

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30</i>				1. REQUISITION NUMBER NCUA-RQ19-PAC002		PAGE OF 1 3	
2. CONTRACT NO.		3. AWARD/ EFFECTIVE DATE 07/01/2019	4. ORDER NUMBER NCUA19P00017		5. SOLICITATION NUMBER		6. SOLICITATION ISSUE DATE
7. FOR SOLICITATION INFORMATION CALL:		a. NAME JOHN ZIU		b. TELEPHONE NUMBER (b)(6) <i>(No collect calls)</i>		8. OFFER DUE DATE/LOCAL TIME	
9. ISSUED BY CODE DPF Chief Financial Officer NCUA 1775 Duke Street Alexandria VA 22314			10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> SMAI BUSINESS PROGRAM <input type="checkbox"/> EDWOSB <input type="checkbox"/> 8(A) NAICS: 541618 SIZE STANDARD: \$15.0				
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>		13b. RATING	
15. DELIVER TO CODE PAC Public & Congressional Affairs NCUA 1775 Duke Street Alexandria VA 22314			16. ADMINISTERED BY CODE DPF Chief Financial Officer NCUA 1775 Duke Street Alexandria VA 22314				
17a. CONTRACTOR/ OFFEROR CODE		FACILITY CODE		18a. PAYMENT WILL BE MADE BY CODE NCUA NATL ACCTG			
17a. KINKADE, DAVID Attn: NCUA KINKADE COMMUNICATIONS LLC 1818 N TAYLOR ST PMB 220 LITTLE ROCK AR 72207-4639				18a. Enterprise Services Center NCUA AP BRANCH, AMZ-160 PO BOX 25710 OKLAHOMA CITY OK 73125			
TELEPHONE NO.				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER							
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
00001	DUNS Number: Not Available Service OA TAS: NO Accounting Info: (b)(4) Period of Performance: 07/01/2019 to 09/30/2019 NCUA Communications Consulting Services The contractor shall provide the NCUA Continued ... <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>						12,000.00
25. ACCOUNTING AND APPROPRIATION DATA See schedule						26. TOTAL AWARD AMOUNT <i>(For Govt. Use Only)</i> \$12,000.00	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA				<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA				<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.				<input type="checkbox"/> 29. AWARD OF CONTRACT: _____ OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR (b)(6)				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) JOHN ZIU Digitally signed by JOHN ZIU Date: 2019.07.16 16:37:07 -04'00'			
30b. NAME AND TITLE OF SIGNER <i>(Type or print)</i> David D. Kinkade/Kinkade Communications LLC		30c. DATE SIGNED July 16, 2019		31b. NAME OF CONTRACTING OFFICER <i>(Type or print)</i> JOHN ZIU		31c. DATE SIGNED	

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	<p>communications consulting to include, at a minimum, the following services: Provide draft content approved by the NCUA at a rate of 5 items per month, for a total of 15 pieces (deliverables) at completion of the period of performance. "Items" may be speech drafts, op-ed columns or other materials as designated by NCUA staff and leadership. The contractor shall also participate in content development planning calls and discussions with the NCUA staff, on an as needed basis.</p> <p>The contractor shall perform in accordance with the attached Nondisclosure Agreement (Exhibit A) and NCUA clauses.</p> <p>The contractor shall invoice monthly at the</p> <div style="border: 1px solid black; padding: 5px; text-align: center;">(b)(4)</div> <p>in accordance with NCUA Clause "9.3000-1 General Contract Terms and Conditions (DEC 2018)" paragraph (b).</p> <p>The NCUA point of contact is (b)(6)</p> <div style="border: 1px solid black; padding: 5px; text-align: center;">(b)(6)</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">(b)(6)</div> <p>Continued ...</p>				

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
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38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
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41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (<i>Print</i>)
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE
	42b. RECEIVED AT (<i>Location</i>)
	42c. DATE REC'D (YY/MM/DD)
	42d. TOTAL CONTAINERS

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED

NCUA19P00017

PAGE OF

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NAME OF OFFEROR OR CONTRACTOR

KINKADE, DAVID

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	The obligated amount of award: \$12,000.00. The total for this award is shown in box 26.				

NCUA Clauses Table of Contents

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9.3000-1 General Contract Terms and Conditions (DEC 2018)

(a) *Primary Government Roles and Responsibilities.* This paragraph describes the roles and responsibilities of individuals and/or authorized users who will be the primary Points of Contact (POC) for the Government on matters regarding contract administration as well as other administrative information. The Government reserves the right to unilaterally change any of these individual assignments at any time. The individuals name and contact information will be provided at contract award.

