



ADMINISTRATIVE COMPLIANCE AGREEMENT

This Administrative Compliance Agreement (the "Agreement") dated this 22nd day of October, 2015, is made between Robert Anthony Luster ("Mr. Luster") and Luster National, Inc. (LNI), and the United States Department of the Army (the "Army").

PREAMBLE

1. LNI is a professional services corporation providing strategic planning and program, project, construction and facilities management services for commercial and government clients across the United States. A California corporation, LNI is managed by Mr. Luster, its President and Chief Executive Officer. Mr. Thomas Gregory Harris ("Mr. Harris") was hired by LNI in 2007 and was eventually promoted within LNI to the position of Senior Vice President of Operations.
2. Tropical Contracting (TC) is a limited liability company organized under the laws of Texas with its principal place of business in San Antonio, Texas. TC has provided civil construction services to local, state, and federal governments as a prime contractor, subcontractor, and joint venture participant since its founding. In February 2009, the Small Business Administration (SBA) certified TC as a small disadvantaged business under the SBA's 8(a) Business Development Program.
3. On 26 March 2010, LNI – a non-8(a) concern – and TC – an 8(a) concern – entered into a Joint Venture Agreement, forming Tropical Luster Joint Venture (TLJV). The SBA approved the TLJV on 27 July 2010.
4. The Joint Venture Agreement required TC to manage the joint venture with Mr. Winters serving as Program Director, "responsible for overall contract performance." LNI, through Mr. Harris, would serve as Program Manager, "responsible for overseeing the job-site, reporting to and implementing the instructions of the Program Director, preparing written reports, . . . detailing all developments and aspects of the job, and submitting such reports to the Program Director at his request." Negotiating any contracts for the TLJV would be handled jointly by Mr. Winters and Mr. Harris. Additionally, LNI and TC represented that each would comply with program rules, terms and conditions, and regulatory requirements in TLJV's performance. As such, both agreed that "[t]he Joint Venture must perform at least 50% of the labor costs incurred . . . with its own employees." In addition to providing Mr. Winters as Program Director, TC agreed to the overall supervision of the project, and appropriate personnel to perform duties as required." LNI agreed to "provide the Program Manager [Mr. Harris], and project on-site management as well as subject matter expert personnel experienced with customer requirements." Profits were to be split, in accordance with SBA program rules, 51% to TC and 49% to LNI. TLJV's accounting and other administrative records were to be "kept and maintained" at TC's office.

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5. On 17 August 2010, TLJV received the first of three Government contracts when the U.S. Army Corps of Engineers (USACE), Galveston District, awarded W912HY-10-P-0064, a small business set-aside contract to perform an on-site assessment and After-Action Report concerning the Galveston District's business and program/project management processes. The USACE, Galveston District, awarded a second small business set-aside contract, W912HY-11-D-0001, on 6 April 2011 (collectively, the "Galveston District Contracts"). Under the Galveston District Contracts, and associated task orders, LNI received \$821,249.13, which represented incurred labor costs and profit; TC received \$110,382.29, which represented 51% of the profit.

6. On 11 July 2011, the International Boundary and Water Commission (IBWC) awarded TLJV its second contract (the IBWC Contract") for the removal and relocation of biosolids sludge at Nogales International Wastewater Treatment Plant in Arizona. Under the IBWC Contract, LNI received \$19,636, which represented profit. LNI did not perform any labor on the IBWC Contract. TC received more than 51% of the profit from the IBWC contract.

7. On 12 August 2011, the Mission Installation Contracting Command, Fort Bliss, awarded TLJV a small business set-aside contract, W911SG-11-P-0291 (the "Fort Bliss Contract"), to develop a "plan for the integration of energy sources and approaches," as well as a "schedule [for meeting] the long term needs of Fort Bliss achieving energy net zero goals." Fort Bliss would then use the plan developed by TLJV to "develop request for proposals to energy management service providers to finance, build, maintain an sustain [sic] energy project to meet Fort Bliss' long term energy [goals.]" Under the Fort Bliss Contract, LNI received \$324,829.71, which represented incurred labor costs and profit; TC received \$15,412.18, which represented 51% of the profit.

8. TC never managed the joint venture, participated in negotiations, supplied employees, or otherwise performed any labor on the Galveston District Contracts or Fort Bliss Contract, but received \$125,794.47 for participating in the arrangements.

9. In April, 2014, Mr. Harris was indicted for his conduct relative to the TLJV. According to the Indictment and the Government's Bill of Particulars, Mr. Harris "purposefully fostered and maintained the fraudulent and material pretense that the [TLJV] was formed to be, and functioned as, a *bona fide* entity qualified to negotiate for and receive Section 8(a) set aside contracts, rather than as a mere 'pass-through' to Luster National." On 16 September 2014, a jury sitting in the United States District Court for the Western District of Texas, El Paso Division, convicted Mr. Harris, on sixteen of seventeen counts of wire fraud. The conviction has been appealed.

