



SUB-VENDOR QUESTIONNAIRE

Kelly Mitchell Group, LLC (KellyMitchell) is an award-winning, IT and professional workforce solutions firm dedicated to offering high-quality strategic consulting, staff augmentation and outsourced business solutions to a wide variety of companies throughout the United States and Canada, from Fortune 500 corporations to rapidly growing high-tech organizations.

Thank you for your interest in partnering with KellyMitchell. We are looking to partner with sub-vendors who can assist us in filling IT and professional roles with highly-qualified and highly motivated consultants. To start the process of becoming an approved sub-vendor, we require you to review the critical factors, fill in and sign the questionnaire, and attach all applicable certificates.

Sub-Vendor Critical Factors

KellyMitchell Policy

Only registered companies in good standing from their state of incorporation will be approved for sub-vendor status.

Please provide a filled in and signed Form W-9.

Insurance Requirements

Sub-Vendors must carry General Liability insurance and Workers Compensation insurance and must provide certificates from their insurance carrier confirming each type of coverage. Upon becoming an approval Sub-Vendor, we will require a copy of the valid certificate of insurance with the following additional language:

Kelly Mitchell Group, LLC and client as additional insureds on General Liability Coverage.

Waiver of Subrogation on Workers Compensation Coverage in favor of Kelly Mitchell Group, LLC and its client.

A 30 day notice of cancellation will be given to the named Certificate Holder.

Copies of Certificates

Please provide the following certificates:

- A. Certificate of Incorporation
- B. copy of Diversity Certification

Review of Sub-Vendor Packet

KellyMitchell's Legal Department will review your responses to the questionnaire and provided certificates, and filled in and signed Sub-Vendor Agreement and ACH form.

SUB-VENDOR GENERAL BUSINESS INFORMATION

1. A Full Legal Company Name:	
2. Federal Tax ID Number:	
3. State/Commonwealth that sub-vendor was formed in:	
4. Date when sub-vendor was formed:	
5. Primary Mailing Address:	
6. Main Telephone Number: Fax Number:	
7. Names of sister companies that sub-vendor is associated with:	
8. Main HR Point of Contact: Full Name: Title: Telephone: Email Address:	
9. Main Account Manager Point of Contact: Full Name: Title: Telephone: Email Address:	
10. Main Recruiter Point of Contact: Full Name: Title: Telephone: Email Address:	

<p>11. Main Point of Contact for Audits:</p> <p style="padding-left: 40px;">Full Name: Title: Telephone: Email Address:</p> <p>Audit Escalation Point of Contact:</p> <p style="padding-left: 40px;">Full Name: Title: Telephone: Email Address:</p>	
<p>12. How many current, billing contractors does the sub-vendor have:</p>	
<p>13. Cities/States that the sub-vendor can provide employees for?</p>	
<p>14. What cities does sub-vendor have employees currently working in? If so, how many employees are working in each city.</p>	
<p>15. To avoid any conflicts, does sub-vendor have agreements directly with end clients? If so, please list the end clients.</p>	
<p>16. Does sub-vendor have any exclusive partnerships with any preferred staffing partners?</p>	
<p>17. List of clients that sub-vendor has provided employees to and/or are currently providing employees for?</p>	
<p>18. Any specialized skillsets by employees?</p>	
<p>19. Is sub-vendor willing to pay for non-local candidate's relocation costs?</p>	

<p>20. Is sub-vendor willing to pay for travel costs for non-local candidates to interview onsite?</p>	
<p>21. Does sub-vendor have a licensed attorney handling its visa applications (such as EADs, H1Bs, and permanent resident)?</p>	
<p>22. Does sub-vendor agree to only present candidates you have a direct relationship, on a W-2, to open requisitions?</p>	
<p>23. <u>Diversity Ownership:</u></p> <p>___ Non-Minority Male Owned</p> <p>___ Minority Owned</p> <p>___ Women Owned</p> <p>___ Veteran Owned</p> <p>___ Person with Disability Owned</p> <p>___ Other: _____</p> <p>Self-Certifying: ___ Yes / No ___</p> <p>*Certifying Agency: _____</p> <p>*Certificate No. _____</p> <p>*Expiration Date: _____</p> <p>**Please include a copy of the Diversity certificate**</p>	<p><u>Diversity Certification Types:</u></p> <p>___ Minority Business Enterprise (MBE)</p> <p>___ Women Business Enterprise (WBE)</p> <p>___ Small Business Enterprise (SBE)</p> <p>___ Small Disadvantaged Business (SDB)</p> <p>___ Veteran Owned Small Business (VOSB)</p> <p>___ Service Disabled Veteran Owned Business Enterprise (SDVOSB)</p> <p>___ Veteran Owned Business Enterprise (VBE)</p> <p>___ Historically Underutilized Business (HUBZONE)</p> <p>___ SBA 8(A) Program</p> <p>___ Alaskan Native Corporation Owned Firm (ANC)</p> <p>___ Woman Owned Small Business (WOSB)</p> <p>___ Lesbian, Gay, Bisexual, Transgender (LGBT)</p> <p>___ Disability-Owned Business Enterprise (DOBE)</p>

TAX INFORMATION

1. What kind of income tax return (i.e. 1120) does the sub-vendor file?	
2. Does the sub-vendor withhold FICA and FUTA taxes?	
3. Does the sub-vendor provide its employees with W-2's each year?	

INSURANCE INFORMATION

1. Does the sub-vendor have General Liability insurance? If yes, please state the name of insurance company.	
2. Does the sub-vendor maintain Workers Compensation insurance? If yes, please state the name of insurance company.	
3. Does the sub-vendor maintain Errors & Omission insurance? If yes, please state the name of insurance company.	

Attested to:

Sub-Vendor's Officer Signature

Date

Print Name

Title



Kelly Mitchell Group, LLC's

SUB-VENDOR MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (hereinafter “Agreement”), effective _____ (“Effective Date”), is entered into by and between Kelly Mitchell Group, LLC, a Missouri limited liability company with its principle executive office for the transaction of business at 8229 Maryland Avenue, Clayton, MO 63105 (hereinafter “KellyMitchell”) and, _____ (*Sub-Vendor's Full Company Name*) (hereinafter “Sub-Vendor”) a _____ (*State of Incorporation & Type of Company*) with its principle executive office for the transaction of business at the following address: _____.