(1) *Contracting Officer (CO).* The CO, within the Division of Procurement and Facilities Management (DPFM), has the overall responsibility for administration of the contract. The CO, without right of delegation, is the only authorized individual to take actions on behalf of the Government to amend, modify or deviate from the contract terms, conditions, requirements, specifications, details and/or delivery schedules.

(2) *Contracting Officer's Representative (COR).* The COR is responsible for the receipt and acceptance of the contract deliverables and reports and past performance reporting for the contract. The COR supports the CO in the general management of the program.

The COR will represent the CO in the administration of technical details within the scope of the contract. The COR is also responsible for the final inspection and acceptance of all deliverables and reports. The COR is not otherwise authorized to make any representations or commitments of any kind on behalf of the CO or the Government. The COR does not have authority to alter the Contractor's obligations or to change the specifications, price, terms or conditions. If, as a result of technical discussions, it is desirable to modify the contract obligations or the specification, changes will be issued in writing and signed by the CO.

(b) *Submission of Invoices.*

(1) The Contractor shall submit an electronic invoice (*e.g. pdf file*) via email to:

(b)(4)

the Contracting Officer, and the Contracting Officer's Representative.

(2) An invoice must include—

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract or task order / delivery order / purchase order number;
- (iv) Line item number as identified in the contract, describing the goods or services, and the amount invoiced for each line item number;
- (v) Description, quantity, unit of measure, unit price, extended price of goods delivered or services performed, and the total invoice amount;
- (vi) Payment terms (discounts for prompt payment);
- (vii) Remittance address (must be the same as that in the contract or in a proper notice of assignment);
- (viii) Name, title, email address, and phone number of person to notify in event of defective invoice;
- (ix) Shipping information (*e.g.* shipment number, date of shipment, bill of lading number and weight of shipment). Shipping charges, if any, must be shown as a separate item on the invoice;
- (x) Any other information or documentation required by the contract, which may include:

- (A) For time and materials or labor hour contracts, copies of time sheets in support of direct labor charges;
- (B) Invoices for contract entered into in the receivership capacity, while not subject to the Prompt Payment Act, must include allocation of all hours and expenses to financial institution number and asset name/number, if applicable.

(3) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(c) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights --

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(d) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. § 3727). However, when a third party makes payment (*e.g.*, use of the Government-wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(e) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(f) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the process outlined in this paragraph.

(1) Claim, as used in this paragraph, refers to a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising or relating to this contract. However, a claim exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment not in dispute when submitted is not considered a claim. The submission may be converted to a claim under 41 U.S.C chapter 71 by complying with the submission and certification requirements of this section if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(2) A claim by the Contractor shall be made in writing and, unless otherwise stated in the contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A

claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

- (i) The Contractor shall provide the certification specified in paragraph (1) of this section when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows, "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(4) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(5) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use an alternative dispute resolution (ADR). If the Contractor refuses to offer an ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(6) The Government shall pay interest on the amount found due and unpaid from

- (i) The date the Contracting Officer receives the claim (certified, if required); or
- (ii) The date that payment otherwise would be due, if that date is later, until the date of payment.

(7) With regard to claims having defective certifications, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claims and then at the applicable rate for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(8) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(g) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy

such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(3) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to:

(b)(4)

Search: NCUA One-Time Payments

Purpose of Payment: Supplier Overpayment

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(4) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(4)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination or f.o.b. destination, within consignee's premises.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties, as applicable.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate have resulted from the termination to the satisfaction of the Government using its standard record keeping system. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights

and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title*. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability*. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances*. The Contractor shall comply with all Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence*. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.
- (3) Addenda to this solicitation or contract, including any license agreements for computer software.
- (4) Solicitation provisions if this is a solicitation.
- (5) Other paragraphs of this clause.
- (6) The contract form.
- (7) Other documents, exhibits, and attachments.
- (8) The specification.

(t) *Unauthorized Obligations*.

- (1) Except as stated in paragraph (s)(2) of this clause, when any supply or service acquired under this contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the

Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

- (i) Any such clause is unenforceable against the Government.
- (ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.
- (iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (s)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(u) *Incorporation by reference.* The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM) and the NCUA representations and certifications, are incorporated by reference into the contract.

(v) *Dissemination of Contract Performance Information.* The Contractor must not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed must be submitted to the Contracting Officer for approval.

(w) *Contractor Advertisements, Publicizing Award, and News Releases.*

- (1) Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity/ news release or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.
- (2) The Contractor agrees not to refer to awards in commercial advertising in such manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

(x) *Whistleblower Protections.* Contractor agrees to inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, regarding protection from reprisal for disclosure of certain information, in the predominant native language of its workforce.

