RUS Project Designation:

[RUS-Designation]

DISTANCE LEARNING AND TELEMEDICINE GRANT AGREEMENT

dated as of [date] between

[GRANTEE'S NAME],

as Grantee

and

THE UNITED STATES OF AMERICA

as Grantor

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UNITED STATES DEPARTMENT OF AGRICULTURE RURAL UTILITIES SERVICE

DISTANCE LEARNING AND TELEMEDICINE GRANT AGREEMENT

THIS DISTANCE LEARNING AND TELEMEDICINE GRANT AGREEMENT (this "Agreement,") dated as of [date], between [**GRANTEE'S NAME**], as Grantee (hereinafter the "Grantee,") a [corporation, limited liability company or other entity] existing under the laws of [State], and the **UNITED STATES OF AMERICA**, as Grantor (hereinafter the "Government,") acting through the Administrator of the Rural Utilities Service ("RUS.")

WHEREAS, the Grantee has applied for financial assistance ("Application") to RUS to finance a Project providing distance learning and/or telemedicine services in rural areas as described in a scope of work plan (the scope of work plan and any revisions thereto, all as approved in writing by RUS, hereinafter the "Scope of Work Plan;")

WHEREAS, RUS is willing to extend financial assistance, in the form of a grant (the "Grant") to the Grantee, pursuant to Title VII of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. § 950aaa), the Funding Opportunity Announcement ("FOA") published on www.grants.gov on [date], and all applicable federal regulations, on the terms and conditions stated herein; and

WHEREAS, the Grantee is willing to secure its other obligations to RUS on the terms stated herein;

THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties agree and bind themselves as follows:

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ARTICLE I - DEFINITIONS

SECTION 1.1 Definitions

The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made in accordance with Accounting Requirements.

"Accounting Requirements" shall mean compliance with U.S. Generally Accepted Accounting Principles (GAAP) acceptable to RUS as well as compliance with the requirements of 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (and by adoption, 48 C.F.R. § 31.2 of the Federal Acquisition Regulations).

"Advance" or "Advances" shall mean an advance or advances made by RUS pursuant to this Agreement.

"Application" shall have the meaning as defined in the second paragraph hereof.

"DLT Regulations" shall mean the specific RUS Regulations promulgated at 7 C.F.R. part 1734, *Distance Learning and Telemedicine Loan and Grant Program*, as amended from time to time. "Expiration Date" shall have the meaning as defined in Section 3.1(b) hereof.

"Laws" shall have the meaning as defined in Section 2.1(e) hereof.

"Matching Contribution" shall have the meaning as defined in Section 4.2(d) hereof.

"Project" shall have the meaning as defined in Section 3.2(a) hereof.

"RUS Regulations" shall mean the rules, regulations and bulletins of general applicability published by RUS from time to time, as such rules, regulations and bulletins exist at the date of applicability thereof,

and shall also include any rule and regulations of other Federal entities which RUS is required by law to implement**.** Any reference to specific RUS Regulations shall mean the version of and cite to such regulation effective at the date of applicability thereof.

"Scope of Work Plan" shall have the meaning as defined in the second paragraph of this Agreement.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

SECTION 2.1 Representations and Warranties of Grantee

Recognizing that RUS is relying hereon, the Grantee represents and warrants, as of the date of this Agreement, as follows:

(a) *Organization; Power, Etc.* The Grantee*:* (i) is the type of organization specified in the first paragraph hereof, duly organized, validly existing, and in good standing under the laws of the State identified in the first paragraph hereof; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business make such qualification necessary; (iii) has all requisite and legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under this Agreement; (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals which are necessary to the conduct of its business or required by applicable Laws; and (v) is eligible to obtain the financial assistance from RUS contemplated by this Agreement.

(b) *Authority.* The execution, delivery and performance by the Grantee of this Agreement and the performance of the transactions contemplated hereby have been duly authorized by all necessary action and do not violate any provision of law or any charter, articles of incorporation, organizational documents or bylaws of the Grantee or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which the Grantee is a party or by which it may be bound. The Grantee has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.