10. On 1 April 2015, the Army Suspension and Debarment Official (SDO) proposed Mr. Luster and LNI for debarment under the authority and procedures of Federal Acquisition Regulation Subpart 9.4. The stated basis of the proposed debarments was evidence that Mr. Luster and LNI knew, or had reason to know, of Mr. Harris' materially false pretenses and material misrepresentations.

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11. LNI and Mr. Luster responded to the notice of proposed debarment on 18 May 2015 and supplemented that response on 18 June 2015, providing additional information and evidence that, the respondents argued, demonstrated that they did not know or have reason to know of Mr. Harris' misconduct. The responses cited changed circumstances beyond LNI's control, which, they argued, resulted in an unexpected outcome that labor was performed by LNI on the Galveston District and Fort Bliss contracts. The responses also contended that LNI operated on a good faith belief that they were complying with SBA regulations. Mr. Luster and LNI also provided evidence that TC performed all of the labor on the IBWC Contract. The respondents admitted that TC did not perform any labor on either the Galveston District or Fort Bliss Contracts, but argued that when all three contracts (Galveston District, Fort Bliss and IBWC) were aggregated and viewed as a whole, TC "provided at least sixty percent (60%) of TLJV's labor . . ." Finally, Mr. Luster and LNI urged that, because of their remedial measures, mitigating factors, and the passage of time, present responsibility was sufficiently demonstrated such that debarment was not necessary to protect the Government's interests.

12. On 16 July 2015, Mr. Luster and LNI entered into a Settlement Agreement with the United States of America, acting through the United States Department of Justice and on behalf of the United States Army and the United States Army Corps of Engineers, to settle certain civil claims the Department of Justice alleged against Luster National "arising from (1) Thomas Harris' Criminal Conduct, and (2) false records, statements and claims that Luster National presented to the United States to obtain (a) SBA approval of the TLJV, (b) the award of the Net Zero and Galveston Contracts, and (c) payment under the Net Zero Contract and Galveston Contracts, during the period from March 26, 2010 through August 3, 2012." Although neither Mr. Luster nor LNI admitted liability, LNI agreed to pay to the United States \$500,000, plus simple interest at 2% per annum to settle the dispute.

13. On 22 July 2015, Mr. Luster and his counsel, Messrs. Phillip Hilder, Hilder and Associates, P.C., and David Ericksen, Severson and Werson, P.C. met, in person, with the SDO to discuss the proposed debarment action. Then, on 23 July 2015, through Mr. Ericksen, Mr. Luster provided follow-up responses to issues raised at the meeting, along with additional documentation. Finally, on 27 July 2015, LNI and Mr. Luster submitted a fourth written submission to the SDO.

14. On 27 August 2015, the SDO debarred LNI and Mr. Luster from future contracting with any agency in the Executive Branch of the United States Government under Section 9.406 of the Federal Acquisition Regulation (FAR). The debarment is effective through 1 April 2018.

15. On 4 September 2015, Mr. Steven Shaw, Covington and Burling, LLP, notified the Army that he now represented Mr. Luster and LNI regarding the debarment proceedings. On 28 September 2015, Mr. Shaw requested a meeting with the SDO.

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16. On 5 October 2015, Mr. Luster's counsel submitted to the SDO a written request for review and reconsideration of the debarment of LNI and Mr. Luster. On 8 October 2015, the SDO met with Mr. Luster's counsel to discuss that request for reconsideration.

17. Mr. Luster and LNI deny the misconduct alleged in the debarments. Nevertheless, they have expressed interest in taking additional actions necessary to demonstrate that they may be trusted to deal fairly and honestly with the Government, and that continued debarment under FAR Subpart 9.4 is not necessary if the terms and conditions set forth herein are duly and forthrightly implemented. To this end, Mr. Luster and LNI have agreed to take the actions specified herein to assure the Government that both possess the high degree of business honesty and integrity required of a Government contractor.

18. The Army, Mr. Luster and LNI agree that FAR Subpart 9.4 provided a legally sufficient basis for debarring Mr. Luster and LNI. This Agreement is intended to provide assurances to the Government that both Mr. Luster and LNI, notwithstanding the bases of debarment, can be trusted to deal fairly and honestly with the Government. The Army has determined that the terms and conditions of this Agreement provide adequate assurance that the interests of the Government will be sufficiently protected and that continued debarment of Mr. Luster and LNI is not necessary to protect those Government interests.

NOW THEREFORE, in consideration of the promises set forth herein and for good and valuable consideration, the parties mutually agree as follows.