9.3000-4 Dissemination of Contract Performance Information (DEC 2018)

The Contractor must not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed must be submitted to the Contracting Officer for approval.

9.3000-5 Contractor Advertisements, Publicizing Award, and News Releases (DEC 2018)

(a) Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity/news release or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

(b) The Contractor agrees not to refer to awards in commercial advertising in such manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

NONDISCLOSURE AGREEMENT

NONDISCLOSURE AGREEMENT (“**Agreement**”), made this date, July 3, 2019, by and between the NATIONAL CREDIT UNION ADMINISTRATION (in such capacity, “**NCUA**”); and Kinkade Communications, LLC (“**Company**”). The NCUA and Company are individually referred to as a “Party” and together as the “Parties”.

WHEREAS, during the performance of the writing/editorial support under contract number NCUA-19-P-00014, effective date July 1, 2019, and associated tasks (the “**Contract**”), which will be incorporated into this Agreement simultaneously upon its signatory execution by the Parties as Exhibit A, Company will have access to Confidential Information, as defined in this Agreement; and

NOW THEREFORE, in consideration of the mutual agreements and covenants herein, as well as other valuable consideration received, the NCUA and Company agree as follows with respect to the Confidential Information:

1. Definitions.

- (a) “**Confidential Information**” shall mean any data, record, report, notes, document, or other information or material (whether written, oral, electronic, or in any other form) regarding services provided under the Contract that is disclosed or provided to, and received by, Receiving Party; provided that Confidential Information shall not include any information that is (i) publicly available at the time of disclosure to Receiving Party or becomes publicly available through no act of Receiving Party that is in violation of this Agreement; (ii) received by Receiving Party from a third party who, to Receiving Party’s knowledge, is not in violation of any obligation of confidentiality owed to Disclosing Party; (iii) developed by Receiving Party on an independent basis without use of, or reference to, any Confidential Information; or (iv) already in the lawful and rightful possession of Receiving Party and not subject to this Agreement.
- (b) “**Receiving Party**” shall mean Company.
- (c) “**Disclosing Party**” shall mean NCUA.

2. Obligation of Confidentiality.

- (a) Receiving Party acknowledges and agrees that the Confidential Information received or accessed by Receiving Party is confidential and/or proprietary and is entitled to, and shall receive, treatment as such. The Confidential Information shall be held in confidence by Receiving Party and, unless otherwise authorized by Disclosing Party, shall not be used for any purpose other than as provided in the Contract and, subject to clause (b) below, may not be disclosed by Receiving Party to anyone (including, but not limited to, any parent, subsidiary, affiliate, or any other person) unless Receiving Party informs all such persons to whom the Confidential Information is disclosed of its confidential nature and of their

obligation to maintain the confidentiality thereof and shall take all reasonable precautions to ensure that all such persons treat the Confidential Information accordingly.

- (b) Receiving Party may disclose the Confidential Information only to those of its affiliates, partners, managers, officers, employees, attorneys, contractors and agents (collectively, "Representatives") with a reasonable need to know or access the Confidential Information. Receiving Party agrees that it is responsible for all use of Confidential Information by its Representatives, and shall inform all such persons to whom the Confidential Information is disclosed of its confidential nature and of their obligation to maintain the confidentiality thereof and shall take all reasonable precautions to ensure that all such persons treat the Confidential Information accordingly. Receiving Party shall promptly notify Disclosing Party upon discovering, or obtaining knowledge of, any unauthorized disclosure or use of the Confidential Information and will reasonably cooperate with Disclosing Party to assist it in regaining possession of and terminating any unauthorized use of the Confidential Information that was subject to the unauthorized disclosure and/or use.
- (c) Confidential Information may not be reproduced, except as required in connection with the Contract or as permitted in (b), above. Confidential Information furnished to Receiving Party or accessed by Receiving Party, together with any and all copies made thereof, shall remain the property of Disclosing Party.
- (d) Receiving Party acknowledges that some of the Confidential Information that may be provided to Receiving Party, or to which Receiving Party may have access, may constitute "Nonpublic Personal Information," which includes information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual (See OMB Circular A-130). Receiving Party agrees to comply with all applicable local, state and federal laws, including, without limitation, all applicable privacy and data protection laws, and to maintain such Nonpublic Personal Information that it receives or accesses in accordance with applicable provisions of applicable federal and state privacy laws. Receiving Party shall maintain such physical and other security measures as shall be necessary to (i) ensure the security and confidentiality of any "Nonpublic Personal Information" that it receives or has access to, (ii) protect against any threats or hazards to the security and integrity of such Nonpublic Personal Information, and (iii) protect against any unauthorized access to or use of such Nonpublic Personal Information. Receiving Party represents and warrants that it has implemented appropriate measures to meet the objectives of OMB Circular A-130 and of the applicable standards adopted pursuant thereto, as now or hereafter in effect. Receiving Party shall notify Disclosing Party promptly following obtaining knowledge of any breach or compromise of the security, confidentiality, or integrity of any such Nonpublic Personal Information.

