the Commission, reports shall include, but not be limited to, information about past, present and future internal and external activities such as events, programs, initiatives, key stakeholder engagement and outreach, executive communications, surveys, focus groups, web and social media assessments, and associated metrics. The report shall be submitted in a standardized format agreed to by the parties and, as needed, include additional content as may be directed by the Commission.

3.4.6.2: Annual Activities Report: The CNA shall submit an annual report summarizing selected Monthly Activities Reports elements identified by the Commission.

3.4.7: Audits: The Commission may require the CNA to perform an audit of its overall Strategic Communications to systematically assess capacity for, or performance of, essential Strategic Communications practices. The audit shall be conducted using standard audit practices and any key areas suggested by the Commission. As may be reasonably required by the Commission, the audit shall include historical information, as well as information related to Nonprofit Agency Strategic Communications. The audit report shall be submitted on a mutually agreeable date.

3.4.8: Plans: The CNA shall submit an annual Strategic Communications plan to the Commission, which may require certain format and content elements. The Commission may request coordination and / or approval of Strategic Communications plans for selected activities and events.

3.4.9: Support: The CNA shall provide writing, editing and planning support to the Commission, as required, for activities and events on a frequency to be coordinated by the CNA and the Commission consistent with available resources.

4.0: Program Performance Objectives and Deliverables

The CNA shall submit all reports to the Commission in accordance with this Agreement and as identified in Section E Attachment 1, Deliverables Schedule. Each report shall include the established key performance indicators and associated metrics as identified in Section E Attachment 2, Performance Requirements Summary table.

The CNA shall maintain complete records of all fees collected in accordance with 41 C.F.R. § 51-3.5 as well as expenditures of such fees. The CNA shall provide the Commission copies of required CNA Fee and Expenditure reports and documents necessary for the Commission to submit to Congress pursuant to Public Law 114-113 2016, Consolidated Appropriations Act, 2016, on a quarterly basis, at the end of each FY quarter. The CNA shall provide 87.5% (7 out of 8) of CNA fee and expenditure reports in a complete, accurate, and timely manner on first submission. Any deficiencies identified by the Commission must be corrected within 15 business days.

4.1: CNA Fees Report. The CNA Fees Report shall include the following:

1. Each fee charged pursuant to Section 51-3.5 of title 41, Code of Federal Regulations;
2. Each NPA charged a fee pursuant to Section 51-3.5 of title 41, Code of Federal Regulations; and
3. For each fee charged, for each government order, include name of NPA, description of product or service ordered, ordering government agency, order price (total), and contract award ID associated with any order, where applicable.

4.2: CNA Expenditure Report. The CNA Expenditures Report shall include the following:

1. Employee Salaries (total), including executive salaries;
2. Employee benefits, including executive benefits;
3. Executive salaries;
4. Executive benefits;
5. Total Travel Expenses;
6. Executive Travel;
7. Lobbying;
8. Advertising and Promotion;
9. CNA reserve level (restricted and unrestricted); and
10. Funds spent to support the efforts of the Commission, including a description of the activities, services, and products supplied to the Commission.

4.3: Program Fee Expenditure Treatment and Reporting. Except as otherwise authorized by this Agreement, the JWOD Act, 41 U.S.C. Chapter 85, or implementing regulations 41 C.F.R. Chapter 51, Program Fee expenditures must meet the following general criteria to be allowable under this Agreement:

1. Be necessary and reasonable for the performance of this Agreement and be allocable thereto under these principles;

2. Be unallowable if any of the following:

a. Alcoholic beverages
b. Bad debts if related to non-Program income
c. Collections of improper payments
d. Compensation and related fringe benefits for personal services
e. Compensation and related fringe benefits for personal services (executive)
f. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements related to CNA fraud or similar misconduct where such conduct is established.
g. Exchange rates
h. Fines, penalties, damages and other settlements
i. Goods or services for personal use by CNA staff or Board members (does not include accommodations)
j. Taxes

3. Be consistent with policies and procedures that apply uniformly to both Program and other activities of the CNA;

4. Be accorded consistent treatment. A cost may not be assigned to this Agreement as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to this Agreement as an indirect cost;

5. Be determined in accordance with generally accepted accounting principles (GAAP), except, as otherwise provided;

6. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period; and

7. Be adequately documented.

Quarterly the CNA shall report total CNA Program Fee related expenses recorded for each of the following:

1. Advertising and public relations;
2. Advisory councils;
3. Audit services;
4. Bonding costs;
5. Conferences;
6. Contributions and donations;
7. Depreciation;
8. Entertainment costs;
9. Equipment and other capital expenditures;

10. Fund raising and investment management costs;
11. Gains and losses on disposition of depreciable assets;
12. General costs of governance;
13. Insurance and indemnification;
14. Interest;
15. Maintenance and repair costs;
16. Proposal costs;
17. Publication and printing costs;
18. Rental costs of real property and equipment;
19. Selling and marketing costs;
20. Termination costs;
21. Training and education costs for CNA employees;
22. Travel costs; and
23. Travel costs (Executive).

4.4: Performance Monitoring. The Commission will monitor and measure the CNA's service performance under this Agreement to determine if services provided are satisfactorily performed and meet performance requirements of the PWS to ensure compliance with the terms and conditions of this Agreement. The Commission and the CNA shall work cooperatively to address any areas of improvement identified by the Commission.

5.0: QUALITY CONTROL PLAN (QCP)

The CNA shall develop and maintain effective quality control procedures to ensure services are performed in accordance with the PWS in this Agreement. All work performed under this Agreement shall be consistent with industry standards to assure timely provision of services and optimum customer satisfaction. The CNA shall develop and implement procedures to identify and ensure services are provided at the required level of performance for all elements of this Agreement. CNA performance requiring corrective actions include, but are not limited to, items such as late performance or submission of defective or late reports on a recurring basis or failure to perform a required task.

The CNA shall submit an initial quality control plan (QCP) to the Commission no later than 30 days after the effective date of this Agreement. The QCP will be reviewed and approved by the Commission and the CNA will be notified if there are any deficiencies. The CNA must correct any deficiencies, if required, within 30 days of notification of any deficiencies. The CNA must ensure the QCP is in operation throughout the entire term of the agreement. The CNA shall prepare and implement a written quality control plan as described below.

5.1: MINIMUM REQUIREMENTS OF QCP. The following are the minimum requirements for a quality control plan to be provided and maintained by the CNA:

1. The CNA shall ensure the required services specified in this Agreement meet the quality standards outlined in the Agreement;
2. The CNA is responsible for the day-to-day inspection and monitoring of all CNA work performed to ensure compliance with Agreement requirements;
3. The results of all quality control inspections conducted by the CNA, including inspections and assistance visits at the NPAs, shall be documented on inspection reports and provided to the Commission upon request. The inspection reports shall be submitted to the Commission no later than ten (10) days after requested; and
4. The CNA shall revise the QCP plan as requested by the Commission, in an effort to ensure Agreement objectives are met. All revisions must be submitted to, reviewed and approved by the Commission before becoming effective.

The Quality Control Plan shall include, but not be limited to:

A. SUSTAINING ACCEPTABLE QUALITY LEVELS (AQLs). The CNA shall deploy methods to identify, correct, and prevent defects in quality service levels before the service level becomes unsatisfactory. (See Section E Attachment 4, Quality Assurance Surveillance Plan (QASP).

