

Request to accept Sections 7 10 of Nokomis Networking Master Service Agreement and Statement of Work

Supervisors	AYE	NAY	ABS	ABSTAIN
Timmons	X			
Cushing	X			
Fried	X			
Harris	X			
Newman	X			
Condado	X			
Briggs	X			
Showalter	X			
Thome			X	
Winkler	X			
Ryden	X			
Fisher	X			
Roach	X			
Sorgel	X			
Rio	X			
Alemekinder	X			
Schreier			X	
Schultz	X			
Oettinger	X			
Kelly	X			
Holewinski	X			
TOTALS	19		2	
TAGS				

Motion by Fried to accept the contract with Nokomis Networking as presented with Sections 7 and 10 removed.
 Seconded by Winkler.

**Nokomis Networking – Onida County
MASTER SERVICES AGREEMENT**

This Master Services Agreement (the "Agreement") is entered into as of March _____, 2023 by and between the undersigned parties;

Onida County ("Onida County"), a Wisconsin governmental entity formed under the laws of the State of Wisconsin with its county offices located at 1 South Onida Avenue, Rhinelander, WI 54501; and

Nokomis Networking, LLC, a Wisconsin Limited Liability Company formed under the laws of the State of Wisconsin ("Nokomis") with a place of business at 2785 Prairie Lake Road, Tomahawk, WI 54487.

1. Professional Services.

1.1 Nokomis will provide Onida County with a specified number of hours of professional services ("Services") as set forth in a statement of work that references this Agreement and is signed by Onida County and Nokomis ("Statement of Work") or as otherwise agreed to by Nokomis and Onida County. The parties may choose to define a set of deliverables, which will be described in a Statement of Work.

If deliverables are defined by the parties, Nokomis will use its commercially reasonable efforts to provide such deliverables (the "Deliverables"), but will not be obligated to provide Services beyond the hours set forth in the Statement of Work.

In the event that a Statement of Work is not specified, Nokomis will use commercially reasonable efforts to provide such Services as requested by Onida County up to the number of hours agreed upon by the parties.

1.2 Nokomis will provide such resources and utilize such employees and/or professional services as it deems necessary to perform the Services. Onida County agrees to furnish Nokomis with adequate assistance, resource access, materials, and an environment suitable for Nokomis to be able to perform the Services. Onida County further agrees to provide Nokomis with such Technology or Business Information owned or controlled by Onida County (the "Licensed Technology") as Nokomis reasonably requires to perform the Services.

1.3 Onida County and Nokomis agree to cooperate in good faith to achieve completion of the Services in a timely and professional manner. Nokomis shall bear no liability or otherwise be responsible for delays in the provision of Services or any portion thereof occasioned by Onida County's failure timely to complete a Onida

County task or adhere to a Onida County schedule.

1.4 Under this Agreement, neither Nokomis or the Onida County is providing or licensing to the other party any existing or future software programs or products. Either Party may acquire licenses to such products only under the terms of a separate software license agreement.

2. Term of Agreement.

This Agreement commences on the earlier of the date of the Statement of Work, Purchase Order, or other date that Nokomis begins provided Services ("Effective Date") and, unless terminated earlier pursuant to the terms of the Agreement, shall continue in force until exhaustion of the number of consulting hours identified in the Statement of Work or as otherwise agreed to by Nokomis and Onida County.

3. Right to Perform Consulting Services.

Onida County acknowledges that Nokomis has extensive expertise, experience, and proprietary knowledge of the products and tools used in the area of the design and implementation of broadband networking. Nokomis will utilize such expertise, experience, products and tools in providing consulting services and other services in such field to Onida County and other clients. Subject to Nokomis's compliance with the confidentiality provisions stated herein, nothing in this Agreement shall restrict or limit Nokomis from performing such development, consulting or other services to any other entity in any industry.

4. Services Fees through Distribution agreements; Nokomis Expenses.

4.1 If Onida County purchases Services from Nokomis, who has been authorized by a third party ("Nokomis as an Authorized Reseller"), then Onida County agrees to pay the applicable fees for such Services to Nokomis, plus any applicable sales or use or other taxes or governmental charges.

4.2 Onida County shall also reimburse Nokomis for actual, reasonable travel and out-of-pocket expenses incurred in accordance with Nokomis' business expense policy.

5. Services Fees, Expenses and Invoicing.

When Onida County purchases Services directly from Nokomis, the following provisions shall apply:

5.1 For the Services provided by Nokomis, Onida County agrees to pay Nokomis the fees set forth in a statement issued by Nokomis to Onida County or as otherwise agreed to by Nokomis and Onida County (the "Payment Schedule") plus any applicable sales or use taxes or other charges as discussed in Section 5.2.

5.2 Onida County also shall reimburse Nokomis for actual, reasonable travel and out-of-pocket expenses incurred in accordance with Nokomis's business expense policy.

5.2 The amounts payable to Nokomis set forth in the Payment Schedule are exclusive of any sales or use or other taxes or governmental charges. Onida County shall be responsible for payment of all such taxes or charges except for any taxes based solely on Nokomis's net income. If Onida County is required to pay any taxes based on this Section 4.2, Onida County shall pay such taxes with no reduction or offset in the amounts payable to Nokomis hereunder.