(c) *Consents*. No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance or enforcement of this Agreement, except such as have been obtained and are in full force and effect.

(d) *Binding Agreement.* This Agreement is, when executed and delivered, the legal, valid, and binding obligation of the Grantee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

(e) *Compliance with Laws.* The Grantee is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws.")

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(f) *Information Submitted with Application.* All information, reports, and other documents and data submitted to RUS in connection with the Application were, at the time the same were furnished, complete, and correct in all material respects. Any financial statements or data submitted to RUS in connection with the Application present fairly, in all material respects, the financial position of the Grantee and the results of its operations in conformity with Accounting Requirements. Since the date thereof, there has been no material adverse change in the financial condition or operations of the Grantee.

(g) *Principal Place of Business.* The principal place of business and chief executive office of the Grantee is at the address specified in Schedule I hereto.

(h) *Ratification.* By executing this Agreement, the Grantee affirms and ratifies all statements, representations and written documents that it has submitted to RUS in connection with the Grant.

(i) *Recipient and Subrecipient Reporting.* The Grantee has the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006, unless Grantee is exempt from such reporting requirements pursuant to 2 C.F.R. part 170.

ARTICLE III - THE GRANT

SECTION 3.1 Grant Amount and Expiration Date

(a) *Grant Amount*. RUS agrees to make and the Grantee agrees to accept, on the terms and conditions stated in this Agreement, the Grant, in the maximum amount specified in Schedule I hereto.

(b) *Expiration Date.* The Grant, and the obligation of RUS to advance the Grant, or any portion thereof, shall expire on a date (the "Expiration Date") three (3) years from the date of this Agreement. No portion of the Grant will be advanced by RUS to the Grantee after the Expiration Date. RUS, in its sole discretion, may approve a one-time extension of the Expiration Date, not to exceed 12 months, provided that the Grantee notify RUS, in writing at least ten days prior to the Expiration Date, of the reasons and need for an extension, together with a suggested, revised Expiration Date.

SECTION 3.2 Project

(a) *Grant Purpose.* The Grant has been made solely to finance the project specifically described in the Application and Scope of Work Plan (hereinafter the "Project") to furnish or improve distance learning and/or telemedicine services in rural areas.

(b) *Changes to Project*. The Grantee shall obtain the prior written approval of RUS for any material change to the scope, budget, design, construction, delivery of services, or objectives of the Project, including, but not limited to any changes to discrete budget line items, or the amount of Grant funds allocated thereto, within the overall Project. Such approved material changes shall be set forth in a revised Scope of Work Plan submitted to RUS.

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ARTICLE IV - CONDITIONS OF FUNDING

SECTION 4.1 General Conditions

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

(a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS.

(b) *Executed Grant Agreement.* RUS shall receive duly executed originals of this Agreement.

(c) *Articles of Incorporation, Charter, Bylaws and Organizational Documents.* With respect to corporate and cooperative grantees, RUS shall have received copies of the Grantee's articles of incorporation or charter and bylaws. With respect to limited liability companies or similar grantees, RUS shall have received copies of the Grantee's organization documents.

(d) *Authorizations.* RUS shall have received evidence satisfactory to it that all documents and proceedings of the Grantee necessary for duly authorizing the execution, delivery and performance of this Agreement have been obtained and are in full force and effect.

(e) *Approvals.* RUS shall have received evidence satisfactory to it that the Grantee has duly registered when and where required by law with all state, Federal and other public authorities and regulatory bodies and obtained all authorizations, certificates, permits, licenses, franchises and approvals necessary for, or required as a condition of, the validity and enforceability of this Agreement and for the construction and operation of the Project.

(f) *Opinion of Counsel.* For Grants in the amount of $500,000 or more, RUS shall receive an opinion of counsel for the Grantee (who shall be acceptable to RUS) in form and content acceptable to RUS.

(g) A*CH*. That Grantee agrees to use of the Automated Clearing House (ACH) Payment System that deposits funds directly into the bank account Grantee designates.