B. RECORDS AND FILES. The CNA shall maintain records, reports, and files to document the inspections conducted by the CNA and any necessary corrective action taken (as appropriate). Copies of all QCP related inspection reports and other documents shall be made available to the Commission when requested. All such documents shall be maintained by the CNA.

6.0: QUALITY ASSURANCE SURVEILLANCE PLAN

6.1: GENERAL. The Commission will evaluate the CNA's performance under this Agreement in accordance with the Quality Assurance Surveillance Plan (QASP) (See Section E Attachment 4). This QASP will serve as a guide for all parties involved to ensure the CNA is providing the Commission and NPAs the support and services required by this agreement. The QASP defines how the performance standards will be applied, the frequency of surveillance, and the minimum acceptable performance levels.

6.2: BUSINESS RELATIONSHIP. The Parties agree to cooperate under the terms of this Agreement to both provide and increase employment and training opportunities for persons who have significant disabilities through the delivery of products and services to the Federal Government. The Parties agree that they will use industry standards, consistent with available resources, to perform respective obligations under this Agreement. Moreover, the Parties agree that the Commission shall reasonably construe the obligations set forth in this Agreement based upon the level of Program Fee available. Nothing in this Agreement shall be construed to create a legal partnership or joint venture between the CNA(s) and the Commission.

In order to have an effective Agreement administration program that also ensures a successful business relationship between the Commission and the CNA, all parties involved in the service delivery process must work as a team and foster open and honest communication at all times. Close coordination and active cooperation on a continuous basis between the CNA and those representing the Commission is critical.

6.3: COMMISSION/CNA WIN-WIN COMMUNICATIONS. To avoid any unnecessary issues and controversy and to settle minor problems and misunderstandings, the CNA and the Commission shall meet bi-weekly during the first six (6) months of the Agreement. The intent is to ensure that the operating environment under this Agreement evolves in an interactive positive and effective manner. Thereafter, the Commission and the CNA will determine the frequency of meetings, but not less frequently than once per month. A mutual effort shall be made to resolve problems identified during these meetings. The participants in these meetings will be determined by the Commission and the CNA. Specific topics to be addressed during these meetings may include such topics as listed below or any other areas that require discussion:

1. Effectiveness of CNA's Quality Control Plan;
2. Quality Assurance Surveillance Plan Performance evaluation;
3. Corrective action plans;
4. PL submittals for new lines of business;
5. Management of NPA's and their support and development;
6. Employee Growth; and
7. New Lines of Business.

6.4: PERFORMANCE EVALUATION. The CNA is expected to provide effective and efficient services at all times. The Commission will conduct performance evaluations in accordance with the Quality Assurance Surveillance Plan (QASP), see Section E, Attachment 4. During the life of this Agreement, the CNA will be expected to document and maintain records of its Quality Control Program.

The Commission will publicly publish the results of CNA performance evaluations. CNA performance of the requirements of this Agreement and the Commission's application of the QASP are factors the Commission will consider as part of the review of the Program Fee ceiling during the first two (2) years of this Agreement.

6.5: EFFECTIVENESS OF QUALITY CONTROL. The Commission will periodically assess the effectiveness of the CNA's Quality Control Program through review of reports required of the CNA, service delivery information, and customer interaction. The quality and timeliness of the CNA's performance of the scheduled program, service call responses and occupant feedback program will be used to assess the overall service delivery. If the CNA fails to adhere to the Agreement requirements and the CNA's performance remains unsatisfactory, it will have a negative impact on the performance evaluation process and have a negative impact on the fee ceiling determinations made by the Commission. Failure to provide required documentation will have a negative impact in the performance evaluation process. See Section E Attachment 4, Quality Assurance Surveillance Plan.

SECTION D – AGREEMENT ADMINISTRATION

1. TERM OF AGREEMENT.

A. This Agreement will become effective upon the Commission's signature and extend for a period of three (3) calendar years for the initial term.

B. The Commission may extend the term of this Agreement by written notice to the CNA not later than the last day of the current performance term.

2. DISPUTE RESOLUTION.

If the key officials are unable to resolve a dispute concerning this Agreement within 30 days, they shall refer the dispute to the following officials, who will confer within 15 days of the referral in order to resolve the dispute:

For the Commission:
Name: Kimberly Zeich
Title: Commission Deputy Executive Director
Address: Commission Headquarters
Phone: 703-603-2130
E-Mail: kzeich@abilityone.gov

For the CNA:
Name: Elizabeth Goodman
Title: Chief Financial Officer
Address: SourceAmerica Headquarters
Phone: 571-226-4506
E-Mail: egoodman@sourceamerica.org

If the Commission and the CNA Chief Executive Officer or his/her designee are not able to resolve the dispute within 15 days, the matter shall be escalated to the Executive Director of the Commission who, in consultation with the Chair of the Commission Stewardship and Business Excellence Subcommittee, will make a determination for final resolution. Such determination shall be the final decision to resolve the dispute. Nothing herein shall limit or waive the CNA's right to pursue judicial review of terms of this Agreement or of any action or decision related to this Agreement except where otherwise prohibited in this Agreement or by law.

3. SEVERABILITY.

If any particular term, covenant, or provision of this Agreement is determined to be invalid or unenforceable, the invalidity or unenforceability thereof will not affect the remaining provisions of this Agreement, which will nevertheless remain in full force and effect. If a court of appropriate jurisdiction finds any provision of this Agreement illegal or unenforceable, the parties will attempt to modify the provision in a mutually agreeable manner that renders the provision lawful and enforceable. If the parties are unable to come to agreement, then the court shall construe such provision as modified to the minimum extent possible to make the Agreement enforceable, provided that the revision does not defeat a material element of the Agreement (e.g., payment).

4. MODIFICATION AND TERMINATION.

A. Modification. Except as otherwise stated herein, this Agreement may be modified only by a written instrument executed by mutual agreement of the parties. The Commission reserves the right to make unilateral changes to the Award Fee structure.

B. Termination. The Agreement may be terminated, in whole or in part, consistent with terms and conditions of this Agreement, the JWOD Act, 41 U.S.C. Chapter 85 and implementing regulations, 41 C.F.R. Chapter 51 as follows:

(1) By the Commission, if the CNA fails to comply with the terms and conditions of this Agreement;

(2) The Government will give not less than 180 days' notice of termination to the other Party to effect a seamless transition of the CNA responsibilities; or

(3) Prior to termination, the Parties agree to work cooperatively in good faith to address any concerns or proposed grounds for termination.

C. In the event of expiration or termination of this Agreement, the CNA may collect:

1. Any and all fees accrued or earned but not collected pursuant to Section B of this Agreement on or before the effective expiration or termination date.; and,

2. Any and all additional payments, including those pursuant to Section B.1.(f), for work performed by the CNA under this Agreement and/or in accordance with relevant statutory and regulatory requirements.

3. CONTINUITY OF SERVICES.

(a) The CNA recognizes that the services under this Agreement are vital to the Government and must be continued without interruption and that, upon expiration of this Agreement, a successor, either the Government or another CNA, may continue them. The CNA agrees to—

(1) Exercise industry standards and cooperation consistent with available resources, to furnish phase-in training; and

(2) Exercise industry standards, consistent with available resources, to effect an orderly and efficient transition to a successor.