ARTICLES

1. Termination of Debarment. The debarments of Mr. Robert Anthony Luster and Luster National, Inc., are terminated upon execution of this Agreement by the Army. This Agreement in no way restricts the authority, responsibility, or legal duty of the Army, or any other federal agency, to consider and institute suspension or debarment proceedings against Mr. Luster and/or LNI based upon information constituting independent cause for suspension or debarment concerning events unrelated to the facts and circumstances set forth in the Preamble, including, but not limited to, any substantive allegations of wrongdoing in the past, at present, or in the future. The Army, or any other federal agency, may, in its sole discretion, initiate such proceedings based upon an independent cause in accordance with FAR Subpart 9.4. The Army's ability to institute such administrative action based upon an independent cause is in addition to its ability to take action under Article 14 of this Agreement.

2. Definitions.

a. "Contractor" refers to Luster National Inc. (LNI), including its directors, officers, and employees, while acting in their capacities as such.

b. "Days" refers to "calendar days."

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c. "Effective date" (of this Compliance Agreement) refers to the date on which the Army's Suspension and Debarment Official signs this Agreement on behalf of the Army.

d. "Employee" refers to officers, managers, and supervisors. All full and part-time workers and consultants will be considered employees for training purposes.

e. "Ethics Program Director" refers to an individual, whether a senior employee of Contractor or an outside attorney, who will serve as the first point of contact for all questions regarding the terms and conditions of this Agreement.

f. "FAR" refers to the Federal Acquisition Regulation.

g. "Government" refers to any department, agency, division, independent establishment, or wholly-owned corporation of the United States Government.

h. "Independent cause" for suspension or debarment refers to a reason or basis for such action not directly related to information set forth in the Preamble or any document referred to in the Preamble.

i. "Independent Monitor" refers to an independent attorney, certified public accountant, or other expert knowledgeable in the area of Government contracting policies and procedures, and who will audit Contractor compliance with the terms of this Agreement.

j. "Army SDO" refers to the Army's Suspension and Debarment Official.

k. "Small business set asides" refers to the Government procurement processes which award certain acquisitions exclusively to small business concerns, further described in FAR Subpart 19.501(a).

3. Independent Monitor.

a. Appointment of Independent Monitor. Within 30 days of the effective date of this Agreement, Contractor shall nominate an individual, not an employee, to serve as an Independent Monitor at Contractor's expense for the oversight of this Agreement. Contractor shall provide the Army with the name, telephone number, current position, resume, and duties of the nominee for Army approval. Should the Army reject the nominee, Contractor shall promptly nominate another Independent Monitor for Army approval. Furthermore, any change of Independent Monitor requires prior Army approval, and should the Army become dissatisfied with the performance of the Independent Monitor, the Army may require Contractor to propose a new Independent Monitor for Army approval.

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b. Nature of Employment. The Independent Monitor is an independent check upon the Contractor's compliance with this Agreement. The Independent Monitor shall not be an agent of Contractor, and his or her work shall not be subject to Contractor's assertion of the attorney-client privilege or the work product doctrine. Generally, the Independent Monitor shall serve as Contractor's first point of contact for all questions regarding the terms and conditions of this Agreement and Contractor implementation thereof. Contractor shall ensure the implementation and management of the Ethics Program which will be verified by the Independent Monitor. Any change in the Ethics Program management shall require prior Army approval. It will be the Independent Monitor's duty to assist management in implementing this Agreement, serve as a point of contact for all questions regarding the terms and conditions of this Agreement, investigate complaints concerning Contractor's compliance with this Agreement, and report to the Army concerning Contractor's compliance with this Agreement.

c. Costs, Fees, Retainers, or Other Reimbursements and Compensation. Contractor shall be responsible for and shall promptly and fully pay all reasonable costs, fees, retainers, or other reimbursements and compensation customarily charged by and payable to the Independent Monitor. If, and to the extent the Independent Monitor requires at his or her reasonable discretion as communicated in writing, staff assistance and/or legal counsel, the Independent Monitor shall be authorized and empowered to retain such assistance and/or legal counsel with reasonable advance notice to Contractor. Contractor shall be responsible for and shall pay all reasonable costs, fees, retainers, or other reimbursements and compensation payable to or on account of such staff or legal counsel for the Independent Monitor. Contractor shall pay all such reasonable advance retainers, if any, required by the Independent Monitor on account of his or her own customary fees or charges, as well as that of his or her staff or counsel.

d. Duties and Responsibilities.