5.3 Unless otherwise set forth in a Statement of Work, Nokomis will invoice on a monthly basis for all Services fees and reimbursable expenses that have accrued. Each invoice shall be due and payable within thirty (30) days of the date of an invoice or statement, and shall be deemed overdue if they remain unpaid beyond that point. If past due amounts owing from Onida County are not paid within thirty (30) days, the unpaid amount shall accrue interest at the rate of 1.0% per month.

6. Intellectual Property Rights.

Deliverables which are first produced or created for Onida County by Nokomis under a Statement of Work incorporating this Agreement shall be the property of Onida County and shall be considered works made for hire under this Agreement. Any developed technology, including patentable and non patentable ideas, know-how, technical data, or techniques, and all intellectual property rights appurtenant thereto which may be developed by Nokomis under this Agreement or in the delivery of any services hereunder shall be the property of Onida County and shall be considered works made for hire under this Agreement.

Onida County will have a nonexclusive license to other pre-existing Nokomis Developments to the extent necessary to enable Onida County to use any Nokomis Deliverable(s). Subject to the limitations placed on Nokomis by the confidentiality provisions of this Agreement or by any existing non-disclosure agreement between Nokomis and Onida County, Nokomis may in its sole discretion develop, use, market, license, or sell the Nokomis Developments and any software, application or product that is similar or related to that which was developed by Nokomis for Onida County.

Nokomis shall not be required to disclose information concerning any Nokomis Developments which Nokomis deems to be proprietary or confidential.

7. Limited Warranties and Exceptions.

7.1 Nokomis warrants that the Services provided hereunder will be performed in a professional manner consistent with the quality of Nokomis's performance of services for similarly situated customers and in accordance with generally accepted industry standards. Nokomis makes no guarantees or assurances that the Services will achieve Oneda County's specific goals or provide additional functionality to Oneda County.

7.2 TO THE FULLEST EXTENT PERMITTED BY LAW, Nokomis EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN WARRANTIES. IN THOSE JURISDICTIONS, SUCH INAPPLICABILITY WILL NOT AFFECT THE REMAINDER OF THE PROVISIONS IN THIS AGREEMENT.

7.3 In order to receive warranty remedies, deficiencies in the Services must be reported to Nokomis in writing within ninety (90) days of completion of the Services. After such time, any corrective Services requested by shall be billed to Oneda County at Nokomis's standard consulting rates then in effect and subject to scheduling availability of Nokomis personnel. Oneda County's sole remedy for a breach of the warranty described in Section 7.1 shall be re-performance of the non-conforming Services or to receive a refund of the pro rata amount of the fees allocable to such non-conforming Services, at Nokomis's option.

7.4 Nokomis's maximum liability for any breach of warranty hereunder shall be a refund of the applicable Services fees paid under this Agreement. Oneda County shall, under no circumstances except as may be specifically set forth in a separate agreement, be entitled to a refund of any fees paid with respect to any Nokomis products or Services.

8. Termination.

8.1 This Agreement may be terminated by either party upon thirty (30) days' prior written notice if the other party materially breaches or fails to perform any material term hereof and the breaching party fails to cure such breach within the 30-day period; provided, that the non-breaching party may immediately terminate this Agreement upon written notice for a breach of the provisions set forth in Section 1.1 (Confidentiality and Non-Use) or misappropriation by the other party of the non-

breaching party's intellectual property rights.

8.2 Each party's obligations under Sections 3-14 of the Agreement shall survive termination or expiration of the Agreement. If Nokomis terminates the Agreement for failure of Onida County to pay any amounts owing hereunder, the rights of Onida County to use the Deliverables including any express or implied licenses which may have been granted herein shall immediately terminate.

9. Indemnification.

9.1 General. Nokomis and Onida County each agrees to indemnify, defend and hold the other, its affiliates, and their respective officers, directors, employees, and agents ("Indemnitees") harmless from and against any and all third party liabilities, losses, damages, costs, and expenses ("Losses"), and any reasonable attorney's fees and expenses relating to its defense, resulting from any third party suit or action brought against the Indemnitees due to third party claims for death, bodily injury or the damage to or loss of any real or tangible personal property to the extent arising out of the indemnitor's negligence or willful misconduct in the performance of this Agreement.

9.2 Intellectual Property Infringement. Nokomis agrees to indemnify, defend and hold harmless Onida County Indemnitees from and against any Losses, and any reasonable attorney's fees and costs relating to its defense, which Onida County may incur for third party claims arising out of any suit brought against Onida County based upon a claim that a Service or Deliverable includes any trade secret that Nokomis has unlawfully misappropriated or infringes: (a) a patent duly issued by the United States, Canada, Japan, or a country that is a member of the European Economic Area; (b) a registered trademark enforceable in any country that has ratified or acceded to either the Madrid Agreement Concerning the International Registration of Marks or the Protocol Relating to the Madrid Agreement; or (c) a copyright valid in any country that has ratified or acceded to The Berne Convention on Literary and Artistic Works.