WHEREAS KellyMitchell is engaged in the business of providing high-quality strategic consulting, staff augmentation and outsourcing business solutions to its customers (hereinafter “Customer”) and Sub-Vendor is engaged in the business of providing IT and Non-IT temporary staffing and consulting services; and

WHEREAS KellyMitchell will from time to time enter into a contract (hereinafter “Prime Contract”) with a Customer to provide certain IT and Non-IT temporary and consulting services; and

WHEREAS KellyMitchell desires Sub-Vendor to provide IT and Non-IT temporary staffing and consulting services as a Sub-Vendor to KellyMitchell to assist in fulfilling KellyMitchell's obligations in a Prime Contract on Customer projects; and

WHEREAS Sub-Vendor is willing to provide such services;

NOW, therefore in consideration of the mutual promises and covenants herein contained, the parties agree that the terms and conditions of this Agreement and any applicable Statement of Work (hereinafter “SOW”) will apply to the Services, Materials, and/or Program Products that Sub-Vendor provides to KellyMitchell.

1. Definitions

- 1.1 “Customer” is KellyMitchell's Customer identified in the SOW.
- 1.2 “Employee” or “Consultant” is a W-2 employee of Sub-Vendor and legally authorized to work in the U.S.
- 1.3 “Materials” are work product such as programs, program listings, programming tools, documentation, reports, and drawings, which Sub-Vendor may deliver to KellyMitchell as set forth in the SOW. Materials do not include Sub-Vendor's Program Products.

- 1.4 “Program Products” are Sub-Vendor’s commercially available software products and associated user documentation.
- 1.5 “Services” are where Sub-Vendor will recruit, interview, hire and assign, assigned employees to perform tasks as outlined in the SOW.
- 1.6 “Statement of Work” (“SOW”) will describe the project, set forth the work to be performed (“Services”), the Materials to be developed and delivered, and any Program Products to be provided as well as any additional terms or modifications to this Agreement and will be Exhibit A to this Agreement. A SOW, consistent with the format in Exhibit A of this Agreement, will be prepared and agreed to for each and every Customer project and each SOW will be independent of each other.

2. **Statement of Work**

- 2.1 Sub-Vendor will furnish Services, Materials, and Program Products to KellyMitchell as set forth in the SOW issued from time to time by KellyMitchell and accepted by Sub-Vendor. This Agreement does not guarantee any work to Sub-Vendor.
- 2.2 Each SOW shall be signed by an authorized representative of each party. Either party may request a change to a SOW. A change order, in a form mutually agreed to be signed by authorized representatives of each party will modify a SOW.
- 2.3 Each party shall appoint a coordinator for the work to be performed under a SOW. Sub-Vendor’s coordinator shall have the authority to represent Sub-Vendor. KellyMitchell’s coordinator shall represent KellyMitchell and be responsible for determining the adequacy and acceptability of the Services, Materials, or any Program Products that Sub-Vendor provides.

3. **Compensation, Invoicing, and Payment**

Compensation to be paid by KellyMitchell to Sub-Vendor, including price, shall be set forth in each SOW.

Sub-Vendor’s employee shall submit their time worked in the Customer’s or KellyMitchell’s time reporting system by end of day on Friday each week (or as designated by Customer). Persistent failure to submit the time in the time reporting system on a weekly basis will result in, at KellyMitchell’s option, an administrative penalty of 3% to be deducted from Sub-Vendor’s monthly invoice. Sub-Vendor will receive three warnings of late time reporting before it will be considered a persistent problem and subject to the administrative penalty. Acceptable exceptions will be technical issues, working additional hours on the weekend, and employee’s health condition.

Sub-Vendor will submit itemized invoices with attached time sheets approved and verified by means of the signature of an authorized representative/manager of the client, for services rendered satisfactorily and reimbursable expenses. Invoices will be submitted monthly on the first day of the month for the month directly preceding the invoice date. Each invoice shall be accurate and, in a form, reasonably acceptable to KellyMitchell. Such invoices are to be emailed to accounts.payable@kellymitchell.com.

Terms of payment on undisputed amounts are **Net 45 days** after the receipt of an invoice that meets the requirements set forth in this section. Further, KellyMitchell shall only pay an invoice from Sub-Vendor when all certificates (i.e., certificate of insurance, minority status certificate, etc.) are up to date and current, and a copy of which is received by KellyMitchell. KellyMitchell shall pay no interest or penalty on any invoice that is disputed or withheld in good faith by KellyMitchell.

KellyMitchell shall make all payments to Sub-Vendor by Automated Clearing House (ACH) payments to such bank account Sub-Vendor designates.

If Sub-Vendor fails to provide an invoice to KellyMitchell for any amount within sixty (60) days after the month in which the Services in question are rendered or the expense incurred, Sub-Vendor shall waive any right it may otherwise have to invoice for and collect such amount.

Regardless of any payment terms that Sub-Vendor may state on invoices, time sheets, or otherwise, KellyMitchell will not be obligated to pay Sub-Vendor, unless and until Customer pays KellyMitchell for Sub-Vendor's Services. If Customer delays its payment or fails to pay KellyMitchell, KellyMitchell will inform Sub-Vendor of the payment issue and may seek assistance from Sub-Vendor in resolving the issue.

On KellyMitchell's request, Sub-Vendor shall repay to KellyMitchell any amounts that KellyMitchell may have paid to Sub-Vendor for which Customer has not yet paid KellyMitchell or which KellyMitchell is required to refund to Customer.

If applicable, an attachment of Customer terms and conditions will be provided and incorporated herein.

4. Records, Reporting, and Audits

Sub-Vendor shall maintain detailed accounting records, in accordance with sound accounting practices, to substantiate all invoices and other documents relating to the Services, SOW, and this Agreement. KellyMitchell shall have the right to audit Sub-Vendor to assure compliance with the terms and conditions of the SOW and/or Agreement. Upon seventy-two (72) hours' notice, such records shall be made available to KellyMitchell during normal business hours and shall include payroll records, pay stubs, work visa documentation, form I-9s records, E-Verify documentation, expense accounts, attendance documentation, job summaries, certificates of insurance, diversity certificates, and other documents related to the Services, SOW and this Agreement. Sub-Vendor shall cooperate and provide KellyMitchell, in a timely manner, all such assistance they may require in connection with any audit or examination. Sub-Vendor shall maintain such records for seven (7) years from the date of final payment, unless otherwise specified herein.

If an audit, review, or examination determines that KellyMitchell has made an overpayment to Sub-Vendor, then Sub-Vendor shall promptly issue a payment in the amount of the overpayment, and if the overpayment is in excess of five percent (5%) of the amount properly due then in addition to the amount of such overpayment, Sub-Vendor will reimburse KellyMitchell for the entire cost and expense of such review and examination. Sub-Vendor will reimburse KellyMitchell within 30 days of the results of the audit.

Sub-Vendor's failure to comply with an audit or request for records by KellyMitchell, may result in delay or stop in payments, request for refund of payments to Sub-Vendor, and/or immediate termination of Agreement and SOW.