(b) The CNA shall, upon the Agreement Officer's written notice, (1) furnish phase-in, phase-out services for up to 180 days after this Agreement expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Agreement Officer's approval. The CNA shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Agreement are maintained at the required level of proficiency. Nothing in this provision is intended to waive the CNA's right to collect Program Fee or the CNA's right to maintain the confidentiality and ownership of its proprietary information and processes.

(c) The CNA shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Agreement.

(d) The CNA shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after Agreement expiration that result from phase-in, phase-out operations) through Program Fee it collects during the phase-in, phase-out period.

4. THIRD PARTY BENEFICIARIES.

Nothing in this Agreement is intended to create third party beneficiaries. No person or entity, including but not limited to NPAs, qualified or otherwise, or any person(s) at one time employed by or seeking employment with an NPA, has any rights or remedies under this Agreement.

SECTION E – LIST OF ATTACHMENTS

Attachment 1	Deliverables Schedule
Attachment 2	Performance Requirements Summary (PRS)
*Attachment 3	Reserved for Award Fee Simulation (to be completed NLT September 30, 2016)
Attachment 4	Quality Assurance Surveillance Plan (QASP)
Attachment 5	List of Regulations and Policies
Attachment 6	Acronyms/Definitions

Attachment 1 – DELIVERABLES SCHEDULE

Task Requirement/Deliverable	PWS Ref	Due Date	Submit to
Employment Growth Plan	Objective 3.1	No later than September 1 each year	Commission Staff-Director of Operations (DOO)
Employment Growth Plan Updates	3.1	Quarterly, as part of the quarterly report.	Commission Staff-DOO
Employment Growth Quarterly Dashboard Reports	3.1	Quarterly, as part of the quarterly report.	Commission Staff-DOO
Pipeline Report	3.1	Annually	Commission Staff - DOO
Mandatory Disclosures	3.2.1	Within five (5) business days of notice of violation	Commission Staff – General Counsel (GC)
Initial Board of Directors Report	3.2.2	No later than July 31, 2016	Commission Staff-GC
Annual Board of Directors Disclosure Report	3.2.2	No later than August 15 each year	Commission Staff-GC
Board of Directors Transition Plan	3.2.2	No later than May 31, 2017	Commission Staff-GC
Internal Control Reporting	3.2.3.1	Annually, by June 1	Commission Staff-Director of Compliance (DOC)
Audit Report	3.2.3.2	Annually, January 31	Commission Staff-DOC
Ad Hoc In-Process Reviews (IPR)	3.2.4	No later than 30 days following request by Commission	Commission Staff-DOC
Annual MOA/(MOU) Report	3.2.4.1.2	No later than January 31 of each year	Commission Staff-Director of Policy and Programs (DPP)

Proposed Structure and Content of Allocation Report	3.2.5	No later than December 31, 2016	Commission Staff-DOO
Initial Allocation and Recommendation Report	3.2.5	No later than December 31, 2017	Commission Staff-DOO
Annual Allocation and Recommendation Report	3.2.5	No later than January 31 of applicable year	Commission Staff-DOO
NPA Oversight	3.3.1.3	Within 120 days after execution of this Agreement	Commission Staff - DOC
NPA Regulatory Assistance Visits Post-Visit Reports	3.3.1.3	Within ten (10) business days of such visits	Commission Staff-DOC
FY Regulatory Review List	3.3.1.3	By September 1 of Each Year	Commission Staff-DOC
Regulatory Review End of Year Analysis	3.3.1.3	By January 31 of Each Year	Commission Staff-DOC
Submission of Form 401 or 402	3.3.2.1	Within ten (10) business days of designation	Commission Staff-DOC & GC
Submission of Annual Reps and Certs	3.3.2.2	No later than December 1 each year	Commission Staff-DOC
Annual Reps&Certs EOY Analysis	3.3.2.2	No later than December 1 each year	Commission Staff – DOC
Data Extract of Annual Reps&Certs	3.3.2.2	No later than December 1 each year beginning December 1, 2017	Commission Staff - DOC
NPA Financial Assessment Report	3.3.2.3	As Required	Deputy Director Business Operations
NPA Recommendation Process documents	3.3.3.2	Within ten (10) business days of Commission Request	Commission Staff-DOO
Complex Projects	3.3.3.4	As Required	Commission Staff - DOO
Proposed Additions to the Procurement List	3.3.3.4	No later than 120 days prior to expiration of the final option year of current agreement	Commission Staff-DOO

Changes to the Procurement List	3.3.3.5	As Required	Commission Staff - DOO
NPA Performance Improvement Plan (PIP)	3.3.3.6	Within ten (10) business days of initiating or terminating PIP	Commission Staff- DOO
Submission of Fair Market Price (FMP) Documentation and Recommendations	3.3.4.1	Within ten (10) business days after negotiations conclude	Commission Staff- Deputy Director Business Operations
Project-Level Information	3.3.5	Within ten (10) business days of Request	Commission Staff- DOO
Training Reports	3.4.1.3	Annually, January 31 with highlights in Quarterly reports	Commission Staff- DPP
Representation Notification	3.4.2.4	At least ten (10) business days prior to Representation	Commission Staff- Director of Strategic Communications (DSC)
Social Media Reports	3.4.2.7	Quarterly as part of the quarterly report	Commission Staff- DSC
Toll Free Number Log	3.4.2.8	Quarterly as part of the quarterly report	Commission Staff- DSC
Proposed annual calendar of all AbilityOne Program ad placement	3.4.3.1	No later than 30 days before the annual period begins and subject to quarterly review	Commission Staff - DSC
Market Research and Analysis Surveys	3.4.3.3	Quarterly as part of the quarterly report	Commission Staff- DSC
AbilityOne Brand Books	3.4.5.2	Quarterly as part of the quarterly report	Commission Staff- DSC
Strategic Communications Quarterly Report	3.4.6.1	Quarterly as part of the quarterly report	Commission Staff- Director of Strategic Communications (DSC)
Annual Activities Report	3.4.6.2	Annually, January 31	Commission Staff- DSC
Strategic Communications Audit Report	3.4.7	As Required	Commission Staff - DSC

Strategic Communications Annual Plan	3.4.8	Annually, June 1	Commission Staff-DSC
CNA Fees and Expenditure Reports	4.0	End of month following quarter end	Commission Staff (Congress)
Initial Quality Control Plan	6.0	No later than 30 days after effective date of agreement	Commission Staff- All Directors including DED
Inspection Report	6.0	No later than ten (10) days after requested	Commission Staff-DOC

Attachment 2 – PERFORMANCE REQUIREMENTS SUMMARY

PERFORMANCE OBJECTIVE	PWS REF	PERFORMANCE STANDARD	METHOD OF SURVEILLANCE
Employment Growth	3.1	The CNA shall provide a timely employment growth plan and associated progress updates 100% of the time. PWS REF. 3.1	100% Surveillance
Employment Growth	3.1	The CNA addressed 100% of the minimum elements in the employment growth plan and progress updates.	100% Surveillance
Employment Growth	3.1	The CNA shall ensure up to 2% increase in annual net employment growth Severely Disabled Direct Labor Hours.	Random Sampling
Employment Growth	3.1	The CNA shall ensure no net loss in annual placements and promotions (P/P).	Random Sampling
Program Admin, Integrity, and Oversight	3.2.5	The CNA's allocation and recommendation processes shall result in no more than 1 allocation and recommendation overturned by the Commission.	100% Surveillance
Advance NPA Capabilities	3.3.1.3	The CNA shall ensure 95% and up to 96% of CNA's associated NPAs are in compliance with AbilityOne regulatory requirements.	100% Surveillance
Advance NPA Capabilities	3.3.2.2.	The CNA shall ensure that 96% and up to 97% of the Reps and Certs submitted by NPAs are accurate and complete, and on time.	100% Surveillance
Advance NPA Capabilities	3.3.3	The CNA shall ensure that 75% and up to 80% of PL transactions are complete and accurate in accordance with the Commission manuals.	100% Surveillance