(1) The Independent Monitor shall report to and be responsible to the Army, and shall be free to communicate with the Army without interference by Contractor. The Army may communicate with the Independent Monitor on a confidential basis and without disclosure to Contractor. The purpose of the Independent Monitor is to observe and review on an ongoing basis, and to report to the Army regarding Contractor's compliance in all respects with this Agreement, including allegations that Contractor has not complied with this Agreement.

(2) The Independent Monitor shall provide quarterly reports to the Army on Contractor's compliance with this Agreement, allegations of non-compliance, and matters coming to the Independent Monitor's attention impacting Contractor's present responsibility to seek, obtain and perform Government contracts. The reports shall also include any findings and recommendations for improvement concerning Contractor's Contractor Responsibility Program (discussed in greater detail below in Article 4). The first report will be delivered to the Army within 90 calendar days from the date of this Agreement, with subsequent reports following each quarter thereafter, through one year from the date of this Agreement, at which point the Army will determine whether less frequent reports are sufficient to accomplish the objectives of this

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Agreement, or whether quarterly reports shall continue during the term of this Agreement. To the extent permitted by law, including the Freedom of Information Act, said reports shall be deemed confidential to Contractor, the Independent Monitor, and the Army.

(3) The Independent Monitor's reports are for the Army's assistance and monitoring purposes and shall be considered by the Army as part of the totality of the information available to it. Proof of Contractor's ongoing compliance or non-compliance with this Agreement, and all its obligations under law, shall be determined based upon all relevant information, documents, communications, testimony, and other evidence of such compliance or lack thereof. Neither the delivery nor review by the Army of any Independent Monitor report shall waive, limit, or in any way diminish the Army's right to obtain, review, analyze, or evaluate any underlying actual evidence of Contractor's compliance or non-compliance with this Agreement or applicable law.

(4) The Independent Monitor shall have unfettered, immediate, and, if requested, real-time access to all Contractor's documents, information, and personnel, including without limitation all files, records, communications, IT and communications systems, e-mail systems, electronic documents, and databases reasonably required to perform the duties of the Independent Monitor set forth in this Agreement. The Independent Monitor shall not be required to provide prior notice to Contractor if the Independent Monitor determines, in his or her reasonable discretion, that the needs or exigencies of his or her monitoring require immediate access or communication. The Independent Monitor shall, during the term hereof, be permitted to communicate with any manager, employee, or contractor of Contractor pertaining to any matter concerning Contractor's present responsibility. Contractor commits to cooperate in good faith with any such communications and to provide, or to have provided, copies of any documents relating to any such communications within a reasonably prompt time. The Independent Monitor shall retain all of Contractor's information and documents in the strictest confidence and shall disclose all such information solely to the Army or other governmental investigatory authorities, and shall not disclose such information or documents to third parties outside Contractor or use such information for any purpose not associated with his or her monitoring activities provided for herein. The Independent Monitor shall return such information and documents, if any, and all copies thereof maintained by the Independent Monitor, to the Contractor within 30 days of the expiration of monitoring responsibilities.

(5) Within 30 days of receipt of an Independent Monitor's quarterly report containing recommendations, Contractor shall provide to the Army and to the Independent Monitor its action plan, with milestones, for implementing the Independent Monitor's recommendations, or, an explanation as to why the Independent Monitor's recommendation should not be implemented. If after review of the Contractor's explanation, the Army agrees with the recommendation of the Independent Monitor, Contractor shall fully implement the Independent Monitor's recommendations within 90 days and report on that implementation to the Army and to the Independent Monitor.

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e. If requested by the Independent Monitor, Contractor shall provide to the Independent Monitor, at Contractor's place of business, on-site management-type office space, furniture, telephone, network access, equipment, and supplies, along with adequate enclosed conference room space or access for the Independent Monitor such that he or she can undertake confidential conferences with Contractor's employees if reasonably required.

f. Failure to cooperate fully and promptly with the Independent Monitor's inquiries, document and information requests, and other monitoring activities may be considered a breach of this Agreement.

g. Contractor hereby agrees that the Independent Monitor shall be released from, held harmless from, and indemnified against any claims, demands, liabilities, obligations, damages, suits, or costs of any sort whatsoever, with the exception of intentional misconduct and gross negligence, whether to Contractor or to any third party, arising out of or relating in any way to the Independent Monitor's agreement, presence at Contractor's place of business, or performance of his or her duties and obligations under this Agreement.