- (e) Receiving Party represents, acknowledges and agrees that it understands its duties and obligations under the federal and state laws and regulations with respect to the use of material non-public information and shall comply with such laws.
- (f) Notwithstanding anything herein to the contrary, upon the receipt of advice of counsel that Confidential Information is required to be disclosed by Receiving Party by applicable law or regulation or by legal process (including interrogatory, subpoena, civil investigative demand or similar process), or by order of a court or other governmental agency or regulatory authority having competent jurisdiction over Receiving Party, unless prohibited by law or regulation, Receiving Party shall promptly notify Disclosing Party in writing prior to making any such disclosure of Confidential Information and reasonably cooperate in any lawful effort by Disclosing Party to contest such disclosure. The foregoing requirements for advice of counsel and notification of Disclosing Party shall not apply to disclosure requests by Receiving Party's regulators, provided that the Confidential Information disclosure is subject to Receiving Party's request to its regulators that such information be treated in confidence.

3. Remedies. Receiving Party acknowledges that the Confidential Information has tangible value, contains valuable confidential information and/or proprietary information, and that any disclosure of such Confidential Information may cause irreparable and immediate harm to Disclosing Party, for which monetary damages may be insufficient. Therefore, Receiving Party agrees that, in addition to any other remedy to which it may be entitled in law or equity, Disclosing Party may seek, among other things, injunctive relief to prohibit and/or otherwise restrict Receiving Party from committing or continuing any violation of this Agreement, provided that neither party waives any defense to such injunctive or other relief by reason of this paragraph.

4. Notices. All notices or reports permitted or required under this Agreement shall be in writing and shall be by personal delivery, nationally recognized overnight courier service, facsimile transmission, electronic transmission, or by certified or registered mail, return receipt requested, and shall be deemed given upon actual receipt by the party being notified. Notices shall be sent to the addresses set forth below or such other address as a party may specify in writing:

Disclosing Party

National Credit Union Administration
Attn: Director OCFO/DPFM
1775 Duke Street
Alexandria, VA 22314

Telephone:
Facsimile: (b)(6)
Attention:

Receiving Party

Kinkade Communications, LLC
1818 N. Taylor, Suite B
PMB 220
Little Rock, AR72207
Telephone: (b)(6); (b)(4)
Facsimile:
Attention: David Kinkade

5. Entire Agreement; Amendment; Assignment. This Agreement constitutes the entire agreement of the Parties and supersedes all prior understandings or agreements, written or oral, pertaining to the treatment of the Confidential Information. No waiver or amendment of this Agreement shall be effective unless it is in writing and signed by each Party. No party may assign or transfer its obligations under this Agreement without the prior written consent of the other parties.

6. Severability. The provisions of this Agreement shall be considered severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the remaining provisions hereof.

7. Governing Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with all applicable federal laws and regulations, including the provisions of the Federal Credit Union Act, 12 U.S.C. § 1751, *et seq.* and NCUA Regulations, 12 C.F.R. Chapter 7, and to the extent applicable, the laws of the Commonwealth of Virginia. NCUA reserves the right to have any claim under this Agreement heard by the appropriate United States District Court pursuant to 12 U.S.C. § 1789(a)(2).

8. Term. This Agreement shall remain in effect for a term of two (2) years from the date hereof; *provided*, however, the obligations of confidentiality with respect to Nonpublic Personal Information shall survive termination of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