Advance NPA Capabilities	3.3.3	The CNA shall ensure that PL Addition Requests are submitted at least 120 days, and up to 129 days, before the expiration of the last option of the current contract, and that there is no more than 1 late submission per quarter with cause.	100% Surveillance
Training and Strategic Communications	3.4.1	The CNA shall ensure 10% and up to 15% increase in NPA enrollment in Federal Procurement related training courses provided by the CNA.	100% Surveillance
Training and Strategic Communications	3.4.1	The CNA shall ensure 85% and up to 86% of NPAs report satisfaction with CNA training courses on Federal Procurement process and negotiation techniques.	Random Sampling
Training and Strategic Communications	3.4.1	The CNA shall make online training available for AbilityOne workers.	Random Sampling
Training and Strategic Communications	3.4.2.2	The 6 minimum elements in the Strategic Communications PWS section 3.4.2 are 85% accurate, complete and on time – and/or reflect an approach or results that are near publication-ready or nearly implementable.	100% Surveillance
Deliverables	Overall	The CNA shall ensure 95% of reports required by the PWS are submitted on time and accurate.	Commission acceptance of deliverables

**The Commission may adjust the Strategic Communications six essentials part of the QASP within 60 days of Agreement effective date to reflect levels of Unsatisfactory-Satisfactory-Good-Exceptional, where applicable. This adjustment will be informed by discussions with the CNA about strategic communications planning.*

Attachment 3 – AWARD FEE PLAN

ABILITYONE AWARD FEE SIMULATION

Effective October 1, 2016

The parties agree to an Award Fee Simulation in Attachment 3. The specifics of this Simulation shall be established in an amendment to this Agreement NLT September 30, 2016.

APPROVED:

Executive Director
DATE: _____

<u>Attachment 4</u> – QUALITY ASSURANCE SURVEILLANCE PLAN (QASP)

[QASP cover page]

Coordinate:

_____ Date _____

Amy Jensen
Director of Compliance, AbilityOne Commission

Coordinate:

_____ Date _____

Timi Kenealy
General Counsel, AbilityOne Commission

Approve:

_____ Date _____

Tina Ballard
Director, AbilityOne Commission

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1 OVERVIEW

1.1: Purpose. The purpose of this QASP is to identify the methods and procedures the Commission will use to ensure the CNA provides the services to the NPAs and accomplishes the AbilityOne Program objectives set forth under this Agreement as identified in Section E Attachment 2, Performance Requirements Summary (PRS) in the Performance Work Statement (PWS). This plan will focus on the level of performance required by the PWS; not the methodology or process.

1.2: Intent. The intent of this plan is to rely on the CNA's quality control, thus changing the Commission's role from "oversight" to "insight". Performance objectives will be periodically monitored and the quality program evaluated but the CNA has as much flexibility as possible to develop the most efficient methodology to meet and exceed the required standards of performance.

2 DESCRIPTION OF SERVICES

2.1: Program Overview: The CNA shall provide all management, labor, supervision, materials, equipment and supplies to furnish CNA program management services.

2.2: Scope of Work. This is a performance-based agreement. The CNA shall plan, schedule, coordinate, and ensure effective and efficient performance of all services provided. The CNA shall perform the services in a manner that promotes the Federal Government's policies and the Commission's specific objectives as set forth in this Agreement, the JWOD Act and 41 CFR Chapter 51. These performance-based objectives express the Government's requirements in the form of the minimum quality standard to be met.

The overall purpose of this effort is to increase employment and training opportunities for persons who are blind or have other significant disabilities through the delivery of products and services to the Federal Government in accordance with the Javits-Wagner-O'Day Act.

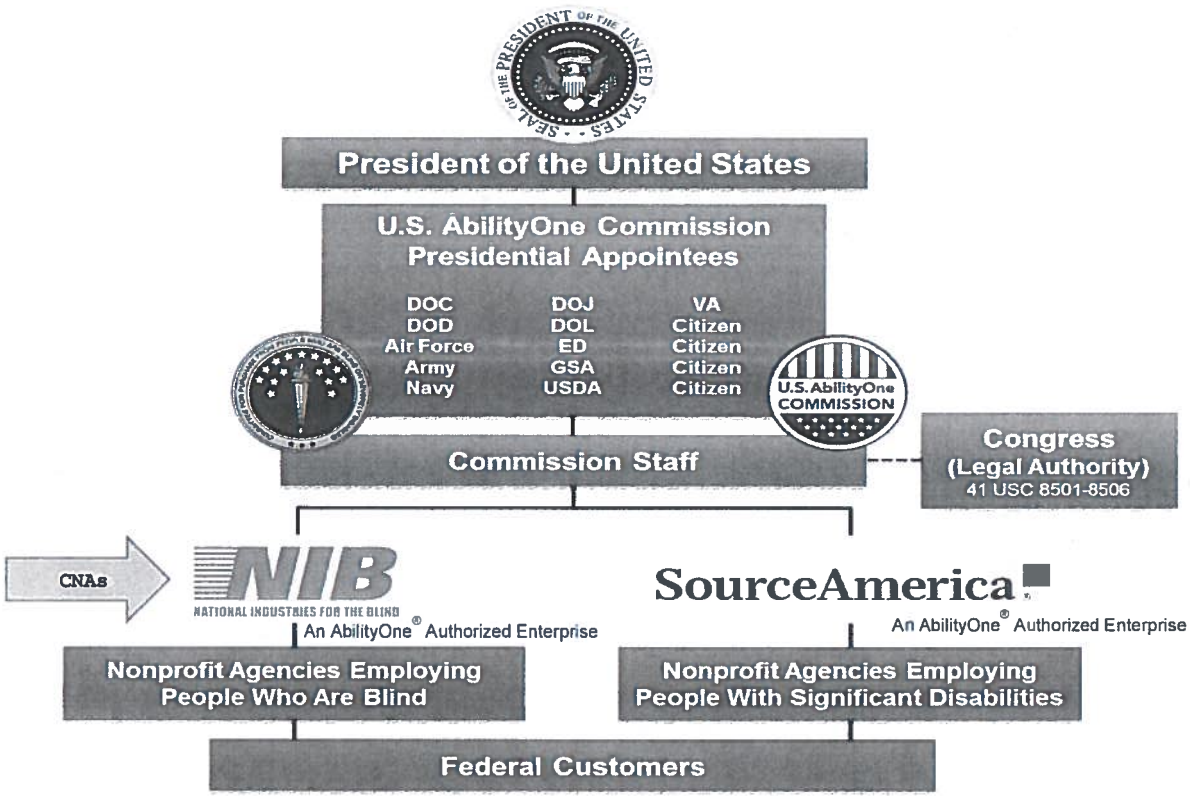
High value is associated with sustaining and increasing current employment levels and developing and executing new lines of business in the AbilityOne Program that also increase new employment opportunities.