(h) *Fidelity Bond Coverage.* Except Grantees which are units of government, and except for grants that are less than $100,000, RUS shall have received evidence, satisfactory to it, that the Grantee has obtained fidelity bond coverage, from a surety doing business with the United States listed in 31 C.F.R. Part 223, in an amount at least fifteen percent (15%) of the Grant, covering all officers, employees, or agents of the Grantee authorized to receive, disburse, or receive and disburse the Grant funds. F or existing RUS Borrowers, however, RUS may waive this fidelity bond coverage requirement, if after evaluation, RUS has determined that adequate fidelity bond coverage is already maintained by the Grantee as an RUS Borrower under an existing loan or guarantee agreement.

SECTION 4.2 Conditions to Advances

The obligations of RUS to approve any Advance of the Grant is subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to RUS in its discretion):

(a) *Continuing Representations and Warranties.* That the representations and warranties of the Grantee contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date.

(b) *Requisitions and Supporting Documentation.* That RUS shall have received not more

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frequently than once a month, a completed Standard Form 270, *Request for Advance or Reimbursement* (hereinafter "Request for Advance,") bearing the original signature of the officer, employee, or agent of the Grantee authorized to receive, disburse, or receive and disburse the Grant, and supporting documentation from the Grantee in accordance with RUS Regulations and DLT Regulations. All Advances shall be limited to the minimum amounts required for the Grantee's immediate disbursement needs and shall be requested by the Grantee only for actual immediate cash requirements of the Grantee. All Advances shall either be provided on a reimbursement basis, supported by documentation including, but not limited to, paid invoices, employee timesheets or lease agreements, or based on unpaid invoices for eligible grant purposes.

(c) *Certification of Authority.* That RUS has received from the Grantee a duly authorized and executed certification of authority designating an officer, employee, or agent of the Grantee as the person or persons authorized to execute and submit, on behalf of the Grantee, the Request for Advance.

(d) *Matching Contribution*. Evidence that the Grantee has provided or made provision for the entire matching contribution, as defined and set forth in 7 C.F.R. § 1734.22 ("Matching Contribution,") to the Project as set forth on Schedule I, or that the Grantee has provided or made provision for a pro rata Matching Contribution in an amount at least equal to the percentage (as specified in Schedule I) of the requested Advance, which evidence may be in the form of documentation including, but not limited to, paid invoices, employee timesheets, lease agreements, or bank deposit slips.

(e) *Compliance with Agreement.* That the Grantee is in material compliance with the Agreement.

(f) *Additional Documents.* The Grantee agrees to provide RUS with such additional documents as RUS may request.

(g) Additional *Conditions.* The Grantee has met all additional conditions specified in Schedule I hereto.

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ARTICLE V - AFFIRMATIVE COVENANTS

SECTION 5.1 Generally

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Grantee shall duly observe each of the affirmative covenants contained in this Article V.

SECTION 5.2 Use of Advances

The Grantee shall expend the Grant funds only for approved purposes as set forth in the DLT Regulations, the Scope of Work Plan, the Request(s) for Advance, and in accordance with the Accounting Requirements. The Grant shall not be expended to cover any costs incurred in connection with the Project prior to the date of receipt by RUS of the Application. The Grantee acknowledges that RUS approval for any Request for Advance shall not be a waiver of any provision or requirement contained or cited herein, but shall be subject to a subsequent compliance review.

SECTION 5.3 Unused and Disallowed Advances

(a) The Grantee shall return to RUS forthwith all or any advanced portion of the Grant not disbursed by the Grantee for the Project or not needed to complete the Project with any interest earned.

(b) The Grantee shall reimburse RUS for any advanced funds whose original expenditure has been disallowed by a RUS grant audit. Disallowances shall be satisfied, as directed by RUS, by either administrative offset against requests for Advances or repaying the disallowed amount directly to the United States Treasury.