5. Confidential Information

- 5.1 Confidential Information ("Information") shall mean that information disclosed to or obtained by Sub-Vendor in connection with, and during the term of, this Agreement and SOW. Information shall not include any information which is previously known to Sub-Vendor without obligation of confidence or without breach of this Agreement, is publicly disclosed either prior to or subsequent to Sub-Vendor's receipt of such information or is rightfully received by Sub-Vendor from a third party without obligation of confidence.
- 5.2 Confidential Information of each party and from the Customer will remain its sole property. All Confidential Information received by a party (the "Recipient") from the other party, including from the Customer, (the "Disclosing Party") during the course of this Agreement and SOW shall be held and protected by the Recipient in strict confidence, and shall be used by the Recipient only as required to render performance or to exercise rights and remedies under this Agreement and SOW. The Recipient will protect the Disclosing Party's Confidential Information from unauthorized use, access or disclosure with the same measures that the Recipient takes to protect its own proprietary information of like importance, but in no event less than reasonable care. Confidential Information of the Disclosing Party shall not be disclosed by the Recipient to any third party without the prior written consent of the Disclosing Party. The Recipient is responsible and liable for compliance with these confidentiality obligations and use restrictions, and for any breach of these obligations.
- 5.3 Each party may disclose the Disclosing Party's Confidential Information in response to a request for disclosure by a court or another governmental authority, including a subpoena, court order, or audit-related request by a taxing authority, if the Recipient: (i) promptly notifies the Disclosing Party of the terms and the circumstances of that request, (ii) consults with the Disclosing Party, and cooperates with the Disclosing Party's reasonable requests to resist and narrow request, (iii) furnishes only information that, according to advice of its legal counsel, the Recipient is legally compelled to disclose, and (iv) uses reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded that information disclosed.
- 5.4 Upon termination or expiration of this Agreement, or upon Disclosing Party's written request, Recipient will promptly, either destroy all of Disclosing Party's Confidential Information in its possession, including all copies and compilations thereof and provide an officer's certificate confirming its destruction or, return all of Disclosing Party's Confidential Information in its possession, including all copies and compilations thereof.
- 5.5 Pursuant to the Defend Trade Secrets Act of 2016 (18 U.S.C. § 1833(b)), an individual may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an

attorney solely for the purpose of reporting or investigating a suspected violation of law. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in a complaint or other document files in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the employer's trade secrets to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order.

5.6 The terms and conditions of this Agreement and SOWs shall be considered Confidential Information and subject to this Section 5.

6. **Ownership and License**

6.1 Sub-Vendor agrees to allow KellyMitchell the right to install and test Program Products for the Customer. Customer will be the licensee of the Program Products. KellyMitchell will not be a party to the license agreement nor assume any obligation for violations of it. Sub-Vendor will enter into a license agreement directly with Customer for its Program Products, if applicable to the respective SOW.

6.2 KellyMitchell shall own exclusively and retain all rights, title, and interest in all Materials delivered to KellyMitchell which result from the Services provided by Sub-Vendor. Such Materials shall be deemed "Works Made for Hire" under the U.S. Copyright Act (17 U.S.C. §§ 101 et seq.) and any other applicable copyright laws. To the extent that any of the Materials may not, by operation of law, be "Works Made for Hire", Sub-Vendor hereby assigns to KellyMitchell the ownership of all rights in such Materials. KellyMitchell shall have the right to obtain and hold in its own name copyrights, registrations, and similar protection which may be available in such Materials. Sub-Vendor agrees to assist KellyMitchell as may be required to perfect such rights.

6.3 To the extent that any pre-existing Materials are contained in the Materials Sub-Vendor delivers to KellyMitchell, Sub-Vendor grants to KellyMitchell an irrevocable, non-exclusive, worldwide, royalty-free license to: (1) use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing Materials and derivative works thereof, and (2) authorize others to do any, some, or all of the foregoing.

7. **Inventions**

7.1 An "Invention" shall mean any idea, design, concept, technique, invention, discovery or improvement, regardless of patentability, made solely or jointly by Sub-Vendor and/or Sub-Vendor's employees, or jointly by Sub-Vendor and/or Sub-Vendor's employees with one or more employees of KellyMitchell or Customer, during the term of this Agreement and in the performance of any work under a SOW issued hereunder or after completion if conceived or made by Sub-Vendor through the use of any of the Materials or any of KellyMitchell's or Customer's equipment, facilities or trade secrets.

- 7.2 Sub-Vendor hereby assigns to KellyMitchell, its successors and assigns, all Inventions, together with the right to seek protection by obtaining patent rights therefor and to claim all rights or priority thereunder, and the same shall become and remain KellyMitchell's property regardless of whether such protection is sought. Sub-Vendor shall promptly make a complete written disclosure to KellyMitchell of each Invention not otherwise clearly disclosed to KellyMitchell in the Materials, specifically pointing out features or concepts that Sub-Vendor believes to be new or different. Sub-Vendor shall, upon KellyMitchell's request and at KellyMitchell's expense, cause patent applications to be filed thereon, through attorneys designated by KellyMitchell, and shall forthwith sign all such applications over to KellyMitchell, its successors and assigns. Sub-Vendor shall give KellyMitchell and its attorneys all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as KellyMitchell may require.
- 7.3 In performing services under this Agreement, Sub-Vendor agrees to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Sub-Vendor becomes aware of any such possible infringement in the course of performing work under any SOW issued hereunder, Sub-Vendor shall immediately notify KellyMitchell in writing.

8. **Warranties**

- 8.1 Sub-Vendor warrants that all Services, Materials and Program Products will be performed in a first class, professional and workmanlike manner, and maintain a reasonable standard of competency and integrity.
- 8.2 Sub-Vendor warrants that it is under no obligation or restriction, nor will it assume any such obligation or restriction which would in any way interfere with or be inconsistent with or present a conflict of interest concerning the Services, Materials, and Program Products to be provided by Sub-Vendor under this Agreement.
- 8.3 Sub-Vendor warrants that the Services, Materials, and Program Products that Sub-Vendor provides shall perform as described in any documentation relating to a SOW and shall be free from defects, viruses, malicious software, harmful code, and/or could otherwise cause harm or interfere with the Services, Materials and Program Products. In the event of a warranty breach, Sub-Vendor agrees to replace, repair, and/or modify the Services, Materials, and Program Products without charge and without delay, for a period to be set out in the SOW.
- 8.4 Sub-Vendor warrants and certifies the originality of the Materials prepared for or submitted to KellyMitchell hereunder and will not infringe upon, violate or misappropriate any intellectual property right of any third party.
- 8.5 Sub-Vendor warrants that no portion of the Materials, or their use, or distribution violates, or is protected by any intellectual property right of any third party. Moreover, no third-party claim has been alleged against Sub-Vendor that the services provided hereunder infringes upon such third party's intellectual rights.
- 8.6 Sub-Vendor warrants that no portion of the Materials is confidential or proprietary to Sub-Vendor or to another party.

