

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) effective this ___ day of _____, 2017, is by and between the Redevelopment Authority of the City of Racine (hereinafter “RDA”), a Wisconsin municipal corporation, and DeepEarth Technologies, Inc., a _____ (insert name of state) corporation, (hereinafter “DTI”); each also referred to individually as a “Party” and collectively as the “Parties”.

In consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. SCOPE OF SERVICES

1.1 DTI shall perform the services set forth in **EXHIBIT A** (“Services”), incorporated herein by reference.

1.2 DTI will perform the Services and provide the work products customarily arising from the Services as well as those work products specified on EXHIBIT A (collectively, the “Deliverables”) in accordance with the schedule (“Project Schedule”), if applicable, as set forth in **EXHIBIT A**.

2. **TERM OF AGREEMENT** Upon execution by the Parties, this Agreement shall have the effective date set forth above. This Agreement shall remain in force until all obligations related to the Services have been fulfilled, unless this Agreement is sooner terminated as set forth herein, provided those obligations identified under Section 22 shall survive termination of this Agreement.

3. **COMPENSATION AND PAYMENT** DTI shall be paid for the performance of the Services in accordance with **EXHIBIT B** (“Compensation and Payment”), incorporated herein by reference.

4. **NOTICE** All notices, requests, claims, demands and other official communications herein shall be in writing. Such notices shall be given (i) by delivery in person, (ii) by a nationally recognized commercial courier service; or (iii) by United States Postal Service, registered mail, postage prepaid and return receipt requested. Notices shall be effective upon actual delivery to the other Party at the following addresses:

TO REDEVELOPMENT AUTHORITY OF THE CITY OF RACINE

Amy Connolly, RDA Executive Director
730 Washington Avenue, Room 102
Racine, Wisconsin 53403

TO DTI:

Amanda Griskel
DeepEarth Technologies, Inc.
8201 W. 183rd St., Suite C
Tinley Park, Illinois 60487

or to such address the receiving Party may from time to time give notice to the other Party. Rejection or other refusal to accept, or the inability to deliver because of changed address for which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal to accept, or inability to deliver.

5. DTI'S RESPONSIBILITIES Timely performance and completion of the Services is a material term of this Agreement. DTI shall perform the Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in the same location under comparable circumstances and as expeditiously as is consistent with professional skill and the orderly progress of the Project and consistent with all applicable codes and standards. DTI shall be responsible for its performance and that of all DTI's subcontractors and vendors. The full extent of DTI's responsibility with respect to the Services shall be to perform them in accordance with Exhibit A, the above standards and the Project Schedule and to promptly remedy any material deficiencies or defects in the Deliverables at DTI's own expense, provided that DTI is notified by RDA, in writing, of any such deficiency or defect within a reasonable period after discovery thereof, but in no event later than two years after DTI's completion or termination of the Services. Other than as set forth in this Section 5, DTI MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THOSE OF NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY OF ANY PRODUCTS, OR AS TO ANY OTHER MATTER, and this Section 5 shall supersede any oral or written warranties or representations made or implied by DTI or any of DTI's employees or representatives or in any of DTI's brochures, manuals, catalogues, literature or other materials. In no event shall DTI assume any liability or responsibility for the work performed by other contractors RDA may hire except to the extent that the Services expressly include DTI's oversight and coordination of services performed by specified contractors RDA may hire, in which case DTI's sole responsibility is to keep the RDA informed about such services and make commercially reasonable efforts to cooperate with RDA so that the services of such contractors is not inconsistent with the Services or the Project Schedule.

6. RDA'S RESPONSIBILITIES

6.1 RDA shall provide in writing any specific RDA requirements or criteria for the Project.

6.2 RDA shall furnish to DTI all information and technical data in RDA's possession or control reasonably required for the proper performance of the Services. DTI agrees RDA has provided sufficient information and technical data regarding the Pilot Demonstration Area specified in Exhibit A to allow DTI to plan and undertake the Services. DTI shall be entitled to reasonably rely without independent verification upon the information and data provided by RDA or obtained from generally accepted sources within the industry, except to the extent such verification by DTI is expressly required as part of the Services.

6.3 RDA shall arrange for access and make all provisions necessary for DTI to enter upon public and/or private property as required for DTI to properly perform the Services. RDA shall disclose to DTI any known or suspected hazards at the Project Site that may pose a threat to human health, property or the environment.