SECTION 5.4 Financial Books

(a) The Grantee shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, invoices, receipts, and bills of sale, adequate to identify the purposes for which, and the manner in which Grant and other funds were expended on the Project. The Grantee shall maintain all such records and copies of forms or financial reports, submitted to RUS in connection with the Grant, for the longest of: (i) three years from the date the Grantee submits its final Project Performance Activity Report; (ii) three years from resolution of disputed items with RUS; or (iii) three years from disposition of property acquired with Grant funds during the term of the Grant.

(b) The Grantee will maintain complete, accurate, and current disclosure of the financial results of each Project in accordance with the DLT Regulations and Accounting Requirements. The source and application of funds shall be readily identified by the continuous maintenance of updated records, with all accounting records being supported by source documentation. Established procedures shall be used for determining the reasonableness, allowability, and allocation of costs in accordance with the DLT Regulations and the Accounting Requirements.

SECTION 5.5 Rights of Inspection and Compliance Reviews

(a) The Grantee shall afford RUS, the Office of Inspector General of USDA and the General Accounting Office, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and right to inspect the Project, and any and all books, records, accounts, including electronic books, records, accounts and electronic mail messages, regardless of the physical form or characteristics, and any and all invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in any way pertaining to the Grant and to make copies or extracts therefrom.

(b) The Grantee shall afford RUS, reasonable opportunity, at all times during business hours and upon prior notice, to conduct a compliance review to determine compliance with this Agreement and to determine whether expenditures and disbursements of the Grant were for approved purposes, and/or in accordance with the Grantee's Request(s) for Advance and the supporting documentation thereto.

SECTION 5.6 Annual Audits

(a) Non-Federal Entities, which include Grantees that are States, local governments, Indian tribes, institutions of higher education , or nonprofit organizations, shall provide RUS with an audit pursuant to 2 C.F.R. part 200, Subpart F (Audit Requirements). The Grantee must follow subsection 200.502 in determining federal awards expended. All RUS loans impose an ongoing compliance requirement for the purpose of determining federal awards expended during a fiscal year. In addition, the Grantee must include the value of new federal loans made along with any grant expenditures from all federal sources during the Grantee's fiscal year. Therefore, the audit submission requirement for this program begins

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in the Grantee's fiscal year that the loan is made and thereafter, based on the balance of federal loan(s) at the beginning of the audit period. All required audits must be submitted within the earlier of: (i) 30 calendar days after receipt of the auditor's report; or (ii) nine months after the end of the Grantee's audit period.

(b) For all other entities, Grantees shall provide RUS with an audit within 120 days after the as of audit date in accordance with 7 C.F.R. part 1773, Policy on Audits of RUS Borrowers. Note that with respect to Advances that contain loan funds, the audit is required after an Advance has been made, and, thereafter, from the close of each subsequent fiscal year until the loan is repaid in full. With respect to Advances that only contain grant funds, the audit is required until all grants funds have been expended or rescinded. While an audit is required, Grantees must also submit a report on compliance and internal controls over financial reporting, as well as a report on compliance with aspects of contractual agreements and regulatory requirements.

SECTION 5.7 Project Performance and Financial Reporting

(a) *Annual Project Performance Activity Report*. No later than January 31st of the following year in which all or any portion of the Grant is first advanced and continuing in subsequent years until completion of the Project, the Grantee must submit the following information utilizing RUS' online reporting system:

(i) a comparison of actual accomplishments to the objectives established for the period;

(ii) a description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall Project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular Project work elements during established time periods, accompanied by a statement of action taken or planned to resolve the situation;

(iii) objectives and timetables established for the next reporting period; and

(iv) a completed SF 425- Federal Financial Report.

(b) *Final Project Performance Activity Report*. No later than ninety (90) days after the Expiration Date, termination of the Grant, the Project completion, or the final disbursement of the Grant by the Grantee, whichever event occurs last, the Grantee must submit a report that only covers an evaluation of the success of the Project in meeting the objectives of the program.

SECTION 5.8 Miscellaneous Information to be Provided to RUS

The Grantee shall furnish to RUS such information regarding the condition, financial or otherwise, or operations of the Grantee as RUS may, from time to time, reasonably request.