4. Contractor Responsibility Program. Contractor agrees to implement a values-based ethics and compliance program (the "Contractor Responsibility Program"). The Contractor Responsibility Program (or "Program") shall be designed to ensure that Contractor, and each of its employees, acts with the business honesty and integrity required of a Government contractor, and that Contractor operates in compliance with all applicable laws, regulations, policies, and terms of any Government contract. At minimum, the Program shall include the following features, each of which shall be implemented within 60 days of the effective date of this Agreement:

a. Appointment of Ethics Program Director. Contractor shall designate an individual to serve as Contractor's Ethics Program Manager.

b. Notification of this Agreement. Contractor's President shall prepare, in a prominent place accessible to all employees and subcontractors, or physically distribute to each employee and subcontractor, a letter stating that Contractor has entered into an administrative agreement with the Army. A copy of the President's letter will be forwarded to the Army for approval before distribution and will describe this Agreement and Contractor's responsibilities thereunder. The letter shall state:

- (1) The basis for this Agreement;
- (2) Contractor's commitment to observe all applicable laws and regulations, and to maintain the highest standards in conducting business with the United States Government;
- (3) A brief description of the features of the Contractor Responsibility Program;

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(4) The Contractor's Ethics Program Director's name, address, and mechanism for reporting misconduct;

(5) The availability of the Ethics Program Director for consultation on any questions concerning Contractor's business practices or employee responsibilities, or subcontractors including required reporting of improprieties; and,

(6) That all improprieties regarding Government operations shall be reported to the Ethics Program Director, who will conduct an investigation followed by appropriate corrective action, and that employees may make such reports without revealing their identity.

c. Code of Business Ethics and Conduct.

(1) Contractor shall create, maintain, and/or revise, as necessary, a Code of Business Ethics and Conduct (the "Code"). The Code shall be designed to ensure that Contractor maintains the business integrity and honesty required of a Government contractor, and that Contractor's performance is in strict compliance with the terms and conditions of its Government contracts.

(2) The Code shall include, at minimum, the following:

(a) A statement of Contractor's commitment to comply with the contractor responsibility provisions of the FAR and all other applicable laws and regulations concerning the conduct of Government contracting or subcontracting;

(b) A statement of Contractor's commitment to fully cooperate with any Government agencies responsible for either investigation or corrective actions;

(c) Specific standards of conduct for Contractor employees concerning their business dealings with the Government on behalf of Contractor;

(d) Notice that Contractor will immediately discipline, to include termination if appropriate, employees or officers whose conduct violates applicable laws, regulations, or the basic tenets of business integrity and honesty set forth in the Code;

(e) Notice that Contractor will immediately terminate affiliation with any other entity or contractor, whether the affiliation results from a joint venture, teaming agreement, subcontracting agreement, or other arrangement, whose conduct violates applicable laws, regulations, or the basic tenets of business integrity and honesty set forth in the Code;

(f) A requirement that Contractor employees report to the Ethics Program Director any impropriety or violation of this Agreement, whether committed by Contractor, a vendor, a subcontractor, or a Government employee; and,

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(g) Any provisions that pertain to an individual contractor's misconduct that this Agreement is designed to prevent, *e.g.*, failure to comply with SBA program terms and regulatory requirements, ostensible subcontracting rule violations, etc.

d. Government Contracting Policies and Procedures Manual.

(1) Contractor shall establish and maintain a written Government Contracting Policies and Procedures Manual (the "Manual") to regulate the performance of its contracts with the Government. The Manual shall describe, in detail, Contractor's methods of competing for and administering Government contracts, and the positions responsible for performing, approving, and reviewing these tasks.

(2) Contractor management shall review employee compliance with the policies and procedures set forth in the Manual, and consider such compliance when making personnel decisions, including compensation.

e. Training Program.

(1) *Training Plan.* Contractor shall create and implement an ethics and Government contracting training plan.

(2) *Ethics training.* Contractor shall provide all its employees with a copy of its Code and conduct initial training in business ethics and conduct. All employees shall sign and date a roster, certifying that they attended training, and received and read a copy of the Code. Contractor shall ensure that newly hired employees receive the training, a copy of the Code, and sign and date a roster certifying that they attended training, and received and read a copy of the Code.

(3) *Government contracting training.*

(a) Contractor shall designate the Ethics Program Director or another individual to undertake training in Government contracting specifically focused on ethics and compliance in business relationships with SBA 8(a) participants. The Army does not endorse a specific program or provider, however, training is available through a number of resources including, but not limited to, the Defense Industry Initiative on Business Ethics and Compliance and SBA District, Regional and Outreach offices. Training undertaken should include a relevant curriculum of the legal requirements of non- 8(a) concerns during Joint Ventures, Mentor – Protégé Agreements, Teaming Agreements and other similar business relationships with SBA 8(a) participants.

(b) Contractor shall provide employees directly involved with Government contracts specialized training in laws, regulations, and contractor policies and procedures related to

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Government contracting. These employees shall sign and date a roster certifying that they attended the training, and received and familiarized themselves with the Government Contracting Policies and Procedures Manual.