Key Performance Indicators (KPIs) of this agreement are:

- Employment growth
- Program administration, oversight, and integrity
- NPA Support, Assistance, and Development

- Training and Strategic Communications

3 ORGANIZATIONAL STRUCTURE



*The current AbilityOne Infrastructure

4. AGREEMENT QUALITY REQUIREMENTS

4.1: Quality System. The CNA's quality requirements are defined in Section C, paragraph 6.0 and Section E Attachment 2, Performance Requirements Summary, of the Performance Work Statement. The CNA shall establish, maintain, and implement a Quality Control Plan (QCP) that encompasses all aspects of the agreement.

5. QASP APPROACH

5.1: Purpose. This section details the method(s) used to verify CNA compliance with PWS requirements. The key elements of this process are the CNA's QCP and Commission identified Performance Objectives. The Performance Objectives dictate the minimum surveillance requirements the Commission must accomplish. This Quality Assurance Surveillance Plan (QASP) provides the procedures on how to conduct these evaluations. To fully understand the roles and responsibilities of the Commission and the CNA, it is important to define the

distinction between the QCP and the QASP. The CNA is responsible for its QCP and is responsible for management and quality control action necessary to meet the quality standards set forth by this Agreement. The QASP is developed to define the Commission's surveillance of the CNA's quality control efforts to ensure the CNA delivers the services and achieves outcomes expected in this Agreement. The Commission is responsible for implementing this QASP and the CNA is responsible for implementing its QCP to meet the quality levels established in this Agreement. Effective CNA surveillance relies on two methods for identification of unacceptable performance – CNA Identified Discrepancies and Commission Identified Discrepancies.

5.2: Surveillance Approach. To facilitate the surveillance of the CNA quality plan, the Commission will verify CNA compliance with designated Performance Objectives. The specific procedures to be followed in verifying the Performance Objectives are delineated in this plan. The intent of this surveillance approach is to gain confidence in the CNA's ability to provide satisfactory services and then adjusting the level of oversight to a point that maintains that confidence. This surveillance approach is subject to change based on the CNA's performance.

5.3: QASP Annual Review. The Commission will review QASP Performance Objectives, assess their applicability and recommend the addition or subtraction of Performance Objectives as conditions warrant. This review will be accomplished annually.

5.4: CNA Special Audits. The Commission must be alert to conditions that would warrant a special quality audit. If the Commission determines a special audit is required because the level of performance for any of the four (4) performance objectives, or any other significant performance requirement, is below an acceptable performance requirement, the Commission may initiate a special quality audit. If a special quality audit is initiated, the CNA will receive a minimum of sixty (60) calendar day notice before the special audit is conducted.

5.5: Surveillance Documentation. Surveillance documentation must be maintained by the Commission to capture surveillance and assessment conducted relevant to the four (4) key performance indicators. The documentation may be maintained in hard copy or on a computer database provided there is adequate backup of the data to preclude accidental loss. The surveillance documentation must contain the results of all surveillance assessments and may contain any other sections or information that the Commission finds useful.

- **QUALITY ASSURANCE SURVEILLANCE PLAN**
- **CNA'S QUALITY CONTROL PLAN**

5.5.1: ACTIVITY LOG. The Commission will prepare a chronological log of CNA actions taken in the accomplishment of assigned performance requirements. The purpose of this log is to

provide a brief synopsis of an inspection of CNA provided services or a meeting or conversation with the CNA regarding PWS performance in a given functional area. Documentation that supports activity log entries is maintained in the RECORDS section of the surveillance folder.

5.5.2: RECORDS. The Commission will maintain any documentation associated with discrepancy reports (both active and resolved), relevant correspondence, and/or letters of interpretation of this Agreement. The CNA shall maintain records that captures all activities relevant to its QCP and actions taken to resolve discrepancies.

5.6: Deficiency Identification. Effective CNA surveillance relies on two methods for identification of unacceptable performance – CNA Identified Discrepancies and Commission Identified Discrepancies. When discrepancies are identified, the Commission and the CNA shall develop a corrective action and ensure necessary actions are completed.

6. METHODS OF SURVEILLANCE

Each Performance Objective below will have unique quality standards and surveillance methodology. Enclosure 1 will be used to ensure consistent, timely, and accurate collection of CNA performance data for each of the defined performance objectives.

7. QASP PERFORMANCE OBJECTIVES/STANDARDS (See Enclosure 1).

The Commission will base performance assessments on both objective and subjective data and information used for evaluation, which will be shared with the CNA. One of the primary goals of the assessment process is to establish a performance and feedback process that supports successful execution of this Agreement. Each Performance Objective includes a Commission determined Performance Standard and the resource that is used to perform the verification.

8. QUALITY CONTROL COMPLIANCE

8.1: Quality Control Compliance. The Commission will evaluate the CNA's QCP semiannually through review of quality records and interview of CNA personnel involved in the quality control process.

8.1.1: The Commission will consider the QCP satisfactory if no more than two (2) findings are identified by the Commission per quarter.

8.1.2: The Commission will utilize the following method of surveillance:

8.1.2.1: Review the CNA's audit and inspection records for the nature and number of inspections conducted, the number and type of deficiencies found and the nature of corrective action taken.

8.1.2.2: Review the CNA's quality status reports to ensure all requirements of the QCP have been complied with.

8.2: Definition of Findings

8.2.1: Finding. A Finding is defined as any Commission identified material noncompliance with Agreement requirements that specifies that an activity or action did not take place. The Commission will document in writing any and all findings of noncompliance with this Agreement and will afford the CNA the opportunity to work with the Commission to address any such findings.

Attachment 5 -- LIST OF REGULATIONS AND POLICIES

The following regulations and policies are documents the CNA shall follow when developing their processes and procedures for performing work under the AbilityOne Program and in accordance with this agreement:

1. 41 U.S.C. Chapter 85
2. 41 C.F.R. Chapter 51
3. Public Law 114-113 2016, Consolidated Appropriations Act, 2016
4. Commission Policies

Attachment 6 -- DEFINITIONS AND TERMS

Term	Definition
AbilityOne Program	The program authorized by the Javits-Wagner-O'Day Act to increase employment and training opportunities for persons who are blind or have other severe disabilities through Government purchasing of commodities and services from nonprofit agencies employing these persons.
Blind	An individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle no greater than 20 degrees.
Central nonprofit agency (CNA)	An agency organized under the laws of the United States or of any State, designated in accordance with the Javits-Wagner O'Day Act, operating in the interest of the blind or persons with other severe disabilities, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual, and designated by the Commission to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities and services on the Procurement List among nonprofit agencies employing persons who are blind or have other severe disabilities, to provide information required by the Commission to implement the AbilityOne Program, and to otherwise assist the Commission in administering these regulations as set forth herein by the Commission.
Commission	The Commission for Purchase From People Who Are Blind or Severely Disabled. **NOTE:** The Commission operates as the **U.S. AbilityOne Commission** effective October 1, 2011.
Complex Project	A proposed Procurement List addition that requires an advance feasibility assessment with the Commission staff, due to potential risks or high visibility. Complex projects may include, but are not limited to, annual values above $5 million, phase-in requests that begin with a direct labor ratio below 50%, multiple nonprofit agency prime/subcontractor relationships, or non-traditional lines of business for the AbilityOne Program.