SECTION 5.9 Obligations with Respect to the Construction, Operation and Maintenance of the Project

(a) *Project Management and Operation.* The Grantee shall be responsible for managing the day-to-day operations of the Project and will operate the Project in an efficient and economic manner as well as maintaining the Project in good repair. The Grantee shall provide the service described in the Application and, if the Project is owned, leased or operated by participants other than the Grantee, the Grantee shall monitor such participants and ensure the Project is operated in accordance with representations in the Application.

(b) *Construction in Accordance with Scope of Work Plan.* The Grantee shall cause the Project

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to be constructed and completed in accordance and within the time frame and budget set forth in the Scope of Work Plan approved by RUS.

(c) *Procurement Requirements.* The Grantee shall conduct all procurement transactions in accordance with 2 CFR §§ 200.317-326, unless it has received written approval otherwise.

(d) *General Insurance Requirements.* In addition to the fidelity bond coverage required in Subsection 4.1(h), the Grantee shall take out and maintain insurance on the Project and any other property acquired with the Grant in accordance with 2 C.F.R. § 200.310.

SECTION 5.10 <u>Compliance with Laws</u>

The Grantee will comply with all applicable federal statutes, regulations and requirements that govern the Application, the Project, and use of federal grant funds for this Grant.

SECTION 5.11 <u>Nondiscrimination</u>

(a) *Equal Opportunity Provisions in Construction Contracts*. The Grantee shall incorporate, or cause to be incorporated, the equal opportunity provisions set forth in Attachment 1 hereto into any "federally-assisted construction contract", as defined in Executive Order 11246 (30 Fed. Reg. 12,319 (1965)), as amended, and pursuant to implementing regulations at 41 C.F.R. Part 60, which is paid for in whole or in part with Grant funds.

(b) *Equal Opportunity Contract Provisions Also Bind the Grantee*. The Grantee further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.

(c) *Codes of Conduct*. The Grantee shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts in accordance with 2 C.F.R. part 200.

(d) *Sanctions and Penalties*. The Grantee agrees that it shall cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of RUS' primary responsibility for securing compliance. The Grantee further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Grantee agrees that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this Agreement, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Grantee, or may refer the case to the Department of Justice for appropriate legal proceedings.

SECTION 5.12 <u>Additional Project Funding</u>

The Grantee shall ensure that adequate funding is in place to complete the Project and will, after obtaining the prior written approval of RUS, obtain loans or funds or receive binding commitments for supplemental funding in an amount needed to ensure completion of the Project.

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SECTION 5.13 Matching Contribution

The Grantee shall provide the entire Matching Contribution prior to the end of the term of this Agreement and in accordance with 2 C.F.R. § 200.306.

SECTION 5.14 SAM Registration and DUNS Number

The Grantee shall comply with the additional requirements set forth in Attachment 2 regarding System for Award Management (SAM) formerly the Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Numbers. For the purposes of this Agreement the term "you" in Attachment 2 shall mean "Grantee" as defined hereunder. The Grantee's DUNS Number is listed in Schedule I hereto.

SECTION 5.15 Subawards and Executive Compensation

The Grantee shall comply with the additional requirements set forth in Attachment 3 regarding Subawards and Executive Compensation. For the purposes of this Agreement the term "you" in Attachment 3 shall mean "Grantee" as defined hereunder.

SECTION 5.16 Additional Affirmative Covenants

The Grantee shall comply with the additional affirmative covenants set forth in Schedule I hereto.

ARTICLE VI - NEGATIVE COVENANTS

SECTION 6.1 General

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Grantee shall duly observe each of the negative covenants set forth in this Article VI.

SECTION 6.2 Contracts

The Grantee shall not, without the prior written consent of RUS, enter into any contract or contracts for the operation or maintenance of the Project and shall not enter into any contract for the use by others of the Project.

SECTION 6.3 Historic Preservation

The Grantee shall not, without the prior written consent of RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

SECTION 6.4 Prohibition Against Internal Confidentiality Agreements

(a) The Grantee shall not require its employees, contractors, or subrecipients to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Grantee shall notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements that may currently be in effect that are inconsistent with paragraph (a) of this section are no longer in effect.