(4) *Frequency and certification of training.* Contractor shall conduct and update all ethics and Government contracting training and employee certifications annually. The Ethics Program Director shall maintain all employee certification rosters for ethics and Government contracting training, and make them available to the Army upon request.

(5) *New employees.* Contractor's training plan shall, within 60 calendar days of starting employment with Contractor, require each new employee involved, or reasonably anticipated by Contractor to become involved, with Government contracts attend a training session administered by the Ethics Program Director covering the topics and requiring the certifications described in subparagraphs (2), (3), and (4) above.

(6) *Notice of training.* Contractor will provide the Army a schedule of all ethics and Government contracting training sessions at least ten (10) days in advance so that the Army may attend the training.

5. Contractor Reporting Requirements.

a. President's Quarterly Report. On a quarterly basis, the President shall submit a written report to the Army describing the measures taken by Contractor during the reporting period to ensure compliance with this Agreement. Contractor shall provide a copy of each quarterly report to the Independent Monitor. The reports shall include (1) information required by other Articles and subparagraphs of this Agreement; (2) information about the status of all internal and Government investigations, if Contractor has reason to believe it is a target or subject of such investigation, that are pending, resolved, or initiated from Contractor's last reporting period; (3) indications of any problems or weaknesses identified by the Program, the corrective action proposed or initiated, and the status of any corrective action; and (4) with respect to each recommendation for improvement included in the Independent Monitor's quarterly report, a summary of the steps taken to implement the recommendation, or an explanation of the reason(s) Contractor has not taken any such steps. The first report will be delivered to the Army on or before 90 days from the date of this Agreement, with subsequent reports following each quarter thereafter for one year from the date of this Agreement, at which point the Army will determine whether less frequent reports are sufficient to accomplish the objectives of this Agreement, or whether quarterly reports shall continue during the term of this Agreement. To the extent permitted by law, including the Freedom of Information Act, said reports shall be deemed confidential to Contractor, the Independent Monitor, and the Army.

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b. Misconduct Reporting.

(1) Within 30 days of the effective date of this Agreement, Contractor shall establish and maintain a mechanism by which employees and/or subcontractors may report to the Ethics Program Director suspected incidents of improper conduct, including fraud, waste, and abuse, or violation of the terms of any contract or this Agreement. The reporting mechanism, and the name and address of the Ethics Program Director, shall be prominently displayed in all employees' and subcontractors' work and break areas, and included in all appropriate internal employee and management publications. These notifications shall describe the reporting mechanism's purpose, explain that reports may be made anonymously, and advise that all anonymous reports will be acted upon in the same manner as identifiable reports.

(2) The Ethics Program Director shall maintain a log of all misconduct reporting, to include: date and time of reporting; identity of reporter, if disclosed; summary of allegation or inquiry; and, general resolution or referral. A copy of the log shall be provided to the Army with each quarterly report of the Contractor. The Ethics Program Director shall ensure that each report is adequately investigated and resolved and shall provide to the Army all reports of any investigation concerning reported misconduct which reasonably relates to Contractor's business integrity. Contractor shall not assert an attorney-client or work product privilege with respect to the transmission of the reporting log, investigative reports, or their contents to the Army. The Army agrees that by providing such reports and/or logs the Contractor does not waive its attorney client privilege generally.

(3) Contractor shall report to the Army, within 30 days of discovery by the President or Ethics Program Director, any suspected misconduct that the President or Ethics Program Director has reasonable grounds to believe may constitute a violation of U.S. criminal or civil law and is reasonably related to Contractor's business integrity. Contractor shall investigate all reports of such misconduct that come to its attention and shall notify the Army of the outcome of such investigations and any potential or actual impact of such misconduct on any aspect of Contractor's business. This requirement is in addition to other reporting requirements articulated in this Agreement, as well as any disclosure to any agency Office of the Inspector General and contracting officer (copies of which Contractor shall provide to the Army) under FAR 52.203-13.

(4) Contractor shall notify the Army, within 30 days of notice, of any of the following events: (a) the initiation of any criminal or civil investigation by any U.S. federal, state, or local government entity involving any allegations of U.S. criminal or civil law violations relating to Contractor's business integrity, if Contractor has reason to believe it is a target or subject of such investigation; (b) service of subpoenas by any such U.S. federal, state, or local government entity, if Contractor has reason to believe that it is a subject or target of the investigation; (c) service of search warrants and/or searches carried out by any U.S. federal, state, or local government entity in any of Contractor's places of business; or (d) initiation of any legal action against Contractor, or any of its officers, employees, affiliates, or agents, by any U.S. federal, state, or local government entity alleging violations of any U.S. criminal or civil law relating to

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Contractor's business integrity. Contractor shall provide to the Army as much information as necessary, consistent with applicable law, to allow the Army to determine the impact of the investigation or legal activity upon Contractor's present responsibility.

