**Exhibit A1 – SPECIAL TERMS AND CONDITIONS FLOW DOWN REQUIREMENTS**

Whereas Otter Tail and Supplier are parties to an Agreement (hereinafter “Agreement”) dated \_\_\_ whereby Supplier has agreed to provide material supply services to Owner in support of Owner’s NDIC Agreement with the North Dakota Industrial Commission (NDIC) to perform work associated with a Department of Energy Grant;

Whereas Owner’s NDIC Agreement with the NDIC authorizes Owner to engage sub-contractors provided the subcontract acknowledges the binding nature of the NDIC Agreement and incorporates the NDIC Agreement, including any attachments into Otter Tail’s subcontracts, including the Service Agreement.

Whereas the NDIC Agreement further requires that Otter Tail comply with certain federal flow down requirements referenced in 2 C.F.R. 200.327 and ensure such requirements, as applicable, flow down to sub-contractors; and

Owner and Supplier acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiently of which is acknowledged.

Now Therefore, Owner and Supplier agree as follows:

1. **Acknowledgement of NDIC Agreement**. Supplier acknowledges through this Agreement the binding nature of the NDIC Agreement between Owner and NDIC. Supplier further acknowledges that the NDIC Agreement, including any attachments are hereby incorporated into the subcontract. The NDIC Agreement is attached hereto as Addendum 1.
2. **Requirements of 2 CFR 200.327**

The following terms are hereby incorporated into the Services Agreement.

* 1. **Equal Employment Opportunity**. Except as otherwise provided under 41 CFR Part 60, for all Orders that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 Supplier agrees to comply with all equal opportunity requirements.
  2. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)**. For construction or repair contracts in excess of $2,000, or is otherwise required by Federal program legislation, Supplier agrees to comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). Under these requirements, Supplier is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Supplier must pay wages not less than once a week.
  3. **Copeland “Anti-Kickback” Act (40 U.S.C. 3145)**. For construction or repair contracts in excess of $2,000, Supplier agrees to comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Suppliers and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that Supplier is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
  4. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**. If the Order is in excess of $100,000 and involve the employment of mechanics or laborers, Supplier shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Supplier is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence
  5. **Rights to Inventions Made Under a Contract or Agreement**. If the Order is for the performance of Federally funded research, development, or experimental work, Supplier agrees to provide to North Dakota Industrial Commission and the U.S. government rights in any invention as contemplated by 37 C.F.R. Part 401 “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and to comply with 37 C.F.R. Part 401 and any awarding agency implementing regulations.
  6. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**. If the Order is in excess of $150,000, Supplier shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)**.**
  7. **Debarment and Suspension (Executive Orders 12549 and 12689)**. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. This Agreement is issued with the understanding that the vendor is not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded by any federal agency from participation in any federal program, including but not limited to grants, contracts and/or cooperative agreements, and that it will notify Otter Tail immediately if it is placed on the SAM Exclusions list.
  8. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**. If the Order is for $100,000 or more, Supplier and any of its subcontractors or suppliers shall file the certification required by this statute and its implementing regulations. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the North Dakota Industrial Commission.
  9. **Procurement of Recovered Materials (2 C.F.R. 200.323)**. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. To the extent applicable, Supplier shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
  10. **Energy Policy and Conservation Act (42 U.S.C. 6201)**. Supplier agrees to comply with all mandatory standards and policies relating to energy efficiency standards which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
  11. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R. 200.216)**. Supplier shall not expend funds received under this Agreement to
      1. Procure or obtain;
      2. Extend or renew a contract to procure or obtain; or
      3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
         1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
         2. Telecommunications or video surveillance services provided by such entities or using such equipment.
         3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
  12. **Domestic Preference for Procurements (2 C.F.R. 200.322)**. As appropriate and to the extent consistent with law, Supplier should, to the greatest extent practicable under this Agreement, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Supplier shall include the requirements of this provision in any lower-tier awards under this Agreement. For the purposes of this Agreement:
      1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
      2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
      3. Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in [2 CFR part 184](https://www.ecfr.gov/current/title-2/part-184).
  13. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR 200.321)**. Supplier shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:
      1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
      2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
      3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
      4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
      5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
      6. If further subcontracts are to be let, Supplier shall take the affirmative steps listed in (a) through (e) above.
  14. **Access to Records (2 CFR 200.337)**. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, the North Dakota Industrial Commission, and Otter Tail, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the Supplier which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Supplier’s personnel for the purpose of interview and discussion related to such documents

1. **BUY AMERICAN REQUIREMENTS FOR INFRASTRUCTURE PROJECTS (MARCH 2023)**
   1. **Definitions**

**Components** are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

**Construction Materials** are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

**Domestic Content Procurement Preference Requirement**- means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

(A) all iron and steel used in the project are produced in the United States;

(B) the manufactured products used in the project are produced in the United States; or

(C) the construction materials used in the project are produced in the United States.

Also referred to as the Buy America Requirement.

**Infrastructure** includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy -including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

**Manufactured** **Products** are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

**Primarily of iron or steel** means greater than 50% iron or steel, measured by cost.

**Project**- means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**Public**- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

* 1. **Buy America Requirement**

None of the funds provided under this award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

* + - 1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
      2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
      3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.