Term	Definition
Contracting activity	Any element of an entity of the Government that has responsibility for identifying and/or procuring Government requirements for commodities or services. Components of a contracting activity, such as a contracting office and an ordering office, are incorporated in this definition, which includes all offices within the definitions of "contracting activity," "contracting office," and "agreement administration office" contained in the Federal Acquisition Regulation, 48 CFR § 2.101, Definitions.
Agreement Officer	Commission Person with the authority to execute, administer, and/or terminate this Agreement, and make related determinations and findings.
Direct labor	All work required for preparation, processing, and packing of a commodity or work directly related to the performance of a service, but not supervision, administration, inspection or shipping.
Entity of the Government	Any entity of the legislative branch or the judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, and any non-appropriated fund instrumentality under the jurisdiction of the Armed Forces.
Federal agency	See *Entity of the Government*
Federal Fiscal year	The 12-month period beginning on October 1 of each year.
Government	See *Entity of the Government*
Interested person or Interested party	An individual or legal entity affected by a proposed addition of a commodity or service to the Procurement List or a deletion from it.
Military resale commodities	Commodities on the Procurement List sold for the private, individual use of authorized patrons of Armed Forces commissaries and exchanges, or like activities of other Government departments and agencies.
Nonprofit agency (NPA)	An organization organized and operated under the laws of the United States or any State, exclusively for an Internal Revenue Code-defined exempt purpose, and none of its earnings may inure to any private shareholder or individual. See Qualified NPA.

Term	Definition
Other severely disabled* and** ***Severely disabled individuals **(hereinafter persons with significant disabilities)**	A person (other than a blind person) who has a significant physical or mental impairment (a residual, limiting condition resulting from an injury, disease, or congenital defect) which limits the person's functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is unable to engage in normal competitive employment over an extended period of time. (1) Capability for normal competitive employment shall be determined from information developed by an ongoing evaluation program conducted by or for the nonprofit agency and shall include, as a minimum, a preadmission evaluation and a reevaluation at least annually of each individual's capability for normal competitive employment. (2) A person with a significant mental or physical impairment who is able to engage in normal competitive employment because the impairment has been overcome or the condition has been substantially corrected is not "other significantly disabled" within the meaning of the definition. In correspondence and policy, the term "significant disability" is synonymous with the term "severe disability" as defined in 41 U.S.C. § 8501 and the applicable regulations.
Personal Conflict of Interest	A situation in which a covered employee has a material financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and perform required fiduciary duties. (A de minimis interest that would not "impair the employee's ability to act impartially" is not covered under this definition.) (1) Among the sources of personal conflicts of interest are— (i) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household; (ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business for the covered employee, close family members or other members of the covered employee's household); and (iii) Gifts, including travel.

Term	Definition
Procurement List	A list of commodities (including military resale commodities) and services the Commission has determined suitable to be furnished to the Government by nonprofit agencies for the blind or nonprofit agencies employing persons with significant disabilities pursuant to the JWOD Act and associated regulations.
Program Fee **(also known as, AbilityOne Program Fee or CNA Fee)**	Program Fee is the maximum fee authorized to be collected that is directly generated and/or earned by the CNA in the performance of this Agreement consistent with the JWOD Act, 41 U.S.C. Chapter 85, and implementing regulations, 41 C.F.R. Chapter 51. This does not preclude the CNA from collecting any and all additional payments for work performed by the CNA under this Agreement and/or in accordance with relevant statutory and regulatory requirements.
Qualified nonprofit agency **(hereinafter qualified nonprofit agency)**	An agency organized under the laws of the United States or any State, operating in the interests of blind individuals or individuals with significant disabilities (who may or may not also be blind), and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which applies for and is accepted for initial qualification and maintains such qualification in the AbilityOne Program pursuant to 41 CFR § 51-3 and -4; and which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs blind individuals or individuals with significant disabilities (including blind) for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.

Term	Definition
Significantly Disabled individual or persons with a significant disability	A person other than a blind person who has a significant physical or mental impairment (a residual, limiting condition resulting from an injury, disease, or congenital defect) which so limits the person's functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is unable to engage in normal competitive employment over an extended period of time. (1) Capability for normal competitive employment shall be determined from information developed by an ongoing evaluation program conducted by or for the nonprofit agency and shall include, as a minimum, a preadmission evaluation and a reevaluation at least annually of each individual's capability for normal competitive employment. (2) A person with a significant mental or physical impairment who is able to engage in normal competitive employment because the impairment has been overcome or the condition has been substantially corrected is not "other significantly disabled" within the meaning of the definition. In correspondence and policy, the term "significant disability" is synonymous with the term "severe disability" as defined in 41 U.S.C. § 8501 and the applicable regulations.
State	The 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory remaining under the jurisdiction of the Trust Territory of the Pacific Islands.
U.S. AbilityOne Commission	Operating name of the Commission for Purchase From People Who Are Blind or Severely Disabled

ACRONYMS

Acronym	Definition
AFDO	Award Fee Determination Office
AFRB	Award Fee Review Board
AQL	Acceptable Quality Level
CNA	Central Nonprofit Agency
EOY	End of Year
JWOD	Javits-Wagner-O'Day Act
NIB	National Industries for the Blind
NISH	NISH—Creating Employment Opportunities For People With Significant Disabilities, now operating as SourceAmerica
NPA	Nonprofit Agency
QCP	Quality Control Plan

SECTION F - AGREEMENT CLAUSES

1. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT

(a) Except as provided in (b) of this clause, the CNA shall not enter into any agreement with an actual or prospective qualified NPA or subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such entity directly to the Government of any item or process (including computer software) made or furnished by the entity under this Agreement or under any follow-on related agreement, contract, or subcontract, or otherwise infringe on the entity's ability to compete for CNA designation.

(b) The prohibition in (a) of this clause does not preclude the CNA from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).

(c) The CNA shall incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this Agreement which exceed the simplified acquisition threshold.

2. ANTI-KICKBACK PROCEDURES

(a) Definitions. "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any CNA, CNA employee, qualified NPA, qualified NPA employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with this Agreement, a prime contract in the AbilityOne Program or in connection with a subcontract relating to a prime contract in the AbilityOne Program.

(b) 41 U.S.C. chapter 87, Kickbacks, prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by the CNA or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor apart from payments contemplated by this Agreement and the Program.

(c)(1) The CNA shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the CNA has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the CNA shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The CNA shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Agreement Officer may (i) assess a penalty which and/or (ii) direct that the CNA withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Agreement Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the CNA shall notify the Agreement Officer when the monies are withheld.

3. BUSINESS ETHICS

(a) *Definition*. As used in this clause--

"Agent" means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

"Full cooperation"—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any CNA rights arising in law, the FAR, or the terms of the Agreement. It does not require—

(i) A CNA to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the CNA, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a CNA from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the Agreement or related to a potential or disclosed violation.

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Code of business ethics and conduct.

(1) Within 30 days after Agreement award, unless the Agreement Officer establishes a longer time period, the CNA shall—

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the Agreement.

(2) The CNA shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) (i) The CNA shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Agreement Officer, whenever, in connection with the award, performance, or closeout of this Agreement or any subcontract thereunder, the CNA has credible evidence that a principal, employee, agent, or subcontractor of the CNA has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the CNA's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by the law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the CNA. The Government may transfer documents provided by the CNA to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the CNA shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic Agreement.