- 8.7 Sub-Vendor will comply with all applicable local, state and federal laws, ordinances, regulations, and orders with respect to its the Services, Materials, and Program Products under this agreement (including, without limitation, laws prohibiting harassment and discrimination of any kind in the workplace, payment of all local, state, and federal income tax and other withholding relating to compensation paid to Sub-Vendor, and payment of all social security, unemployment, disability, and other taxes required under local, state and federal laws). Sub-Vendor will obtain and maintain all licenses and permits required by local, state and federal law for the Services, Materials, and Program Products under the agreement and SOW.
- 8.8 Sub-Vendor warrants that it has all necessary skills, rights, financial resources, and authority to enter into this Agreement and related SOWs, including the authority to provide the Services, Materials, and Program Products if Sub-Vendor does not own all intellectual property rights.

9. **Personnel**

- 9.1 It is understood and agreed that Sub-Vendor is an independent contractor and not an employee, partner, or joint venture of KellyMitchell. Personnel provided by Sub-Vendor will not for any purpose be considered employees of KellyMitchell or any of KellyMitchell's Customers.
- 9.2 Sub-Vendor retains the sole and exclusive right to control or direct the manner or means by which the work described in the SOW is to be performed. Sub-Vendor shall assume full responsibility for their actions while performing hereunder and shall be responsible for their supervision, daily direction and control, payment of salary, benefits, insurance, and the like. This Agreement and additional SOWs shall in no way affect the right of Sub-Vendor, in their sole discretion as employers, to hire, assign, reassign and/or terminate Sub-Vendor's employees.
- 9.3 Sub-Vendor shall be responsible for: (a) maintaining and keeping current all necessary personnel and payroll records including those required by local, state and federal laws and regulations; (b) compute their wages and withhold applicable federal, state and local taxes and Social Security payments; (c) remit employee withholdings to the proper governmental authorities and make employer contributions for FICA and federal and State unemployment insurance payments; (d) pay net wages and fringe benefits (including health, welfare and pension benefits), if any, directly to your employees; (e) provide for liability, auto, employers liability, and worker's compensation insurance coverage in appropriate amounts.
- 9.4 Sub-Vendor shall be responsible for proper payment of wages, including overtime when due, in accordance with the Fair Labor Standards Act, and where applicable, corresponding, similar, or additional state or local employment laws and regulations. If Sub-Vendor fails to properly pay, in accordance with the Fair Labor Standards Act, State Law or local law, any employee provided to KellyMitchell for services, those employees of Sub-Vendor are not subject to the restrictive covenant contained in paragraph 9.15 below and may be employed directly by KellyMitchell at any time. In addition, Sub-Vendor will refund any and all monies paid by KellyMitchell to Sub-Vendor for such personnel, indemnify KellyMitchell for any

and all actions for such personnel who were provided by Sub-Vendor in violation of this provision, and KellyMitchell has the right to terminate the Agreement and/or SOW immediately upon written notice.

9.5 Sub-Vendor shall comply with all applicable federal, state, and local laws and regulations regarding its employees.

9.6 KellyMitchell may interview and approve all Sub-Vendor employees assigned hereunder to its Customers. Sub-Vendor agrees to provide KellyMitchell with resumes of all employees assigned to this Agreement or SOW. If Sub-Vendor decides to replace its personnel assigned to this agreement or SOW, Sub-Vendor will: (1) notify KellyMitchell before they are replaced, (2) Sub-Vendor's replacement will have equal or better qualifications and will not change the terms of the SOW or Agreement, and (3) KellyMitchell and/or the customers have the right to approve or reject the placement of Sub-Vendor's replacement assigned to KellyMitchell's Customers' location.

9.7 Sub-Vendor acknowledges that should KellyMitchell determine at its sole discretion, that the performance of Sub-Vendor employees assigned to this Agreement is unsatisfactory or that such employees do not meet the professional standards deemed appropriate by KellyMitchell or should the Customer request the removal of Sub-Vendor employees, Sub-Vendor will remove, upon KellyMitchell's request, such employees from an assignment hereunder in a timely manner.

9.8 Background. Sub-Vendor shall comply with all the on-boarding requirements required by KellyMitchell and its Customers and shall conduct a background check and drug screen for each individual providing services to KellyMitchell and its Customer in accordance with applicable federal, state, local laws, and its Customer requirements. The background check is to identify whether any such individual has been convicted of a felony/misdemeanor in federal, state and county(ies) they live/lived work/worked in the past seven (7) years.

(a) Subject to applicable law, the Sub-Vendor shall ensure the individual has not pled guilty or *nolo contendere* to a crime involving breach of trust, fraud, theft, dishonesty, gambling, moral turpitude or injury, assault, domestic violence, acts of violence, the possession or trafficking of drugs and/or weapons, or any physical crime against other persons or property, including sexual crimes.

Further, Sub-Vendor is to ensure that the individual is not falsifying their name, experience, education, work history, Date of Birth, and Social Security Number. Sub-Vendor will verify its employee's education, experience, and employment for the past seven (7) years. Sub-Vendor agrees that, to the extent in accordance with applicable federal, state, and local laws, no individual convicted of a felony and no person presenting a positive drug screen will be permitted to provide services in connection with a SOW submitted by KellyMitchell and Customer without KellyMitchell and Customer's written consent.

Finally, the cost of background checks, drug screens, skill assessment testing, and other requirements by KellyMitchell and its Customers shall be paid by Sub-Vendor.

9.9 Sub-Vendor is responsible for completing and keeping on file the United States Citizenship and Immigration Services Employment Eligibility Form (I-9 or any