(c) The prohibition in paragraph (a) above does not contravene requirements imposed by a Federal

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department or agency governing the nondisclosure of classified information.

(d) If RUS determines that the Grantee is not in compliance with paragraph (a) or (b) of this section:

(1) RUS shall cease to make Grant funds available under this Agreement and shall prohibit the Grantee's use of Grant funds under this award; and

(2) RUS may pursue other remedies available due to the Grantee's material failure to comply with award terms and conditions.

SECTION 6.5 Additional Negative Covenants

The Grantee shall comply with the additional negative covenants set forth in Schedule I hereto.

ARTICLE VII – TERMINATION, SUSPENSION AND OTHER REMEDIES

SECTION 7.1 Termination of the Grant

(a) *Termination of the Grant by RUS.* RUS, in its sole discretion, may terminate the Grant, in whole or part if:

(i) RUS does not receive this Agreement, duly executed on behalf of the Grantee, within one hundred twenty (120) days from the date hereof;

(ii) all conditions to the Grant, and all conditions to advance are not satisfied within one hundred twenty (120) days from the date hereof;

(iii) RUS has determined that the Grantee has failed to materially comply with the terms and conditions of this Agreement;

(iv) any representation or warranty made by the Grantee in the Application, Scope of Work Plan, request for Advance, this Agreement, any certification, or other supporting documentation thereunder, shall prove to be incorrect in any material respect at the time made;

(v) the Grantee shall forfeit or otherwise be deprived of its charter, articles of organization, franchises, permits, easements, consents, or licenses required to carry on any material portion of its business, or an event occurs which can reasonably be expected to result in its dissolution or termination;

(vi) a court having proper jurisdiction shall enter a decree or order for relief with respect to the Grantee in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (A) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official or (B) ordering the winding up or liquidation of its affairs; or the Grantee shall commence a voluntary case under any applicable bankruptcy insolvency or other similar law now or hereafter in effect, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; and/or

(vii) Grantee has filed for dissolution or liquidation, or upon the dissolution or liquidation of the Grantee.

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(b) *Termination of the Grant by the Grantee.* The Grantee may terminate the Grant by providing written notification to RUS, setting forth the reasons for such termination, the effective date, and, in the case of a partial termination, the portion of Grant funds to be terminated. In the case of a partial termination, if RUS determines that the remaining portion of the Grant will not accomplish the Project, then RUS may terminate the Grant in its entirety, and request reimbursement of all advanced Grant funds.

(c) *Mutual Termination of the Grant.* RUS and the Grantee may mutually agree, in writing, to terminate the Grant upon certain conditions, specifying the effective date of the termination, and in the case of a partial termination of the Grant, any unadvanced portion of the Grant to be terminated and any advanced portion of the Grant to be returned to RUS.

(d) *Effect of Termination*. Upon termination of the Grant: (1) the Grantee shall not incur any new obligations after the effective date of the termination with respect to the Grant, (2) the Grantee shall cancel as many outstanding obligations as possible, and seek to mitigate the costs of any outstanding obligations, and (3) any unadvanced portion of the Grant not required for Approved Purposes shall not be available for advance by RUS and any advanced portion of the Grant not required by the Grantee for Approved Purposes or for completion of the Project shall be immediately returned to RUS.

(e) *Notice of Termination*. Written notice of termination shall be sent to the Grantee as provided for in Section 8.1 hereof, setting forth the reason(s) for termination, which termination shall be effective as of the date of receipt of such notice.

SECTION 7.2 <u>Suspension of Advances</u>

RUS may suspend the Grant, in whole or in part, for the reasons specified in Section 7.1 hereof as a basis for Grant termination.

(a) *Suspension Procedure*. RUS shall issue to the Grantee a suspension notice stating the reasons for the suspension, any corrective action required to be taken by the Grantee and the effective date of the suspension. The suspension shall remain in effect until the Grantee has taken all corrective actions required by RUS and RUS terminates the suspension.