National Credit Union Administration

By: (b)(6)
Name: John A. Ziu
Title: Authorized Representative

Kinkade Communications, LLC

By: (b)(6)
Name: **DAVID D. KINKADE**
Title: Authorized Representative

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30</i>				1. REQUISITION NUMBER NCUA-RQ19-PAC004		PAGE OF 1 3	
2. CONTRACT NO.		3. AWARD/ EFFECTIVE DATE 10/01/2019	4. ORDER NUMBER NCUA19P00021		5. SOLICITATION NUMBER		6. SOLICITATION ISSUE DATE
7. FOR SOLICITATION INFORMATION CALL:		a. NAME JOHN ZIU		b. TELEPHONE NUMBER (b)(6)		8. OFFER DUE DATE/LOCAL TIME	
9. ISSUED BY Chief Financial Officer NCUA 1775 Duke Street Alexandria VA 22314			CODE DPF	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR:		WOMEN-OWNED SMALL BUSINESS <input type="checkbox"/> (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB NAICS: 541618 <input type="checkbox"/> 8(A) SIZE STANDARD: \$15.0	
11. DELIVERY FOR FOB DESTINA- TION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING	
15. DELIVER TO Public & Congressional Affairs NCUA 1775 Duke Street Alexandria VA 22314			CODE PAC	16. ADMINISTERED BY Chief Financial Officer NCUA 1775 Duke Street Alexandria VA 22314		CODE DPF	
17a. CONTRACTOR/ OFFEROR KINKADE, DAVID Attn: NCUA KINKADE COMMUNICATIONS LLC 1818 N TAYLOR ST PMB 220 LITTLE ROCK AR 72207-4639		CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY Enterprise Services Center NCUA AP BRANCH, AMZ-160 PO BOX 25710 OKLAHOMA CITY OK 73125		CODE NCUA NATL ACCTG	
TELEPHONE NO.				<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER			
				<input type="checkbox"/> 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
00001	DUNS Number: Not Available Service OA TAS: NO Accounting Info: (b)(4) Period of Performance: 10/01/2019 to 12/31/2020 NCUA Communications Consulting Services The contractor shall provide the NCUA Continued ... <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>						12,000.00
25. ACCOUNTING AND APPROPRIATION DATA See schedule						26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$60,000.00	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA				<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA				<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.				<input checked="" type="checkbox"/> 29. AWARD OF CONTRACT: _____ OFFER DATED <u>09/27/2019</u> . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) (b)(6)			
30b. NAME AND TITLE OF SIGNER (Type or print)			30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or print) JOHN ZIU		31c. DATE SIGNED 10/18/2019	

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	<p>communications consulting to include, at a minimum, the following services: Provide draft content approved by the NCUA at a rate of 5 items per month. "Items" may be speech drafts, op-ed columns or other materials as designated by NCUA staff and leadership. The contractor shall also participate in content development planning calls and discussions with the NCUA staff, on an as needed basis.</p> <p>The contractor shall perform in accordance with the attached Nondisclosure Agreement (Exhibit A) and NCUA clauses.</p> <p>The contractor shall invoice monthly at the</p> <div style="border: 1px solid black; text-align: center; padding: 5px;">(b)(4)</div> <p>in accordance with NCUA Clause "9.3000-1 General Contract Terms and Conditions (DEC 2018)" paragraph (b).</p> <p>Delivery: 12/31/2019 Period of Performance: 10/01/2019 to 12/31/2019</p> <p>The NCUA point of contact is (b)(6)</p> <div style="border: 1px solid black; padding: 2px; margin-left: 100px;">(b)(6)</div> <div style="border: 1px solid black; padding: 2px; margin-left: 100px;">(b)(6)</div> <p>Continued ...</p>				

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE			32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
			32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT		37. CHECK NUMBER
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL			<input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		
38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY			
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT			42a. RECEIVED BY (<i>Print</i>)		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE	42b. RECEIVED AT (<i>Location</i>)		
			42c. DATE REC'D (<i>YY/MM/DD</i>)		42d. TOTAL CONTAINERS

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED

NCUA19P00021

PAGE OF

3 3

NAME OF OFFEROR OR CONTRACTOR

KINKADE, DAVID

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
00002	<p>NCUA Communications Consulting Services</p> <p>The contractor shall provide the NCUA communications consulting to include, at a minimum, the following services: Provide draft content approved by the NCUA at a rate of 5 items per month. "Items" may be speech drafts, op-ed columns or other materials as designated by NCUA staff and leadership. The contractor shall also participate in content development planning calls and discussions with the NCUA staff, on an as needed basis.</p> <p>The contractor shall perform in accordance with the attached Nondisclosure Agreement (Exhibit A) and NCUA clauses.</p> <p>The contractor shall invoice monthly at the</p> <div data-bbox="191 852 894 940" style="border: 1px solid black; text-align: center; padding: 5px;">(b)(4)</div> <p>in accordance with NCUA Clause "9.3000-1 General Contract Terms and Conditions (DEC 2018)" paragraph (b). (Option Line Item)</p> <p>Delivery: 12/31/2020 Period of Performance: 01/01/2020 to 12/31/2020</p> <p>The NCUA point of contact is <div data-bbox="605 1182 899 1213" style="border: 1px solid black; padding: 2px;">(b)(6)</div></p> <div data-bbox="183 1213 716 1245" style="border: 1px solid black; text-align: center; padding: 2px;">(b)(6)</div> <div data-bbox="188 1245 448 1276" style="border: 1px solid black; text-align: center; padding: 2px;">(b)(6)</div> <p>The obligated amount of award: \$12,000.00. The total for this award is shown in box 26.</p>				48,000.00