6.4 If any document or inquiry requires RDA to approve, comment, or to provide any decision or direction with regard to the Services, such approval, comment, decision or direction shall be provided within a reasonable time within the context of the Project Schedule, or if not identified in the Project Schedule, within a reasonable time to facilitate the timely performance of the Services.

7. INDEPENDENT CONTRACTOR DTI is an Independent Contractor. Nothing contained in this Agreement, or in the Parties' relationship, shall be construed to create a partnership, joint venture, or a relationship of employer/employee or principal/agent between RDA or RDA's Contractors and DTI or any of DTI's employees, subcontractors, subconsultants, and vendors.

8. CONFIDENTIALITY

8.1 DTI shall treat as confidential information and data delivered to it by RDA or developed in the performance of the Services that are specified in writing by RDA to be confidential ("Confidential Information"). Confidential Information shall not be reproduced, transmitted, disclosed or used by DTI without the consent of RDA, except in the proper performance of the Services.

8.2 Notwithstanding the above, these restrictions shall not apply to Confidential Information that (i) is already known to DTI at the time of its disclosure; (ii) becomes publicly known through no wrongful act or omission of DTI; (iii) is communicated to a third party with the express written consent of RDA and not subject to restrictions on further use or disclosure; (iv) is independently developed by DTI; or, (v) to the extent such Confidential Information is required by subpoena or other law to be disclosed to any governmental agency or authority; provided that before making such disclosure, DTI shall promptly provide RDA with written notice of such requirement and a reasonable opportunity for RDA to object to the disclosure or to take action that RDA deems appropriate to maintain the confidentiality of the Confidential Information.

8.3 Upon termination of this Agreement or upon RDA's written request, DTI shall return the Confidential Information to RDA or destroy the Confidential Information in DTI's possession or control. Notwithstanding the above, DTI shall be entitled to retain a copy of such Confidential Information relating to the Services or this Agreement for its archives, provided all such Confidential Information is clearly marked "CONFIDENTIAL" and subject to DTI's continued compliance with this Section 8.

8.4. Notwithstanding anything else contained herein, the Parties acknowledge the applicability of the Wisconsin Public Records Law to all records, as defined by that law, held or maintained in DTI's possession and control on behalf of RDA.

9. DATA RIGHTS

9.1 All Deliverables set forth in **Exhibit A** shall become the property of RDA upon proper payment for the Services. DTI shall bear no liability or responsibility for Deliverables that have been modified post-delivery or used for a purpose other than that for which it was prepared under this Agreement.

9.2 Notwithstanding Paragraph 9.1 above, DTI's proprietary information, including without limitation, notes, internal memoranda, drawings, specifications, processes,

procedures, software, interim or draft documents, methodologies, know-how, software and other instruments of service belonging to or licensed by DTI and used to develop the Work Product (“DTI Data”), shall remain the sole property of DTI. To the extent the Deliverables contain or require the use of DTI Data, DTI hereby grants to RDA, upon proper payment for the Services, a non-exclusive, non-transferable Agreement to use such DTI Data solely for the purposes for which the Deliverables were developed.

9.3 Nothing in this Section shall be construed to prohibit DTI from using skills, knowledge or experience gained by DTI in the performance of the Services for other purposes, provided that DTI does not use RDA’s Confidential Information.

10. COMPLIANCE The Parties shall comply with applicable treaties, compacts, statutes, ordinances, codes, regulations, consent decrees, orders, judgments, rules, and other requirements of governmental or judicial entities that have jurisdiction over the Services.

11. FORCE MAJEURE Neither Party shall be responsible for a delay in its respective performance under this Agreement, other than a delay in payment for Services already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts, or other industrial disturbances, acts of governmental agencies or authorities, discovery of unexpected hazardous materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming Party. DTI shall be entitled to an equitable adjustment to the Project Schedule in the foregoing circumstances, which shall not require RDA to adjust the compensation due under this Agreement.

12. INSURANCE

12.1 DTI shall not commence work on the Services until proof of all insurance required has been provided to the RDA’s satisfaction and this Agreement has been approved by the RDA.

12.2 It is hereby agreed and understood that the insurance required hereunder by the RDA is primary coverage and that any insurance or self-insurance maintained by the City of Racine, the RDA, their elected and appointed officials, officers, employees, or authorized representatives or volunteers, and each of them, will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed and the length of time that is specified, if any, as listed below, whichever is longer.