(b) *Effect of Suspension*. New obligations shall not be incurred by the Grantee during the suspension, following the date of notice of suspension, unless specifically authorized by RUS, in writing. RUS will allow necessary allowable costs which the Grantee could not reasonably avoid during the suspension, if the obligations were properly incurred prior to the date of the suspension and not in anticipation of the suspension or termination. During the suspension, appropriate adjustments shall be made to the Grant by RUS in order that credit not be given to the Grantee for disbursements made in payment of unauthorized obligations incurred by the Grantee during the suspension. RUS may also make adjustments by disallowing all or part of the costs of the Project that are not in compliance with this Agreement or RUS may withhold subsequent Advances.

SECTION 7.3 <u>Misrepresentation and Misappropriation</u>

(a) Upon a determination by RUS that the Grantee did not utilize the Grant in the manner and exclusively for the Project as approved by RUS, RUS may, in its sole discretion:

(i) Disallow all or a part of the expenditures and disbursements of the Grant and require the Grantee to deposit such funds in an account to be applied toward other approved Project purposes or to reimburse the Government;

(ii) Suspend making Advances; and/or

(iii) Take any other action RUS determines to be necessary including, without

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limitation, exercising any right or remedy available herein or at law.

(b) If any representation or warranty made by the Grantee in the Application, Scope of Work Plan, request for Advance, this Agreement, any certification, or other supporting documentation thereunder shall prove to be incorrect in any material respect at the time made, RUS may, in its sole discretion:

(i) Suspend making Advances;

(ii) Require the Grantee to reimburse the Government for all or any part of the Grant;

(iii) Terminate the Grant; and/or

(iv) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available herein or at law.

ARTICLE VIII - MISCELLANEOUS

SECTION 8.1 Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Receipt of all such communications shall be deemed to have occurred when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

RUS
Rural Utilities Service
1400 Independence Avenue, S.W. Washington, D.C. 20250-1500 Attention: Administrator

Grantee
See Schedule I United States Department of Agriculture

With a copy to:

See Schedule I

With a copy to:

See Schedule I

SECTION 8.2 Expenses

To the extent allowed by law, the Grantee shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Agreement or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

SECTION 8.3 No Waiver

No failure on the part of RUS to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

SECTION 8.4 Governing Law

This Agreement shall be governed by and construed in accordance with applicable federal law, and in the absence of controlling federal law, by the laws of the State identified in the first paragraph herein, except those that would render such choice of law ineffective.

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SECTION 8.5 Successors and Assigns

(a) This Agreement shall be binding upon and inure to the benefit of the Grantee and RUS and their respective successors and assigns, except that the Grantee may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.

(b) Pursuant to federal claims collection laws, RUS' claims hereunder may be transferred to other agencies of the United States of America; in the event of such transfer, all security interests, rights and remedies hereby granted or conferred on RUS shall pass to and inure to the benefit of any such successor agency.

SECTION 8.6 Complete Agreement; Waivers and Amendments

Subject to RUS Regulations, this Agreement is intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement. No amendment, modification, or waiver of any provision hereof, and no consent to any departure of the Grantee herefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 8.7 Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

SECTION 8.8 Severability

If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

SECTION 8.9 Schedules and Attachments

Each Schedule and Attachment attached hereto and referred to herein is each an integral part of this Agreement.

SECTION 8.10 Authority of Representatives of RUS

In the case of any consent, approval or waiver from RUS that is required under this Agreement, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this section, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

SECTION 8.11 Amendment of Laws and RUS Regulations

Nothing contained herein shall restrict in any way RUS' right to amend, rescind or supplement any of the RUS Regulations or to seek such changes to existing Laws.

SECTION 8.12 Interest on Disallowed Amounts

Disallowed and reimbursable Advance amounts hereunder shall accrue interest payable to RUS from the date RUS delivers to the Grantee a written demand for payment. Interest shall accrue at a rate equal to the lesser of (a) twelve percent (12%) per annum or (b) the maximum interest rate permissible by law. Termination of the Grant will not affect the right of RUS to disallow expenditures and recover, in full, any

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amount on the basis of a subsequent audit or other review or the Grantee's obligation to return any disallowed expenditures.