NCUA Clauses Table of Contents

9.3000-1 General Contract Terms and Conditions (DEC 2018)..... 2
9.3000-4 Dissemination of Contract Performance Information (DEC 2018)..... 8
9.3000-5 Contractor Advertisements, Publicizing Award, and News Releases (DEC 2018) 9

9.3000-1 General Contract Terms and Conditions (DEC 2018)

(a) *Primary Government Roles and Responsibilities.* This paragraph describes the roles and responsibilities of individuals and/or authorized users who will be the primary Points of Contact (POC) for the Government on matters regarding contract administration as well as other administrative information. The Government reserves the right to unilaterally change any of these individual assignments at any time. The individuals name and contact information will be provided at contract award.

(1) *Contracting Officer (CO).* The CO, within the Division of Procurement and Facilities Management (DPFM), has the overall responsibility for administration of the contract. The CO, without right of delegation, is the only authorized individual to take actions on behalf of the Government to amend, modify or deviate from the contract terms, conditions, requirements, specifications, details and/or delivery schedules.

(2) *Contracting Officer's Representative (COR).* The COR is responsible for the receipt and acceptance of the contract deliverables and reports and past performance reporting for the contract. The COR supports the CO in the general management of the program.

The COR will represent the CO in the administration of technical details within the scope of the contract. The COR is also responsible for the final inspection and acceptance of all deliverables and reports. The COR is not otherwise authorized to make any representations or commitments of any kind on behalf of the CO or the Government. The COR does not have authority to alter the Contractor's obligations or to change the specifications, price, terms or conditions. If, as a result of technical discussions, it is desirable to modify the contract obligations or the specification, changes will be issued in writing and signed by the CO.

(b) *Submission of Invoices.*

(1) The Contractor shall submit an electronic invoice (e.g. pdf file) via email to:

(b)(4) the Contracting Officer, and the Contracting Officer's Representative.

- (2) An invoice must include—
- (i) Name and address of the Contractor;
 - (ii) Invoice date and number;
 - (iii) Contract or task order / delivery order / purchase order number;
 - (iv) Line item number as identified in the contract, describing the goods or services, and the amount invoiced for each line item number;
 - (v) Description, quantity, unit of measure, unit price, extended price of goods delivered or services performed, and the total invoice amount;
 - (vi) Payment terms (discounts for prompt payment);
 - (vii) Remittance address (must be the same as that in the contract or in a proper notice of assignment);
 - (viii) Name, title, email address, and phone number of person to notify in event of defective invoice;
 - (ix) Shipping information (e.g. shipment number, date of shipment, bill of lading number and weight of shipment). Shipping charges, if any, must be shown as a separate item on the invoice;
 - (x) Any other information or documentation required by the contract, which may include:

- (A) For time and materials or labor hour contracts, copies of time sheets in support of direct labor charges;
- (B) Invoices for contract entered into in the receivership capacity, while not subject to the Prompt Payment Act, must include allocation of all hours and expenses to financial institution number and asset name/number, if applicable.

(3) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(c) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights --

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(d) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. § 3727). However, when a third party makes payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(e) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(f) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the process outlined in this paragraph.

(1) Claim, as used in this paragraph, refers to a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising or relating to this contract. However, a claim exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment not in dispute when submitted is not considered a claim. The submission may be converted to a claim under 41 U.S.C chapter 71 by complying with the submission and certification requirements of this section if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(2) A claim by the Contractor shall be made in writing and, unless otherwise stated in the contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A

claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

- (i) The Contractor shall provide the certification specified in paragraph (1) of this section when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows, "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(4) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(5) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use an alternative dispute resolution (ADR). If the Contractor refuses to offer an ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(6) The Government shall pay interest on the amount found due and unpaid from

- (i) The date the Contracting Officer receives the claim (certified, if required); or
- (ii) The date that payment otherwise would be due, if that date is later, until the date of payment.

(7) With regard to claims having defective certifications, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claims and then at the applicable rate for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(8) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(g) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy

such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(3) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to:

(b)(4)

Search: NCUA One-Time Payments

Purpose of Payment: Supplier Overpayment

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(4) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(4)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination or f.o.b. destination, within consignee's premises.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties, as applicable.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate have resulted from the termination to the satisfaction of the Government using its standard record keeping system. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights

and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title*. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability*. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances*. The Contractor shall comply with all Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence*. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.
- (3) Addenda to this solicitation or contract, including any license agreements for computer software.
- (4) Solicitation provisions if this is a solicitation.
- (5) Other paragraphs of this clause.
- (6) The contract form.
- (7) Other documents, exhibits, and attachments.
- (8) The specification.