6. Cooperation with Investigations. Contractor shall cooperate fully with all Government agencies responsible for audits and investigations. Contractor agrees that full cooperation shall be judged by the Army (or, if appropriate, another Government agency) and shall include, at minimum, providing unfettered and timely access to employees, records, documents, electronically-stored information, and other information or evidence to federal law enforcement upon request and without requiring a subpoena. Such full cooperation shall not require Contractor to waive the attorney-client privilege, work product protection, or any other applicable privileges or protections. In addition, Contractor agrees to take all reasonable steps to make its current and/or former employees and consultants available to testify on behalf of the Government in any criminal or civil proceeding arising out of the investigation(s) described above.

7. Access to Books and Records. During the term of this Agreement, the Army Procurement Fraud Division shall have the opportunity to interview Contractor and/or its representative(s) or request written submissions for the purpose of evaluating (a) compliance with the terms of this Agreement; (b) future compliance with federal procurement policies and regulations; and (c) maintenance of the high level of business integrity and honesty required of a Government contractor. To the extent permitted by law, including the Freedom of Information Act, this information shall be deemed confidential to Contractor, the Independent Monitor, and the Army.

8. Business Relationships with Suspended or Debarred Individuals and Entities. Within 60 days of the effective date of this Agreement, Contractor agrees to institute a written policy stating that:

(a) Contractor shall not knowingly employ, with or without pay, any individual who is listed by a federal agency as debarred, suspended, or otherwise ineligible for federal programs. Contractor shall make reasonable inquiry into the status of any potential employee or consultant. Such reasonable inquiry shall include, at minimum, review of the Systems for Award Management. The policy will further provide that, if any employee is charged with a criminal offense relating to Government contracts or otherwise indicating a lack of business integrity or business honesty, the Contractor will remove that employee immediately from responsibility for, or involvement with, Contractor's business affairs concerning contracts with the Government. Contractor shall notify the Independent Monitor and the Army of each such personnel action taken, and the reasons therefore, within 30 days of taking the personnel action.

(b) Contractor shall not knowingly form a contract with, purchase from, or enter into any business relationship with any individual or business entity that is listed by a federal agency as debarred, suspended, or otherwise ineligible for federal programs. Contractor shall make

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reasonable inquiry into the status of any potential business partner. Such reasonable inquiry shall include, at minimum, review of the Systems for Award Management.

9. Relationships with Participant Business and Entities of the Small Business

Administration (SBA) 8(a) Business Development Program. Contractor shall not knowingly enter into any business relationship with any individual or business participating, applying to participate, or otherwise seeking to participate, in the SBA 8(a) Business Development Program for the purposes of conducting business with the benefit of “small business set asides” or any other limited competition benefits under the SBA 8(a) program. Prohibited relationships include, but are not limited to, Contracts, Subcontracts, Joint Ventures, Mentor-Protégé Agreements, Teaming Agreements, and other business agreements, however characterized, under the SBA Business Development Program.

10. Adverse Actions. The Contractor avers that adverse actions taken, or to be taken, by Contractor against any employee, other individual, or business entity associated with Contractor arising out of or related to the conduct at issue here were or are solely the result of Contractor’s initiatives and decisions, and were or are not taken at the direction of the United States.

11. Unallowable Costs. Contractor agrees that all costs, as defined in FAR 31.205-47, incurred by, for, or on behalf of Contractor or any current or former employee, affiliate, or agent in connection with: (a) criminal or civil actions arising out of alleged violations described in the Preamble; (b) the proposed debarment and all costs incurred in negotiating, implementing, and abiding by the terms of this Agreement; (c) any investigation conducted as a result of the proposed debarment or this Agreement; or (d) the costs of Contractor’s submissions, presentations, reviews by outside consultants and law firms, and appearances before the Army SDO, both in the past and throughout the term of this Agreement, shall be expressly deemed unallowable costs, direct or indirect, for Government contract accounting purposes. Contractor shall separately account for these costs (i) through accounting records to the extent possible; (ii) through memorandum records, including diaries and formal logs, regardless, of whether such records are part of official corporate documentation, where accounting records are not available; and (iii) through good faith itemized estimates, where no other accounting basis is available. However, the costs of all self-governance, compliance, or ethics programs, activities, and offices in existence before the matters described in the Preamble of this Agreement arose, and which are continued by the terms of this Agreement, and measures taken upon the Contractor’s initiative during the term, but beyond the scope of this Agreement, shall be allowable costs to the extent otherwise permitted by law and regulation.

12. Present Responsibility. Contractor’s compliance with the terms and conditions of this Agreement shall constitute an element of Contractor’s present responsibility for Government contracting. By entering into this Agreement, the Army is not determining that Contractor is presently responsible for any specific Government contract.