- successor form) for each of its employees, and, as required by law or if requested by Customer, Sub-Vendor is responsible for determining and keeping on file the E-Verify findings for each of its employees.
- 9.10 Sub-Vendor employees shall comply with all KellyMitchell and Customer security, health, and safety regulations and personnel identification requirements for personnel access at KellyMitchell or Customer facilities.
- 9.11 Onboarding Requirements. During the onboarding process by KellyMitchell of the Sub-Vendor's employees for a Customer project, Sub-Vendor shall provide to KellyMitchell a copy of the Sub-Vendor's employee's state ID/driver's license, work visa, resume, Social Security card, US Form I-9, and the following additional documents, if applicable: E-Verify documentation (applicable based on USCIS visa requirements, customer requirements, and/or State requirements), and vaccination records. Further, KellyMitchell's Customer may require additional documentation, which Sub-Vendor agrees to provide, or Sub-Vendor's employee may not start the Customer's project.
- 9.12 Sub-Vendor shall have an employment agreement with each of its employees whose services Sub-Vendor may require sufficient to enable it to comply with all the terms of this Agreement.
- 9.13 Work Authorization. Sub-Vendor shall maintain and keep current all visas, employment authorization cards (EAD) and other federal and state documentation for its personnel assigned to perform Services pursuant to this Agreement. Further, if Sub-Vendor knows that its employee's visa or EAD is set to expire without an extension, Sub-Vendor shall notify KellyMitchell within 30 days of expiration, so KellyMitchell can find a suitable replacement.
- 9.14 Right to Hire. Sub-Vendor shall comply and not interfere with Customer's desire and right to directly or indirectly hire Sub-Vendor's personnel when desired, and KellyMitchell will flow-down any direct hire fee to Sub-Vendor, if applicable, minus any KellyMitchell administrative fee.
- 9.15 W-2 Employees. Sub-Vendor asserts and warrants that any and all personnel the Sub-Vendor provides to KellyMitchell are W-2 employees of Sub-Vendor, which means that Sub-Vendor issues a W-2 for the services provided by such personnel. Unless Sub-Vendor receives prior written approval, Sub-Vendor agrees that any personnel provided to KellyMitchell for services who are 1099 individuals, employees of a 3rd Party or otherwise and are not W-2 employees of Sub-Vendor are not subject to the restrictive covenant contained in paragraph 9.15 below and may be employed directly by KellyMitchell at any time. In addition, Sub-Vendor will refund any and all monies paid by KellyMitchell to Sub-Vendor for such personnel, indemnify KellyMitchell for any and all actions for such personnel who were provided by Sub-Vendor in violation of this provision, and KellyMitchell has the right to terminate the Agreement and/or SOW immediately upon written notice.
- 9.16 Non-Solicitation. Except as states otherwise in this Agreement, during the term of this Agreement and for a period of twelve (12) months following its termination, neither KellyMitchell or Sub-Vendor shall, directly or indirectly, solicit, recruit, employ, or contract for the Services of any employee of the other who is assigned to perform Services pursuant to this Agreement. This provision does not apply to

employees who respond to a general solicitation to the public through advertisement, website posting, or other job posting media.

- 9.17 Sub-Vendor shall, and shall abide by all employment laws, including but not limited to, all wage-hour and wage payment laws, and the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and Sub-Vendors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.
- 9.18 Inclusion and Diversity. KellyMitchell is committed to the highest standards of diversity and inclusion in its employees, vendors, and business partners. The KellyMitchell's policy is to encourage its vendors and business partners to engage diverse sub-vendors and suppliers (also known as disadvantaged business enterprise- "DBE" or "DBEs") to the maximum practicable extent when providing services to KellyMitchell and its Customers. Thus, Sub-Vendor agrees using its best efforts to keep up to date and maintain their diversity certificate, if applicable and award DBEs to the maximum practicable extent possible for provision of the services under the Agreement; provided, however, that the DBEs can support the efficient performance of the services by offering competitive pricing, quality, services, and capabilities compared to other sub-vendors and suppliers offering similar products or services.
- 9.19 Cyber Security. The Sub-Vendor shall at all times maintain a high level of security for the services provided by their employee and the Customer's data, including without limitation protection against unauthorized access, interception or interference by third parties, and encryption of the client's data when transferred between data centers. Sub-Vendor shall notify KellyMitchell immediately (within 24 hours of knowledge of security incident) in the event of any IT security incident, security breach, and any corruption or loss of the customer's data and, at the request of the client or KellyMitchell and without prejudice to any other remedies that available to KellyMitchell or Customer, restore or procure the restoration of the Customer's data to its state immediately prior to the said corruption or loss. Further, Sub-Vendor represents and warrants that its directors, shareholders, officers, employees, and agents are currently in compliance, and will continue to be in compliance, with all laws pertaining to the safeguarding, protection, privacy, security, encryption, unauthorized disclosure, breach notification and disposal of Personal Information used, maintained, and/or accessed on Customer's behalf. Sub-Vendor shall perform all services under this Agreement in accordance with the various state, federal or international privacy acts and Sub-Vendor only accesses, collects, retains, uses, discloses, and otherwise process Customer's data in order to fulfill its obligations to the customer and on Customer's behalf.

10. **Performance Guarantee**

- 10.1 KellyMitchell's Customer will provide specifications that will indicate the skill and experience level of resources to be provided for each temporary staffing service requirement. Performance of Sub-Vendor's personnel will be monitored closely by KellyMitchell's Customer to determine if their performance is satisfactory.
- 10.2 Sub-Vendor will guarantee the performance of their employees assigned to KellyMitchell's Customer. If Sub-Vendor's employee resigns during the assignment, or if KellyMitchell's Customer and/or KellyMitchell determine that the Sub-Vendor's hours/services are unbillable, or if KellyMitchell's Customer and/or KellyMitchell are dissatisfied with Sub-Vendor's employee for any reason, Sub-Vendor's employee shall be removed, and Sub-Vendor shall not bill and shall waive the fees with respect to the Sub-Vendor employee's hours that KellyMitchell's Customer and/or KellyMitchell require to be waived.
- 10.3 If KellyMitchell's Customer elects to allow KellyMitchell and Sub-Vendor the opportunity to replace a rejected employee, the succeeding individual provided by the Sub-Vendor shall be guaranteed on the same basis.

11. **Taxes**

Sub-Vendor shall bear the sole responsibility for payment of compensation to its personnel. Sub-Vendor shall pay and report, for all personnel assigned to KellyMitchell's Customer work, federal and state income tax withholding, social security taxes, and unemployment insurance applicable to such personnel as employees of Sub-Vendor. Sub-Vendor shall bear sole responsibility for any health or disability insurance, retirement benefits, or other welfare or pension benefits, if any, to which such personnel may be entitled. Sub-Vendor agrees to defend, indemnify, and hold harmless KellyMitchell, its officers, directors, employees and agents and the administrators of KellyMitchell benefits plans, and KellyMitchell's Customer, from and against any claims, liabilities, or expenses relating to such compensation, tax, insurance or benefit matters; provided that KellyMitchell shall: (1) promptly notify Sub-Vendor of each claim when and as it comes to KellyMitchell's attention; (2) Sub-Vendor will assume control of the defense of such claim, negotiation, and resolution of such claim provided that no compromise or settlement thereof may be effected or committed to by Sub-Vendor without KellyMitchell's prior written consent unless (i) there is no finding or admission of any violation of law or any violation of the right of any third party by KellyMitchell; and (ii) there is no injunctive or equitable relief entered against KellyMitchell. However, KellyMitchell's failure to comply with any of the foregoing conditions shall not relieve Sub-Vendor of its obligations to KellyMitchell and Customer. Finally, KellyMitchell has the right to participate in the defense, negotiation, audit, and resolution of any such claim.