12.3 DTI will maintain the following insurance coverages and amounts:

12.3.1 PROFESSIONAL LIABILITY

A. Limits

- (1) \$1,000,000 each claim
- (2) \$1,000,000 annual aggregate

B. Must continue coverage for 2 years after final acceptance for service/job.

12.3.2 GENERAL LIABILITY COVERAGE

A. Commercial General Liability

- (1) \$1,000,000 each occurrence limit
- (2) \$1,000,000 personal liability and advertising injury
- (3) \$2,000,000 general aggregate
- (4) \$2,000,000 products - completed operations aggregate

B. Claims made form of coverage is not acceptable.

C. Insurance must include:

- (1) Premises and Operations Liability
- (2) Contractual Liability
- (3) Personal Injury
- (4) Explosion, collapse and underground coverage
- (5) Products/Completed Operations must be carried for two years after acceptance of completed work
- (6) The general aggregate must apply separately to this project/location

12.3.3 BUSINESS AUTOMOBILE COVERAGE

A. \$1,000,000 combined single limit for Bodily Injury and Property Damage each accident

B. Must cover liability for Symbol #1 – “Any Auto” - including Owned, Non-Owned, and Hired Automobile Liability.

12.3.4 WORKERS COMPENSATION AND EMPLOYERS LIABILITY – As required by Wisconsin State Statute or any Workers Compensation Statutes of a different state for work performed in such state.

A. Must carry coverage for Statutory Workers Compensation and an Employers Liability limit of:

- (1) \$100,000 Each Accident
- (2) \$500,000 Disease Policy Limit
- (3) \$100,000 Disease - Each Employee

12.3.5 UMBRELLA LIABILITY – If exposure exists, provide coverage at least as broad as the underlying Commercial General Liability, Automobile Liability and Employers Liability, with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$10,000.

12.3.6 CONTRACTORS POLLUTION LIABILITY with minimum limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate insuring onsite and offsite work and covering bodily injury and property damage from pollution conditions arising from the work or operations of Supplier or its subcontractors endorsed to cover RDA as additional insureds.

12.3.7 ADDITIONAL PROVISIONS

A. Primary and Non-contributory requirement - all insurance must be primary and non-contributory to any insurance or self-insurance carried by City of Racine and/or the RDA.

B. Acceptability of Insurers - Insurance is to be placed with insurers that have an A. M. *Best* rating of no less than A- and a Financial Size Category of no less than Class VII, and who are authorized as an admitted insurance company in the State of Wisconsin.

C. Additional Insured Requirements - The following must be named as additional insureds on the General Liability and Business Automobile liability coverage arising out of project work:

The City of Racine, the RDA, their elected and appointed officials, officers, employees, authorized representatives, and volunteers.

On the Commercial General liability Policy, the additional insured coverage must be ISO form CG 20 10 0704 and also include Products - Completed Operations additional insured coverage per ISO form CG 20 37 07 04 or their equivalents for a minimum of two years after acceptance of work. This does not apply to Workers Compensation Policies.

D. Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to the RDA.

E. Evidences of Insurance - Prior to execution of this Agreement, the Contractor shall file with the RDA a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. In addition form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or their equivalent.

13. INDEMNITY

13.1 Subject to Sections 14 and 15 below, DTI hereby indemnifies and shall defend and hold harmless the City of Racine and the RDA, their elected and appointed officials, officers, employees or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after completion of the work hereunder to the extent caused, directly or indirectly, by the negligent act or omission of DTI or its employees or direct contractors in connection with or incident to the performance of this Agreement regardless if liability without fault is sought to be imposed on the City of Racine and/or the RDA, provided DTI's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability to the extent caused by the fault, negligence, or wilful misconduct of the City of Racine, the RDA, or their elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

In any and all claims against the City of Racine, the RDA, their elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of DTI, any subcontractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for DTI or any of DTI's employees, subcontractors, subconsultants and vendors under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

No provision of this Indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this Indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City of Racine, their elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favour of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located. Notwithstanding anything else contained in this Agreement, DTI shall reimburse the City of Racine, the RDA, their elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided such enforcement efforts are successful. In the event such enforcement efforts are not successful, DTI shall be reimbursed its legal expenses and costs incurred in defending such actions. DTI's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City of Racine, the RDA, their elected and appointed officials, officers, employees or authorized representatives or volunteers.

14. CONSEQUENTIAL DAMAGES WAIVER Notwithstanding anything set forth in this Agreement to the contrary, in no event shall either party, their parents, affiliates, and subsidiaries or their respective directors, officers, or employees be liable to the other for consequential damages, or any damages not reasonably anticipated by the Parties, (including, without limitation, lost profits, loss of revenue, loss of use or interruption of business) arising out of or related to this Agreement.