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13. Survival of this Agreement. If, during the term of this Agreement, Contractor establishes new companies, subsidiaries, merges with another company, or transfers the entire company or a majority of its assets to new owners, it shall notify the Army not less than 90 days in advance of such action and provide a copy of the corporate documents. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns, unless the new owners request and show good cause why it should not be applicable to their operations. Bankruptcy proceedings shall not prevent or stay the enforcement of this Agreement or any debarment proceedings the Army deems to be appropriate should the parties fail to comply with the terms of this Agreement, or engage in such other conduct that is a cause for suspension or debarment.

14. Breach of Agreement. If at any point during the term of this Agreement, the Army determines, in its sole discretion, that Contractor has breached a term of this Agreement or failed to meet any requirement of this Agreement, the Army may terminate this Agreement and suspend or initiate proceedings to debar Contractor and its managers, employees, and other agents, as appropriate. The basis of this determination may include any conduct that constitutes a breach of this Agreement. Contractor does not, by this Agreement or otherwise, waive its right to oppose such action under FAR Subpart 9.4, or any other substantive, procedural, or due process rights it may have under the United States Constitution, or other applicable laws or regulations of the United States. The Army agrees that prior to imposition of sanctions under this Article, Contractor will be notified of the basis of the contemplated action to suspend or initiate proceedings to debar the Contractor, and provide Contractor a reasonable period, not to exceed thirty (30) days, to cure the alleged breach or to demonstrate that Contractor is not in breach of the Agreement.

15. Release. Contractor releases the United States, its instrumentalities, agents, and employees, in their official and personal capacities, of any and all liability or claims, monetary or equitable, arising out of the investigation and negotiation of this Agreement.

16. Paragraph Headings. The paragraph headings in this Agreement are inserted for convenient reference only and shall not affect the meaning or interpretation of this Agreement.

17. Severability. In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement.

18. Entire Agreement. This Agreement, which begins on page one (1) and ends with signatures of the parties on page seventeen (17), constitutes the entire agreement between the Army, Mr. Luster and Luster National Inc., and supersedes all prior agreements or understandings, oral or written, with respect to the subject matter of this action. This Agreement shall be binding upon, and be enforceable by, the parties hereto and their respective successors and assigns.

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19. Modifications of this Agreement. Any requirements imposed on Contractor by this Agreement may be discontinued by the Army at its sole discretion. Other modifications shall be made only in writing and upon mutual consent of the parties to this Agreement.

20. Restriction on Use. Contractor shall not use any term of this Agreement, the existence of this Agreement, or the termination of Contractor's debarment for any purpose related to the defense or litigation of, or in mitigation of, any criminal, civil, or administrative investigation or proceedings. Notwithstanding this provision, Contractor may share a copy of this Agreement with its customers or other Government agencies.

21. Public Document. This Agreement, and any related Army administrative actions and notices, is a public document that may be distributed by the Army throughout the Government for official purposes and to other interested parties as required by law.

22. Truth and Accuracy of Submissions. Contractor represents that all written materials and other information supplied to the Army directly by Contractor's authorized representatives or through its counsel during the course of discussions with the Army preceding this Agreement are true and accurate in all material respects to the best of Contractor's information and belief. Contractor understands that this Agreement is executed on behalf of the Army in reliance upon the truth, accuracy, and completeness of all such representations.

23. Notices. All submissions required by this Agreement shall be delivered to the following addresses, or such other addresses as the parties may designate in writing.

If to the Army:

Procurement Fraud Division
U.S. Army Legal Services Agency (USALSA)
9275 Gunston Road
Fort Belvoir, Virginia 22060-5546

If to Mr. Robert Luster or Luster National, Inc.:

Robert Anthony Luster
c/o Mr. Steven A. Shaw, Esq.
Covington and Burling, LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001-4956

23. Authorized Representative. Robert Anthony Luster is fully authorized to execute this Agreement and represents that he has authority to bind Luster National, Inc.

24. Period of Agreement. This Agreement shall be effective upon its execution by the Army SDO. The parties intend that all terms and conditions of this Agreement shall continue in force

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and effect for three (3) years from the effective date absent an extension or earlier termination by the Army SDO. The Army SDO agrees to consider terminating the Agreement after two (2) years, based on a recommendation by the Independent Monitor that maintaining the Agreement beyond two (2) years provides no continuing benefit to the Government.



ROBERT ANTHONY LUSTER
President and Chief Executive Officer,
Luster National, Inc.
For himself and Luster National Inc.

10/22/2015
DATE



MORTIMER C. SHEA, JR.
Army Suspension and Debarment Official
U.S. Army

23 OCT 2015
DATE