(t) *Unauthorized Obligations*.

(1) Except as stated in paragraph (s)(2) of this clause, when any supply or service acquired under this contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the

Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

- (i) Any such clause is unenforceable against the Government.
- (ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.
- (iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (s)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(u) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM) and the NCUA representations and certifications, are incorporated by reference into the contract.

(v) *Dissemination of Contract Performance Information.* The Contractor must not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed must be submitted to the Contracting Officer for approval.

(w) *Contractor Advertisements, Publicizing Award, and News Releases.*

- (1) Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity/ news release or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.
- (2) The Contractor agrees not to refer to awards in commercial advertising in such manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

(x) *Whistleblower Protections.* Contractor agrees to inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, regarding protection from reprisal for disclosure of certain information, in the predominant native language of its workforce.

9.3000-4 Dissemination of Contract Performance Information (DEC 2018)

The Contractor must not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed must be submitted to the Contracting Officer for approval.

9.3000-5 Contractor Advertisements, Publicizing Award, and News Releases (DEC 2018)

(a) Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity/news release or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

(b) The Contractor agrees not to refer to awards in commercial advertising in such manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

NONDISCLOSURE AGREEMENT

NONDISCLOSURE AGREEMENT (“**Agreement**”), made this date, October 18, 2019, by and between the NATIONAL CREDIT UNION ADMINISTRATION (in such capacity, “**NCUA**”); and Kinkade Communications, LLC (“**Company**”). The NCUA and Company are individually referred to as a “Party” and together as the “Parties”.

WHEREAS, during the performance of the writing/editorial support under contract number NCUA-19-P-00021, effective date October 1, 2019, and associated tasks (the “**Contract**”), which will be incorporated into this Agreement simultaneously upon its signatory execution by the Parties as Exhibit A, Company will have access to Confidential Information, as defined in this Agreement; and

NOW THEREFORE, in consideration of the mutual agreements and covenants herein, as well as other valuable consideration received, the NCUA and Company agree as follows with respect to the Confidential Information:

1. Definitions.

- (a) “**Confidential Information**” shall mean any data, record, report, notes, document, or other information or material (whether written, oral, electronic, or in any other form) regarding services provided under the Contract that is disclosed or provided to, and received by, Receiving Party; provided that Confidential Information shall not include any information that is (i) publicly available at the time of disclosure to Receiving Party or becomes publicly available through no act of Receiving Party that is in violation of this Agreement; (ii) received by Receiving Party from a third party who, to Receiving Party’s knowledge, is not in violation of any obligation of confidentiality owed to Disclosing Party; (iii) developed by Receiving Party on an independent basis without use of, or reference to, any Confidential Information; or (iv) already in the lawful and rightful possession of Receiving Party and not subject to this Agreement.
- (b) “**Receiving Party**” shall mean Company.
- (c) “**Disclosing Party**” shall mean NCUA.

2. Obligation of Confidentiality.

- (a) Receiving Party acknowledges and agrees that the Confidential Information received or accessed by Receiving Party is confidential and/or proprietary and is entitled to, and shall receive, treatment as such. The Confidential Information shall be held in confidence by Receiving Party and, unless otherwise authorized by Disclosing Party, shall not be used for any purpose other than as provided in the Contract and, subject to clause (b) below, may not be disclosed by Receiving Party to anyone (including, but not limited to, any parent, subsidiary, affiliate, or any other person) unless Receiving Party informs all such persons to whom the Confidential Information is disclosed of its confidential nature and of their

obligation to maintain the confidentiality thereof and shall take all reasonable precautions to ensure that all such persons treat the Confidential Information accordingly.