12. **Term and Termination**

- 12.1 This Agreement shall continue in effect for the period set forth in a SOW or until Sub-Vendor terminates this Agreement or SOW by providing a two-week written notice to KellyMitchell. This Agreement shall remain in effect regarding any SOWs already in effect until such SOWs are themselves terminated and/or performance is completed.
- 12.2 KellyMitchell may immediately terminate for convenience any outstanding SOW and/or this Agreement, or any portions thereof, either orally or upon written notice. Upon receipt of such notice, Sub-Vendor shall immediately stop all activities

associated with the terminated SOW. Sub-Vendor will be paid for the work performed through the date of termination when KellyMitchell receives the Services, Materials, or Program Products specified in the notice, with the exception of waiving the fees under Section 10.2. Such payment shall constitute KellyMitchell's entire liability.

- 12.3 KellyMitchell may immediately terminate at its option any outstanding SOW and/or this Agreement, either orally or upon written notice if in the sole judgment of KellyMitchell, Sub-Vendor is not capable of meeting its financial performance, service and/or contractual obligations hereunder, or violates any warranties, representations, and/or obligations outlined in this agreement and/or SOW. Termination of any SOW is immediate upon receipt of such notice and any and all future financial obligations subsequent to the termination date by KellyMitchell to Sub-Vendor shall cease immediately. Sub-Vendor shall be reimbursed for all services actually rendered and expenses properly pre-approved and incurred prior to any termination date of the SOW. Sub-Vendor agrees to promptly provide KellyMitchell with all items associated with the SOW in order for KellyMitchell or a third party to perform the SOW.
- 12.4 KellyMitchell may immediately terminate at its option any SOW and/or this Agreement, either orally or upon written notice, if in the sole judgment of KellyMitchell, Sub-Vendor and/or its employee made misrepresentations, false/deceptive statements, acted in a fraudulent/negligent/reckless/careless manner, and/or committed fraud regarding its services, representations, or contractual obligations hereunder. Termination of the Agreement and/or any SOW is immediate upon receipt of such notice and any and all future financial obligations subsequent to the termination date by KellyMitchell to Sub-Vendor shall cease immediately. In addition, KellyMitchell has the right to seek a refund of any and all monies paid by KellyMitchell to Sub-Vendor, and Sub-Vendor agrees to indemnify KellyMitchell for any and all actions of its personnel who were provided by Sub-Vendor. Further, Sub-Vendor agrees to promptly provide KellyMitchell with all items associated with the SOW in order for KellyMitchell or a third party to perform the SOW.
- 12.5 Upon termination pursuant to this Section 12 of this Agreement, or other expiration of this Agreement, each party shall return to the other all documents, equipment, materials, and other properties of the other held for purposes of execution and performance of this Agreement.
- 12.6 The rights and obligations of Sections 4,5,6,7,8,9,11,12,13,14 and 15 shall continue after expiration or termination of this Agreement and shall bind the parties and their legal representatives, successors, heirs, and assigns.

13. **Indemnification**

- 13.1 Sub-Vendor agrees to indemnify, defend and hold harmless KellyMitchell and/or its Customer from and against any and all claims, demands, damages, suits, losses, liability, fines, judgments, cost or expense of any kind (including, without limitation, reasonable attorney's fees, court costs, collection costs) suffered by, accrued against, charged to, or recovered from Customer and/or KellyMitchell, its

directors, officers, and/or employees, arising out of, in connection with, or related to:

- (a) any act, error, omission, negligent or intentional misconduct, criminal conduct, or reckless action of the Sub-Vendor or personnel Sub-Vendor provides under this Agreement or any SOW;
- (b) any personal injury or death, or for damage to real property or tangible personal property due to wrongful actions, errors, or omissions of the Sub-Vendor or personnel Sub-Vendor provides under this Agreement or any SOW;
- (c) any matter relating to any compensation paid, or agreed to be paid, by Sub-Vendor to any of the personnel Sub-Vendor provides under this Agreement or any SOW, including premiums, contributions and taxes payable pursuant to any tax withholding, workers' compensation, unemployment compensation, disability benefits, or other benefit laws;
- (d) any claims for wages or benefits made by any of the personnel Sub-Vendor provides under this Agreement or any SOW;
- (e) Any violations or infringement or claim of infringement of any Intellectual Property rights of any third party arising out of, associated with, or related to the performance of the Services, Materials and Program Products by Sub-Vendor and/or Sub-Vendor's employee(s);
- (f) Any breach of this Agreement or any SOW by Sub-Vendor or personnel Sub-Vendor provides under this Agreement or any SOW;
- (g) Any security breach or violation by Sub-Vendor or personnel Sub-Vendor provides under this Agreement or any SOW;
- (h) Any claim under Title VII, the ADA, the ADEA, the FRCA, ERISA, COBRA, the FEHA, the FMLA, OSHA, the FLSA, or comparable state or local laws, regulations, and ordinances brought by personnel Sub-Vendor provides under this Agreement or any SOW;
- (i) Any workers compensation and unemployment claim brought by personnel Sub-Vendor provides under this Agreement or any SOW; and
- (j) Any claims of co-employment or joint employer.

13.2 KellyMitchell shall: (1) promptly notify Sub-Vendor of each claim when and as it comes to KellyMitchell's attention; (2) Sub-Vendor will assume control of the defense of such claim, negotiation, and resolution of such claim provided that no compromise or settlement thereof may be effected or committed to by Sub-Vendor without KellyMitchell's prior written consent unless (i) there is no finding or admission of any violation of law or any violation of the right of any third party by KellyMitchell; and (ii) there is no injunctive or equitable relief entered against KellyMitchell. However, KellyMitchell's failure to comply with any of the foregoing conditions shall not relieve Sub-Vendor of its obligations to KellyMitchell and Customer. Finally, KellyMitchell has the right to participate in the defense, negotiation, audit, and resolution of any such claim.

14. **Limitation of Liability**

IN NO EVENT SHALL KELLYMITCHELL NOR ITS CUSTOMER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, WHETHER THE CLAIM IS BASED IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR IN CONTRACT, AT LAW OR IN EQUITY, INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. NOTWITHSTANDING THE FOREGOING, THERE ARE NO LIMITATIONS ON LIABILITY ARISING UNDER THE CONFIDENTIALITY AND INDEMNIFICATION PROVISIONS HEREIN. IN ALL OTHER RESPECTS, THE PARTIES INTEND AND AGREE TO LIMIT THEIR RESPECTIVE LIABILITY TO DIRECT DAMAGES ONLY, TO THE MAXIMUM EXTENT ALLOWED BY LAW.