15. RISK ALLOCATION AND RESTRICTION OF REMEDIES The parties have evaluated the respective risks and remedies under this Agreement and this Agreement allocates the risks and restrict the remedies to reflect that evaluation. Notwithstanding anything to the contrary set forth in this Agreement, RDA agrees to restrict its remedies under this agreement against DTI, its parents, affiliates and subsidiaries, and their respective directors, officers, shareholders and employees, so that the total aggregate liability of the DTI covered parties shall not exceed, on both per claim and aggregate basis, the required limits of liability on insurance policies as required by this Agreement and generally applicable to the type of suit, claim, action, loss, cost (including attorney fees) and damage brought, suffered or alleged by the RDA. This restriction of remedies shall apply to all suits, claims, actions, losses, costs (including attorney fees) and damages of any nature arising from or related to this Agreement without regard to the legal theory under which such liability is imposed.

16. DISPUTES RESOLUTION

16.1 Either Party may pursue against the other any remedy available at law or equity except as expressly limited by this Agreement.

16.2 Either Party may initiate an alternative dispute resolution by providing written notice to the other Party setting forth the subject of the claim, dispute or controversy (“Claim”) and the requested relief. The recipient of such notice shall respond within 30 business days with a written statement of its position and a recommended solution to the Claim.

16.3 If the Parties cannot resolve the dispute through negotiation, either Party may refer the Claim to a panel (“Panel”) consisting of a designated senior representative from each Party (“Representative”), who shall have the authority to resolve such Claim. The Representatives shall not have been directly involved in the Services and shall negotiate in good faith. No written or verbal representation made by either Party in the course of any Panel proceeding or other settlement negotiations shall be deemed to be a party admission. The Parties acknowledge that any resolution hereunder shall require the ratification of the RDA and/or the City of Racine Common Council. If the representatives are unable to resolve the dispute within 90 days, either Party may pursue its respective legal and equitable remedies.

17. GOVERNING LAW This Agreement shall be governed by and interpreted under the laws of the State of Wisconsin, excluding the conflict of law provisions.

18. TERMINATION This Agreement may be terminated for cause by either Party if the other Party materially fails to perform its obligations under this Agreement, does not commence correction of such non-performance within 30 days of receipt of written notice and/or fails to diligently complete such correction thereafter. The respective rights and obligations of the Parties predating such termination shall survive termination of this Agreement.

19. ASSIGNMENT Neither Party may assign this Agreement without the written consent of the other Party.

20. PARTIES IN INTEREST Nothing in this Agreement, expressed or implied, is intended to confer on any person or entity other than the Parties any right or remedy under or by reason of this Agreement. The Services are solely for the benefit of the RDA and the City of Racine and may not be relied upon by any third party without DTI’s express prior written consent. The provisions of this Agreement shall bind and inure solely to the benefit of the Parties and their respective successors and permitted assigns. The Parties acknowledge that, notwithstanding anything else contained herein, that this Agreement is between DTI and RDA, and that the City of Racine is not a party to this agreement.

21. WAIVER Either Party may in writing waive any provisions of this Agreement to the extent such provision is for the benefit of the waiving Party. No waiver by any Party of a breach of any provision of this Agreement shall be construed to be a waiver of any subsequent or different breach.

22. SEVERABILITY AND SURVIVAL The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted. Any contrary provision of this Agreement notwithstanding, Sections 4 (Notice), 5 (DTI’s Responsibilities), 6.2 (Reliance on Data), 8 (Confidentiality), 9 (Data Rights), 12 (Insurance), 13 (Indemnity), 14 (Consequential Damages Waiver), 15 (Risk Allocation), 16 (Disputes Resolution), 17 (Governing Law), 19 (Assignment), 20 (Parties in Interest) and 22 (Survival) shall survive termination of this

Agreement.

23. PREPARATION OF AGREEMENT Each Party has had the opportunity to avail itself of legal advice and counsel. Neither Party shall be deemed to be the drafter or author of this Agreement. In the event this Agreement is subject to interpretation or construction by a court of law or panel of arbitration, such court or panel shall not construe this Agreement, or any portion hereof, against either Party as the drafter of this Agreement.

24. SIGNATURES Each person executing this Agreement warrants that he/she has the necessary authority to do so on behalf of the respective Party. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement. Signatures sent by telefax or email shall be deemed to have the same effect as original signatures.