- (b) Receiving Party may disclose the Confidential Information only to those of its affiliates, partners, managers, officers, employees, attorneys, contractors and agents (collectively, "Representatives") with a reasonable need to know or access the Confidential Information. Receiving Party agrees that it is responsible for all use of Confidential Information by its Representatives, and shall inform all such persons to whom the Confidential Information is disclosed of its confidential nature and of their obligation to maintain the confidentiality thereof and shall take all reasonable precautions to ensure that all such persons treat the Confidential Information accordingly. Receiving Party shall promptly notify Disclosing Party upon discovering, or obtaining knowledge of, any unauthorized disclosure or use of the Confidential Information and will reasonably cooperate with Disclosing Party to assist it in regaining possession of and terminating any unauthorized use of the Confidential Information that was subject to the unauthorized disclosure and/or use.
- (c) Confidential Information may not be reproduced, except as required in connection with the Contract or as permitted in (b), above. Confidential Information furnished to Receiving Party or accessed by Receiving Party, together with any and all copies made thereof, shall remain the property of Disclosing Party.
- (d) Receiving Party acknowledges that some of the Confidential Information that may be provided to Receiving Party, or to which Receiving Party may have access, may constitute "Nonpublic Personal Information," which includes information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual (See OMB Circular A-130). Receiving Party agrees to comply with all applicable local, state and federal laws, including, without limitation, all applicable privacy and data protection laws, and to maintain such Nonpublic Personal Information that it receives or accesses in accordance with applicable provisions of applicable federal and state privacy laws. Receiving Party shall maintain such physical and other security measures as shall be necessary to (i) ensure the security and confidentiality of any "Nonpublic Personal Information" that it receives or has access to, (ii) protect against any threats or hazards to the security and integrity of such Nonpublic Personal Information, and (iii) protect against any unauthorized access to or use of such Nonpublic Personal Information. Receiving Party represents and warrants that it has implemented appropriate measures to meet the objectives of OMB Circular A-130 and of the applicable standards adopted pursuant thereto, as now or hereafter in effect. Receiving Party shall notify Disclosing Party promptly following obtaining knowledge of any breach or compromise of the security, confidentiality, or integrity of any such Nonpublic Personal Information.

- (e) Receiving Party represents, acknowledges and agrees that it understands its duties and obligations under the federal and state laws and regulations with respect to the use of material non-public information and shall comply with such laws.
- (f) Notwithstanding anything herein to the contrary, upon the receipt of advice of counsel that Confidential Information is required to be disclosed by Receiving Party by applicable law or regulation or by legal process (including interrogatory, subpoena, civil investigative demand or similar process), or by order of a court or other governmental agency or regulatory authority having competent jurisdiction over Receiving Party, unless prohibited by law or regulation, Receiving Party shall promptly notify Disclosing Party in writing prior to making any such disclosure of Confidential Information and reasonably cooperate in any lawful effort by Disclosing Party to contest such disclosure. The foregoing requirements for advice of counsel and notification of Disclosing Party shall not apply to disclosure requests by Receiving Party's regulators, provided that the Confidential Information disclosure is subject to Receiving Party's request to its regulators that such information be treated in confidence.

3. Remedies. Receiving Party acknowledges that the Confidential Information has tangible value, contains valuable confidential information and/or proprietary information, and that any disclosure of such Confidential Information may cause irreparable and immediate harm to Disclosing Party, for which monetary damages may be insufficient. Therefore, Receiving Party agrees that, in addition to any other remedy to which it may be entitled in law or equity, Disclosing Party may seek, among other things, injunctive relief to prohibit and/or otherwise restrict Receiving Party from committing or continuing any violation of this Agreement, provided that neither party waives any defense to such injunctive or other relief by reason of this paragraph.

4. Notices. All notices or reports permitted or required under this Agreement shall be in writing and shall be by personal delivery, nationally recognized overnight courier service, facsimile transmission, electronic transmission, or by certified or registered mail, return receipt requested, and shall be deemed given upon actual receipt by the party being notified. Notices shall be sent to the addresses set forth below or such other address as a party may specify in writing:

Disclosing Party

National Credit Union Administration
Attn: Director OCFO/DPFM
1775 Duke Street
Alexandria, VA 22314

Telephone:
Facsimile: (b)(6)
Attention:

Receiving Party

Kinkade Communications, LLC
1818 N. Taylor, Suite B
PMB 220
Little Rock, AR 72207
Telephone: (b)(4); (b)(6)
Facsimile:
Attention: David Kinkade

5. Entire Agreement; Amendment; Assignment. This Agreement constitutes the entire agreement of the Parties and supersedes all prior understandings or agreements, written or oral, pertaining to the treatment of the Confidential Information. No waiver or amendment of this Agreement shall be effective unless it is in writing and signed by each Party. No party may assign or transfer its obligations under this Agreement without the prior written consent of the other parties.

6. Severability. The provisions of this Agreement shall be considered severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the remaining provisions hereof.

7. Governing Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with all applicable federal laws and regulations, including the provisions of the Federal Credit Union Act, 12 U.S.C. § 1751, *et seq.* and NCUA Regulations, 12 C.F.R. Chapter 7, and to the extent applicable, the laws of the Commonwealth of Virginia. NCUA reserves the right to have any claim under this Agreement heard by the appropriate United States District Court pursuant to 12 U.S.C. § 1789(a)(2).

8. Term. This Agreement shall remain in effect for a term of two (2) years from the date hereof; *provided*, however, the obligations of confidentiality with respect to Nonpublic Personal Information shall survive termination of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

National Credit Union Administration

By: (b)(6) _____

Name: John A. Ziu

Title: Authorized Representative

Kinkade Communications, LLC

By: _____

Name:

Title: Authorized Representative