(c) *Business ethics awareness and compliance program and internal control system.* This paragraph (c) does not apply if the CNA has represented itself as a small business concern pursuant to the award of this Agreement or if this Agreement is for the acquisition of a commercial item. The CNA shall establish the following within 90 days after Agreement award, unless the Agreement Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the CNA's standards and procedures and other aspects of the CNA's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise

disseminating information appropriate to an individual's respective roles and responsibilities.

(2) An internal control system.

(i) The CNA's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the CNA's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Best efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the CNA's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the CNA's code of business ethics and conduct and special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Agreement Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the CNA or a subcontractor thereunder, the CNA has credible evidence that a principal, employee, agent, or subcontractor of the CNA has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Agreement Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' Agreement Officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts.

(1) The CNA shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of $5.5 million and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Agreement Officer.

4. EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS

(a) Employees working on this Agreement will be covered by the whistleblower rights and remedies in the pilot program on CNA employee whistleblower protections established at 41 U.S.C. § 4712.

(b) The CNA shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712.

(c) The CNA shall insert the substance of this clause, including this paragraph (c), in all agreements with qualified NPAs and subcontracts.

5. SYSTEM FOR AWARD MANAGEMENT MAINTENANCE

(a) Definitions. As used in this clause—

"Data Universal Numbering System (DUNS) number," as used in this clause, means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the CNA identification number.

"System for Award Management (SAM)" means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes.
(b) (1) By signing this Agreement, the CNA acknowledges the requirement to be registered and maintain an "Active" record in the SAM database prior to award, during performance, and through final performance under this Agreement.

(2) The CNA is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on

inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the CNA is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this Agreement.

(c) The CNA's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the Agreement.

6. CERTIFICATION REGARDING RESPONSIBILITY MATTERS

(a) By signing this Agreement, the CNA certifies, to the best of its knowledge and belief, that the CNA and/or any of its Principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; have not within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses listed in this paragraph; have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds $3,500 for which the liability remains unsatisfied; have not, within a three-year period preceding this Agreement, had one or more contracts terminated for default by any Federal agency

(b) This certification concerns a matter within the jurisdiction of an Agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.

(c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the CNA knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Agreement Officer may cancel this Agreement.

7. UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS

The CNA shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of this agreement, by posting the required information in the System for Award Management database via https://www.acquisition.gov.

8. PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS

(a) Definitions. As used in this clause—

"Inverted domestic corporation" means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. § 395(b), applied in accordance with the rules and definitions of 6 U.S.C. § 395(c).

"Subsidiary" means an entity in which more than 50 percent of the entity is owned (1) Directly by a parent corporation; or (2) through another subsidiary of a parent corporation.

(b) If the CNA reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this Agreement, the Commission may prohibit the CNA from collecting Program Fee for activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the CNA fails to perform in accordance with the terms and conditions of the Agreement as a result of Government action under this clause.

(c) In the event the CNA becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during Agreement performance, the CNA shall give written notice to the Agreement Officer within five (5) business days from the date of the inversion event.

9. AUDIT AND RECORDS—NEGOTIATION

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. The CNA shall maintain and the Agreement Officer, or an authorized representative of the Agreement Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement. This right of examination

shall include inspection at all reasonable times of the CNA's plants, or parts of them, engaged in performing the Agreement.

(c) Comptroller General.—

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the CNA's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the CNA or subcontractor to create or maintain any record that the CNA or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(d) Reports. If the CNA is required to furnish cost, funding, or performance reports, the Agreement Officer or an authorized representative of the Agreement Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the CNA's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(e) Availability. The CNA shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any shorter or longer period required by statute or by other clauses of this Agreement.

(f) The CNA shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts under this Agreement that exceed the simplified acquisition threshold.

10. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES

If the CNA has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, the CNA shall immediately give notice, including all relevant information, to the Agreement Officer. The CNA shall include the substance of this clause in all subcontracts and in all contracts with agents.

11. CONVICT LABOR

(a) Except as provided in paragraph (b) of this clause, the CNA shall not employ in the performance of this Agreement any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The CNA is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

12. MINIMUM WAGES

(a) All stipulations required by 41 U.S.C. chapter 65 and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this Agreement shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR § 50-202.2). Learners, student learners, apprentices, and workers with disabilities may be employed at less than the prescribed minimum wage (see 41 CFR § 50-202.3) to the same extent that such employment is permitted under section 14 of the Fair Labor Standards Act (41 U.S.C. § 6508).

13. PROHIBITION OF SEGREGATED FACILITIES

(a) Definitions. As used in this clause

"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

"Segregated facilities," means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) The CNA agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The CNA agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

14. COMBATING TRAFFICKING IN PERSONS

(a) Definitions. As used in this clause—

"Agent" means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

"Coercion" means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the CNA directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

"Forced Labor" means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

"Severe forms of trafficking in persons" means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the CNA or another subcontractor.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Policy. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. The CNA, CNA employees, and their agents shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the Agreement;

(2) Procure commercial sex acts during the period of performance of the Agreement;

(3) Use forced labor in the performance of the Agreement;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees recruitment fees;

(7)(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment—

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that—

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is—

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The CNA shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the CNA shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee

relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) CNA requirements. The CNA shall—

(1) Notify its employees and agents of—

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii)(1) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification.

(1) The CNA shall inform the Commission and the agency Inspector General immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a CNA employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. § 1351, Fraud in Foreign Labor Contracting, which requires disclosure to the agency Office of the Inspector General when the CNA has credible evidence of fraud); and

(ii) Any actions taken against a CNA employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the CNA shall inform the Agreement Officer for the contract with the highest dollar value.

(e) Remedies. In addition to other remedies available to the Government, the CNA's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

(1) Requiring the CNA to remove a CNA employee or employees from the performance of the Agreement;

(2) Requiring the CNA to terminate a subcontract;

(3) Suspension of Program Fee payments until the CNA has taken appropriate remedial action;

(4) Loss of Program Fee, consistent with this Agreement, for the performance period in which the Government determined CNA non-compliance;

(5) Declining to exercise available options under the Agreement;

(6) Termination of the Agreement for default or cause, in accordance with the termination clause of this Agreement; or

(7) Suspension or debarment.

(f) Mitigating and aggravating factors. When determining remedies, the Agreement Officer may consider the following:

(1) Mitigating factors. The CNA had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) Aggravating factors. The CNA failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Agreement Officer to do so.

(g) Full cooperation.

(1) The CNA shall, at a minimum—

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any CNA rights arising in law or the terms of the Agreement. It does not—

(i) Require the CNA to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the CNA, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the CNA from—

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the Agreement or related to a potential or disclosed violation.

(h) Compliance plan.

(1) This paragraph (h) applies to any portion of the Agreement that—

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds $500,000.

(2) The CNA shall maintain a compliance plan during the performance of the Agreement that is appropriate—

(i) To the size and complexity of the Agreement; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the Agreement or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) Minimum requirements. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform CNA employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of

awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the CNA or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) Posting.

(i) The CNA shall post the relevant contents of the compliance plan, no later than the initiation of Agreement performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the CNA's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the CNA shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The CNA shall provide the compliance plan to the Agreement Officer upon request.