SECTION 8.13 No Third-Party Beneficiary

This Agreement is exclusively between RUS and the Grantee and does not nor is intended to create any privity of contract with any other party not a party hereto, nor to imply a contract in law or fact. Any funds advanced by RUS to the Grantee are intended to finance the Grantee's Project. Any approvals given by RUS to the Grantee are solely for the benefit of RUS. RUS is not obligated to advance grant funds on any contract, or otherwise, between the Grantee and any other party, nor intends to assume, at any time, direct obligations for payment for work, goods, or other performance under such contracts. The obligation to pay any amounts due under such contracts is solely the responsibility of the Grantee. Nothing herein, express or implied, is intended to, or shall confer upon, any other person any right, benefit, or remedy of any nature whatsoever under or by reason of the Grant Agreement between RUS and the Grantee.

SECTION 8.14 Disposition of Grant Property

Unless otherwise agreed to in writing by RUS, any and all dispositions of Grant property shall be made in accordance with federal regulations at 2 C.F.R. part 200.

SECTION 8.15 Term

This Agreement shall remain in effect until one of the following three events has occurred:

(a) The Grantee and RUS replace this Agreement with another written agreement;

(b) All of the Grantee's obligations under this Agreement have been discharged; or

(c) This Agreement has been terminated pursuant to the provisions of Article VII hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

[GRANTEE'S NAME]

by: _____
[*Signature*]

_____
[*Name, Position – Please Print*]

UNITED STATES OF AMERICA

by _____
as [position] of the Rural Utilities Service

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SCHEDULE I

1. Article II Representations and Warranties

a. Section 2.1(g) Grantee's address:

2. Article III The Grant

a. Section 3.1(a) Maximum Grant Amount:

3. Article IV Conditions of Grant Funds Release

a. Section 4.2(d) Matching Contribution amount is $_____.

b. Section 4.2(d) Matching Contribution shall be equal to at least [insert matching percentage] % of each Advance (with credit given for those contributions exceeding [insert matching percentage] % toward the next Advance). Evidence that the Matching Contribution has been made or will be made before the release of funds must be presented with the request for each Advance.

c. Section 4.2(g) Additional Conditions:

4. Article V Affirmative Covenants

a. Section 5.14 Grantee's Data Universal Numbering System (DUNS) Number:

b. Section 5.16 Additional Affirmative Covenants:

5. Article VI Negative Covenants

a. Section 6.5 Additional Negative Covenants:

6. Article VIII Miscellaneous

a. Section 8.1 Grantee's address for purposes of notification: Copy sent to:

b. Section 8.1 RUS' copy address for purposes of notifications: Copy sent to:

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ATTACHMENT 1

Equal Opportunity Contract Provisions

During the performance of this contract, the contractor agrees as follows:

(a) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

(b) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous place available to employees and applicants for employment.

(d) The contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.

(f) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or part by the Government, and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The contractor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non- compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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ATTACHMENT 2

SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for System for Award Management (SAM) formerly Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at http://www.sam.gov).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian Tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R. part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, including 2 C.F.R. § 200.92, 2 C.F.R. § 200.93, 2 C.F.R. § 200.330, 2 C.F.R. § 200.331, and 2 C.F.R. § 200.332).

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

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ATTACHMENT 3

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub.L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to http://www.fsrs.gov. PLEASE NOTE: Currently underway is a consolidation of eight federal procurement systems, including the Sub-award Reporting System (FSRS), into one system, the System for Award Management (SAM). Therefore, please note that the Sub-award Reporting System (FSRS) will soon be consolidated into and accessed through SAM.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if--

i. the total Federal funding authorized to date under this award is $25,000 or more;

ii. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at http://www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if--

i. in the subrecipient's preceding fiscal year, the subrecipient received--

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(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 C.F.R. part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R. part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

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5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

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