15. Applicable Laws

Sub-Vendor shall at its own expense comply with all laws and regulations of federal, state, and local government authorities, including the Immigration Reform and Control Act of 1986, as amended, relating to its obligations under this Agreement. Sub-Vendor shall obtain any permits and pay all fees required thereby. This law requires that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. It is the policy of KellyMitchell to comply fully with this requirement, and to require compliance by all Sub-Vendors performing services at KellyMitchell's Customer worksites. Sub-Vendor shall not place any employee of Sub-Vendor at a KellyMitchell's Customer worksite, nor shall Sub-Vendor permit any employee, nor any contractor or Sub-Vendor, to perform any work on behalf of or for the benefit of KellyMitchell nor KellyMitchell's Customer, without first verifying and ensuring said employee's authorization to lawfully work in the United States. To that end, Sub-Vendor acknowledges, agrees and warrants that: (a) Sub-Vendor maintains and follows an established policy to verify the employment authorization of its employees, and to ensure continued compliance for the duration of employment, (b) Sub-Vendor has verified the identity and employment eligibility of all employees, in compliance with applicable law, (c) Sub-Vendor is without knowledge of any fact that would render any employee, contractor or Sub-Vendor ineligible to work legally in the United States.

16. General

16.1 Insurance Coverage. Sub-Vendor shall at its own expense maintain insurance coverage for the duration of this Agreement as listed below. Insurance Certificates evidencing this coverage must be provided to KellyMitchell within 5 business days after receipt of an executed SOW and shall name KellyMitchell and Customer as "an additional insured." Such Certificates shall provide that the insurance company gives KellyMitchell a 30-days' notice prior to any cancellation or change into the stated coverage.

- A. General Liability Insurance, Personal Injury and Property Damage, Combined Single Limit: \$1,000,000 per occurrence and \$2,000,000 aggregate;
- B. Automobile Insurance, Bodily Injury and Property Damage, Combined Single Limit: \$1,000,000 combined single limit;

- C. Workers Compensation insurance with benefits afforded under the laws of the state in which services are to be performed and Employers Liability insurance with minimum limits of \$1,000,000 each accident.
 - i. Waiver of Subrogation for Workers Compensation for Kelly Mitchell Group, LLC and its Customer.
 - D. Upon offer to provide services to KellyMitchell's Customer, KellyMitchell will provide notice of additional language and additional coverage requirements that Customer may require of Sub-Vendor (such as Umbrella, Errors & Omissions, Crime, Network Security, Employment Practices Liability, Media Liability, Fidelity Bond, etc.). Sub-Vendor agrees to obtain the additional insurance coverage upon notice if Customer requires it.
- 16.2 Use of Name. Sub-Vendor shall not use Customer's nor KellyMitchell's trademark, trade name, or other designation for any reason without KellyMitchell's and Customer's prior written consent.
- 16.3 Equipment. Equipment (including but not limited to computers, PCs, laptops, equipment, safety equipment, notebooks, tablets, smart devices, phones, and other electronic devices), and any other hardware, or any other KellyMitchell and Customer asset furnished to Sub-Vendor and Sub-Vendor's employee are KellyMitchell and/or Customer property and intended for Customer business use only. In the event KellyMitchell and/or KellyMitchell's Customer require equipment (such as laptops, tablets, PCs, equipment., smart devices, safety equipment, etc.) for the Sub-Vendor's employees to perform their job duties, Sub-Vendor agrees to purchase and/or provide its employees with the required equipment as requested by KellyMitchell and/or KellyMitchell's Customer and the equipment shall meet the minimum required specifications as provided by KellyMitchell and/or KellyMitchell's Customer. If Sub-Vendor fails or refuses to provide the equipment, or opts to have KellyMitchell provide the required equipment to its employee, KellyMitchell, at its option, may provide: (1) the equipment at no cost; (2) charge Sub-Vendor for the full cost of the equipment, which will be deducted from Sub-Vendor's invoices; or (3) charge Sub-Vendor a rental fee of \$1.00 per approved hour worked by Employee, which will be either deducted from Sub-Vendor's invoices as a monthly fee or be issued as an "Adjusted Bill Rate" to the Sub-Vendor's Bill Rate.
- A. If KellyMitchell and/or KellyMitchell's Customer provide the equipment, Sub-Vendor agrees to pay for the initial shipment cost of the equipment to the provided address from Sub-Vendor's employee. However, Sub-Vendor agrees that the shipment cost will also be charged to Sub-Vendor and be deducted from Sub-Vendor's invoice.
 - B. If KellyMitchell's Customer charges a fee for the equipment, a seat fee, technology fee, facility fee, or other type of fee, KellyMitchell will pass on that fee to the Sub-Vendor and the fee will be deducted from the Sub-Vendor's invoices.
 - C. Sub-Vendor and Sub-Vendor's employee shall keep KellyMitchell and/or KellyMitchell's Customer's equipment in good working condition with

minimal wear or tear. Sub-Vendor and Sub-Vendor's employee are responsible for damage, altered, lost, or missing equipment.

- D. In the event KellyMitchell or KellyMitchell's Customer provide the equipment (such as laptops, tablets, PCs, smart devices, equipment, badges, keys, safety equipment, etc.), to Sub-Vendor's Employee, Sub-Vendor agrees to reimburse KellyMitchell and/or authorizes KellyMitchell to deduct from Sub-Vendor's payments any and all charges KellyMitchell incurs, or receives from KellyMitchell's Customer, for returning equipment, failing to return the equipment in a timely manner, or any damaged, missing or destroyed equipment that was issued to Sub-Vendor's employee.
- E. Sub-Vendor and Sub-Vendor's employee are responsible for any costs associated with packaging, shipping, and returning the equipment. KellyMitchell has final authority in how and where the equipment will be sent and returned. Sub-Vendor and Sub-Vendor's employee are required to return the equipment in good, unaltered condition; on or before the Sub-Vendor's employee last workday or as requested by KellyMitchell/Customer.
- F. If any equipment is returned in a damaged/altered condition or Sub-Vendor or Sub-Vendor's employee fails to return the equipment to KellyMitchell or KellyMitchell's Customer within ten (10) days of request (or sooner as required by Customer), Sub-Vendor or Sub-Vendor's employee are required to reimburse KellyMitchell in full for the damaged/altered or missing equipment, and Sub-Vendor agrees that the cost for missing or damaged/altered equipment shall be charged to Sub-Vendor and be deducted from Sub-Vendor's invoice. In the alternative, at KellyMitchell's option, KellyMitchell may report the property damage or report the missing equipment as stolen to the local Police and seek criminal penalties or seek civil remedies.
- G. KellyMitchell has the right to hold payment to Sub-Vendor until equipment is returned to KellyMitchell or KellyMitchell's Customer.
- H. No equipment and electronic information/data shall be transported out of the United States by Sub-Vendor or Sub-Vendor's Employee without prior written approval by KellyMitchell's manager and KellyMitchell's Customer. This includes all international travel requested by KellyMitchell's Customer.