(5) Certification. Annually after receiving an award, the CNA shall submit to the Agreement Officer the statement as follows: "I certify to the best of my knowledge and belief that —

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the CNA's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the CNA or subcontractor has taken the appropriate remedial and referral actions.

(i) Subcontracts.

(1) The CNA shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds $500,000.

(2) If any subcontractor is required by this clause to submit a certification, the CNA shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

15. DRUG-FREE WORKPLACE

(a) Definitions. As used in this clause --

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. § 812) and as further defined in regulation at 21 CFR §§ 1308.11 -- 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The CNA shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the CNA's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—
(i) The dangers of drug abuse in the workplace;
(ii) The CNA's policy of maintaining a drug-free workplace;
(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the Agreement with a copy of the statement required by paragraph (b)(1) of this clause;
(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this Agreement, the employee will—
(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Agreement Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate 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; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The CNA, if an individual, agrees by award of the Agreement or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this Agreement.

(d) In addition to other remedies available to the Government, the CNA's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the CNA subject to suspension of Agreement payments, termination of the Agreement or default, and suspension or debarment.

16. ENCOURAGING CNA POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

In consideration of Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009, the CNA is encouraged to (1) Adopt and enforce policies that ban text messaging while driving (i) Company-owned or -rented vehicles or Government-owned vehicles; or (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. (2) Conduct initiatives in a manner commensurate with the size of the business, such as (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

17. PRIVACY ACT NOTIFICATION

The CNA may be subject to the Privacy Act of 1974 (5 U.S.C. § 552a) and applicable Commission regulations, when conducting AbilityOne Program qualified NPA site visits in the event the CNA has reason to inspect personally identifiable information maintained for AbilityOne Program purposes. Violation of the Act may involve the imposition of criminal penalties.

18. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the CNA shall not acquire, for use in the performance of this Agreement, any supplies or services if any proclamation, Executive Order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at http://www.treas.gov/offices/enforcement/ofac.

(c) The CNA shall insert this clause, including this paragraph (c), in all subcontracts.

19. AUTHORIZATION AND CONSENT

(a) The Government authorizes and consents to all use and manufacture, in performing this Agreement or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this Agreement; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the CNA or a subcontractor with (i) specifications or written provisions forming a part of this Agreement or (ii) specific written instructions given by the Agreement Officer directing the manner of performance. the entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this Agreement or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The CNA shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

20. PROHIBITION OF ASSIGNMENT OF CLAIMS

The assignment of claims under the Assignment of Claims Act of 1940 "(31 U.S.C. § 3727, 41 U.S.C. § 6305)" is prohibited for this Agreement.

21. UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this Agreement is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the CNA or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. § 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.
(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

22. PRIVACY OR SECURITY SAFEGUARDS

(a) The CNA shall not publish or disclose in any manner, without the Commission's written consent, the details of any safeguards either designed or developed by the CNA under this Agreement or otherwise provided by the Commission.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the CNA shall afford the Government access to the CNA's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the CNA, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

23. BANKRUPTCY

In the event the CNA enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the CNA agrees to furnish, by certified mail or electronic commerce method authorized by this Agreement, written notification of the bankruptcy to the Agreement Officer responsible for administering this Agreement. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of government contract numbers and contracting offices for all government contracts against which final payment has not been made. This obligation remains in effect until final payment under this agreement.

24. LIMITATION OF LIABILITY—SERVICES

(a) Except as provided in paragraphs (b) and (c) of this clause, and except to the extent that the CNA is expressly responsible under this Agreement for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the CNA shall not be liable for loss of or damage to property of the Government that—

(1) Occurs after Government acceptance of services performed under this Agreement; and

(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the CNA's managerial personnel. The term "CNA's managerial personnel," as used in this clause, means the CNA's directors, officers, and any of the CNA's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the CNA's business;

(2) All or substantially all of the CNA's operations at any one plant, laboratory, or separate location at which this Agreement is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this Agreement.

(c) If the CNA carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the CNA's performance of services or furnishing of materials under this agreement, the CNA shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this agreement.

25. DATA RIGHTS

(a) Pursuant to 41 U.S.C. § 8503(e) and this Agreement, the CNAs shall conduct studies, analyses, evaluations, test data, research, pilots, or similar work at the request of the Commission. To the extent directed by the Commission, and funded by the Program Fee, the Commission shall have unlimited rights to any reports, data, research results or other information yielded from such activities for use in direct connection with the Program.

To the extent directed by the Commission in writing, and as funded by the Program Fee, the Commission shall have unlimited rights, including but not limited to technical data rights, consistent with the language stated in FAR Clause 52.227-17 addressing use and data rights for the Government as described in FAR Part 27.405-1, related to Special Works, for use in direct connection with the Program.

(b) Any such studies, analyses, evaluations, test data, research, pilots, or similar work that require the CNA to contract with third parties shall include rights in data language that provides the Commission the same use and data rights in subsection (b).

(c) Nothing in this Agreement shall be construed as limiting or impacting any data rights of the CNA or the CNA's right to maintain the confidentiality and ownership of proprietary information and processes.

Section G - MISCELLANEOUS

1. Force Majeure. Performance by either party under this Agreement is excused during the period such performance is prevented or delayed by government restrictions (whether with or without valid jurisdiction), war or warlike activity, insurrection or civil disorder, or any other causes similar or dissimilar to the foregoing that are beyond the control of either party and are not foreseeable at the time the Agreement is executed.

2. Captions. Any captions or headings to the sections of this Agreement are solely for the convenience of the parties hereto, are not part of this Agreement, and are not to be used for the interpretation or determination of the validity hereof.

3. Counterparts. This Agreement may be executed in counterparts. Facsimile or copied signatures are to be deemed originals.

4. Assignment. Neither party hereto may assign this Agreement without the written consent of the other, such consent not to be unreasonably withheld.

5. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all pre-existing agreements and understandings between them with respect thereto.

6. Nature of Relationship. Nothing in this Agreement is intended or is to be deemed to create a partnership or joint venture between the parties.

7. No waiver. No waiver or modification of any of the terms of this Agreement will be valid unless in writing and agreed to by both parties. No waiver by either party of a breach hereof or default hereunder will be deemed a waiver by such party of any subsequent breach or default.

8. Inherently Governmental Functions – Addition to Agreement. The Award Fee Simulation shall include an analysis to identify any Inherently Governmental Functions being performed by the CNA. Specifics of this analysis will be determined by the Commission, and this Agreement amended accordingly.

9. Representation of Authority of Parties/Signatories. Each person signing this Agreement represents and warrants that he or she is duly authorized as the representative for his or her respective party and has legal capacity to execute this Agreement. Further, each party represents and warrants to the other that upon the execution of this Agreement, the party enters into this Agreement of its own free will and volition and was not coerced nor under duress at the time of executing this Agreement. The parties, by signature herein affirm that this Agreement is a valid and legal agreement and binding on such parties and enforceable with its terms.

10. Governing Law. Federal laws of United States will apply to this Agreement.

The effective date of this agreement is the last date of signature below.

For Central Nonprofit Agency

/S/ June 15, 2016
STEVEN SOROKA Date
SourceAmerica
President/CEO

For U.S. AbilityOne Commission

/S/ June 15, 2016
JAMES M. KESTELOOT Date
U.S. AbilityOne Commission
Chairperson