25. ENTIRE AGREEMENT This Agreement contains all of the promises, representations and understandings of the Parties and supersedes any previous understandings, commitments, proposals or agreements, whether oral or written. This Agreement shall not be altered, changed, or amended except as set forth in a written amendment to this Agreement, duly executed by both Parties. The attached **EXHIBIT C** (“Change Order”), incorporated herein by reference, is the preferred form for such use.

[The balance of this page is left intentionally blank.]

DeepEarth Technologies, Inc.

Redevelopment Authority of the City of Racine

Signature

Signature

Printed Name

Printed Name

Printed Title

Printed Title

Address

Address

EXHIBIT A

SERVICES

DTI's Proposal # 2170 Pilot Demonstration, dated September 7, 2017, is specifically incorporated herein by reference.

EXHIBIT B

COMPENSATION AND PAYMENT

- 1. NOT TO EXCEED COST** DTI's Services as set forth in Exhibit A shall be performed, delivered and paid for as a lump sum, not to exceed cost.

- 2. CHANGE ORDERS** The Parties are not obligated to but may at any time and by written agreement make changes in the Services, Project Schedule, Deliverables, Compensation or other terms and conditions in this Agreement. The Parties shall effect such change through the use of a written Change Order. **EXHIBIT C** is the preferred form for such use.

- 3. INVOICING** DTI will invoice RDA twice as follows: a progress invoice upon completion of the soil blending and mixing of gravel into the soil blending area; and a final invoice upon completion of the Services and delivery of all deliverables, unless otherwise set forth herein. If RDA disagrees with any portion of an invoice, it shall notify DTI in writing of the amount in dispute and the specific reason for RDA's objection within 5 days of receipt of invoice. RDA shall pay the undisputed portion of the invoice as set forth below. Documentation supporting the invoice will be made available upon request.

5 PAYMENT

- 5.1** Timely payment is a material term of this Agreement. RDA shall pay all undisputed portions of DTI's invoices within 30 days of receipt without holdback or retention.

- 5.2** If the Project is suspended by RDA for more than 30 days, DTI shall be paid for all Services performed prior to the effective date of suspension within 30 days of such suspension. Upon resumption of the Project, DTI shall be entitled to an equitable adjustment in cost and schedule to compensate DTI for expenses incurred as a result of the interruption and resumption of the Services.

- 5.3** To the extent that completion of the Services is delayed beyond the original scheduled completion date and such delay is not the fault of DTI, an equitable adjustment shall be made to DTI's Compensation and Project Schedule.

- 5.4** Except as otherwise specifically provided herein, RDA shall pay or reimburse DTI, as appropriate, for all categories of taxes other than income tax, including without limitation, sales, consumer, use, value added, gross receipts, privilege, and local license taxes related to the Services.

- 5.5 RDA shall make payments to DTI as generally provided in section 5 of this Agreement and Exhibit A thereto, after taking into account any applicable Change Order(s).
- 5.7 Client shall pay late charges at the rate of 1.5% per month or the maximum percentage allowed by law, whichever is less, for any amounts not paid within 30 days of the due date, except that amounts for which RDA timely sends DTI a written notice of dispute of invoice shall not be subject to late charges.

EXHIBIT C

CHANGE ORDER FORM

In accordance with the Professional Services Agreement dated _____, 2017 between the Redevelopment Authority of the City of Racine (“RDA”), and DeepEarth Technologies, Inc, a _____ corporation, (“DTI”), this Change Order, with an effective date of _____, 2017 modifies that Agreement as follows:

1. Changes to the Services:

2. Change to Deliverables:

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3. Change in Project Schedule (attach schedule if appropriate):

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4. Change in DTI’s Compensation:

The Services set forth in this Change Order will be compensated on the following basis:

- No change to Compensation
- Time & Material (See **Exhibit B** for the Hourly Labor Rate Schedule)
- Time and Materials with a Not- to-Exceed amount of (\$). The Hourly Labor Rate Schedule is set forth in **EXHIBIT B** (if applicable). Reimbursable expenses are included in the overall Not to Exceed cap.
- Lump Sum [\$]

Milestone/Deliverable & Date	Payment Amount
	\$

- Cost Plus Fixed Fee:** [Cost \$ and Fee \$]

Therefore, the total authorized Compensation, inclusive of this Change Order is \$.

5. Project Impact:

6. **Other Changes** (including terms and conditions):

7. All other terms and conditions of the Agreement remain unchanged.

8. Each Party represents that the person executing this Change Order has the necessary legal authority to do so on behalf of the respective Party.

DTI:

RDA:

Signature

Signature

Printed Name

Printed Name

Printed Title

Printed Title

Address

Address