16.4 Training. In the event KellyMitchell and/or KellyMitchell's Customer require training for Sub-Vendor's employee to perform their job duties, Sub-Vendor agrees their employee will complete the training in the timeframe designated by KellyMitchell and Customer.

- A. If KellyMitchell or Customer charge a fee for training, Sub-Vendor agrees to reimburse KellyMitchell for all charges KellyMitchell incurs or received from KellyMitchell's Customer for that training. KellyMitchell will pass on that fee to the Sub-Vendor and the fee will be deducted from the Sub-Vendor's invoices.

- 16.5 Nothing in this Agreement shall be construed as prohibiting or restricting KellyMitchell from independently developing or acquiring and marketing materials and/or programs, which are competitive with those, delivered hereunder.
- 16.6 Assignment. Sub-Vendor shall not sell, transfer, assign, or subcontract any right or obligation hereunder without the prior written consent of KellyMitchell.
- 16.7 Amendment. Except as otherwise expressly provided herein, no amendment of this Agreement or Exhibit hereto shall be effective until reduced in writing and executed by an authorized representative of the parties hereto. Any and all amendments will not be retroactive unless specifically stated in the amendment.
- 16.8 Sub-Vendor acknowledges that it is incorporated or organized under the laws of a state in the United States of America.
- 16.9 KellyMitchell is free to determine the price charged to Customer for the Services, Materials, and Program Products Sub-Vendor provides to KellyMitchell.
- 16.10 Relationship. Sub-Vendor acknowledges that KellyMitchell is the prime contractor and has exclusive right and authority to manage the Prime Contract, manage the relationship with the Customer, and this Subcontract, and to take all actions that it considers necessary to carry out its responsibilities. Sub-Vendor will not have any right or authority to act for or bind KellyMitchell concerning the Prime Contract. All Sub-Vendor contact with Customer and/or any other prime contractor/vendor associated with a Customer project must be approved in advance by KellyMitchell. Further Sub-Vendor agrees not to solicit business directly with Customer or any other prime contractor/vendor providing services to Customer during the term of this Agreement and for six (6) months following its termination, unless Sub-Vendor has had an existing contractual relationship with Customer or prime contractor/vendor providing services to Customer, in the last 12 months, prior to fulfilling KellyMitchell's obligations on Customer projects.
- 16.11 Force Majeure. KellyMitchell shall not be liable to Sub-Vendor or be regarded as being in breach of this Agreement by reason of any failure or delay in performance of its obligations to the extent such failure or delay arises from acts of God, war, flood, fire, disaster, explosion, vandalism, national emergency, riot, civil disturbance, action or inaction of government authorities, terrorist acts, labor dispute, lockout, failures or interruptions of utilities or communications equipment or services, systems failures or any other cause or event that is beyond its reasonable control, whether foreseeable or not. KellyMitchell will inform Sub-Vendor in a reasonable manner and time of the occurrence of such an event.
- 16.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri without regard to any portion of its choice of law principles that might provide for application of a different jurisdiction's law. The Parties consent to and agree that the venue is proper and any and all disputes arising out of or relating in any way to the Agreement shall be subject to the exclusive jurisdiction of the Circuit Court of St. Louis County, Missouri or the U.S. District Court for the Eastern District of Missouri. The Parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.
- 16.13 Notices. All notices required by or relating to this Agreement shall be in writing and delivered to the addresses set forth below. Notices shall be deemed to have

been duly given (a) when delivered in person, (b) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail (but, in the case of electronic mail, only if followed by transmittal by national overnight courier or hand for delivery on the next business day), (c) upon receipt after dispatch by registered or certified mail, postage prepaid or (d) on the next business day if transmitted by national overnight courier (with confirmation of delivery).

If to Kelly Mitchell:

Kelly Mitchell Group, LLC
Attn: Legal Department
8229 Maryland Avenue
St. Louis, MO 63105
Tele: (314) 727-1700

If to Sub-Vendor:

Contact Name: _____
Mailing Address: _____
Email: _____
Telephone: _____
Fax: _____

- 16.14 No Waiver. No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained. Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise.
- 16.15 Severability. If any provision of this Agreement is found invalid or unenforceable under any applicable statute or rule of law, then the affected provision shall be limited only to the extent necessary to bring said provision within legal requirements, and this Agreement as so modified shall continue in full force and effect in order to achieve the original intent of the parties.
- 16.16 Order of Precedence. In the event of a conflict between this Agreement and any Exhibits or Statement of Work signed by the Parties which reference the Agreement, the provisions of this Agreement shall take precedence over the Exhibits or Statements of Work unless the Statement of Work or Exhibit specifically references the provision of the Agreement or Exhibit it is modifying.
- 16.17 Survival. Expiration or termination of this Agreement for any reason shall not release either Party from any liability or obligation set forth in this Agreement which the Parties have expressly agreed will survive any such expiration or

termination or remain to be performed or by their nature would be intended to be applicable following such expiration or termination.

16.18 Entire Agreement. This Agreement and exhibits constitute the entire agreement between the parties and shall supersede all proposals or prior agreements, oral or written, and all other communication between the parties relating to the subject matter of this Agreement. This Agreement shall not be varied by other than an instrument in writing of subsequent date hereto, executed by both parties.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date and year first written above.

KELLY MITCHELL GROUP, LLC:
("KellyMitchell")

("Sub-Vendor")

By: _____

By: _____

Name: Matthew Searing

Name: _____

Title: General Counsel

Title: _____

Date: _____

Date: _____

FEIN: _____

KELLY MITCHELL GROUP, LLC

ACH FORM

This form authorizes Kelly Mitchell Group, LLC to pay and deposit funds into your bank account. Please contact us as soon as practicable if any of your information changes and return completed form to: accounts.payable@kellymitchell.com

COMPANY INFORMATION *[Please Print]*

Company Legal Name: _____

Remit to Address: _____

Address: _____

City/State or Province/Zip: _____

Accounting Contact: _____

Accounting Phone: _____

Accounting Email***: _____

***Use this email address for payment notifications.*

Sales Contact: _____

Sales Phone: _____

Sales Email: _____

DEPOSITARY INFORMATION *[Please Print]*

Bank Legal Name: _____

Bank Address: _____

City/State or Province/Zip: _____

Account Name: _____ Account Number: _____

[US] Bank Routing No/ABA [9 Digits]: _____

Authorized Signature: _____ Title: _____

[E-Signature is equivalent to hand written signature.]

Printed Name: _____ Date: _____