9.3 Nokomis will have the right, at its option and expense: (i) to obtain for Onida County rights to use the Service or Deliverable, (ii) to replace or modify the Service or Deliverable so that they become non-infringing, or (iii) to accept return of the Deliverables for a refund not to exceed the purchase price paid by Onida County for such Deliverables based upon a three year straight line depreciation. The foregoing, subject to the following restrictions, states the exclusive liability of Nokomis to Onida County concerning infringement. Nokomis will have no liability for any claim of infringement based on: (i) use of a Service or Deliverable in combination with

equipment or software not supplied by Nokomis where the Service or Deliverable would not itself be infringing, (ii) software or technology not developed by Nokomis or (iii) Services or Deliverables that have been altered or modified in any way by anyone other than Nokomis or according to Nokomis's instructions.

9.3 Condition to Indemnification. If any claim or action is commenced against a party entitled to indemnification under this Section 9 for Losses resulting from such claim or action (a "Claim"), such party shall give written notice to the other party within ten (10) days of notice of such Claim. If such party receiving notice is obligated under this Section 9 to defend the party against such Claim, then the indemnifying party shall take control of the defense and investigation of the Claim, using such attorneys and other assistance as it selects in its discretion. The indemnified party shall cooperate in all reasonable respects in such investigation and defense, including trial and any appeals, provided that such party may also participate, at its own expense, in such defense. No settlement of a Claim that involves a remedy other than payment of money by indemnifying party shall be agreed to and entered without the consent of the indemnified party, which consent shall not be unreasonably withheld.

10. Limitations on Liability.

EXCEPT FOR DAMAGES OR LOSSES ARISING FROM INFRINGEMENT OR MISAPPROPRIATION OF A PARTY'S INTELLECTUAL PROPERTY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Nokomis's TOTAL AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SERVICES IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATIONS DO NOT APPLY TO ANY LIABILITY FOR DEATH OR PERSONAL INJURY OR TO ANY LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED BY THE GOVERNING LAW OF THIS AGREEMENT AS SET OUT IN SECTION 13.

11. Confidentiality and Non-Use.

11.1 By virtue of this Agreement, each party hereto may disclose to the other party information that is confidential and otherwise proprietary. Unless governed by the terms of an existing or contemporaneously executed non-disclosure agreement ("NDA"), the following Sections 11.2 and 11.3 apply.

1.1.2 Subject to the exceptions listed below, a party's "Confidential Information" shall be defined as information disclosed by one party to the other party under this Agreement and clearly marked or otherwise clearly designated as "confidential" or information disclosed by one party that is reasonably understood by the other party to be confidential. The Licensed Technology, the Parties' proprietary software applications and hardware and the terms and pricing of this Agreement shall automatically be considered Confidential Information under this Agreement. However, a party's Confidential Information shall not include any information that: (a) is or becomes a part of the public domain through no act or omission of the other party; or (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party by employees or agents without access to the party's Confidential Information.

1.1.3 Each party agrees, for the term of this Agreement and three (3) years after its expiration or termination, to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties not authorized by the disclosing party to receive such Confidential Information, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take reasonable steps to protect the other party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this Agreement. The foregoing prohibition on disclosure of Confidential Information shall not apply to the extent certain Confidential Information is required to be disclosed by the receiving party as a matter of law or by order of a court, provided that the receiving party uses reasonable efforts to provide the disclosing party with prior notice of such obligation to disclose and reasonably assists in obtaining a protective order therefore.

12. Independent Contractors.

Independent Contractor. Nokomis holds itself out as an independent contractor. Contractor: is a separate and independent enterprise from the County; has a full opportunity to find other business; has made its own investment in its business, trade or profession; possesses the equipment, instrumentalities, materials, and office necessary to perform the work; controls the means of performing the work; and risks profit and loss as a result of the work. Nokomis is acting as an independent contractor in providing and performing the services contemplated by this contract. It is not intended that anything in, or done pursuant to, this contract create the relationship of employer and employee, principal and agent, partners, or a joint

venture between County and Nokomis. This contract does not create an employee/employer relationship between the parties. It is the parties' intention that Nokomis is an independent contractor and not the County's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Internal Revenue Code, the state revenue and taxation law, the state workers' compensation law and the state unemployment insurance law. It is not the intention of the parties that this contract create any joint employment relationship between Nokomis and the County, and the County shall not be liable for any obligation incurred by Nokomis, including but not limited to unpaid minimum wages, overtime premiums, unemployment insurance benefits, worker's compensation benefits, health insurance, health benefits, disability benefits, or retirement benefits. Nokomis is not entitled to receive any benefits from County or to participate in any County benefit plan.

13. Miscellaneous.

13.1 Notices. Any Notices required under this Agreement must be in writing in English and delivered by certified or registered mail, return receipt requested, postage prepaid and addressed, in the case of the Oneida County, to the address first set forth above or in the Statement of Work, and in the case of Nokomis, to the address set forth opposite the applicable undersigned Nokomis entity below. Either party may change its address by giving the other party written notice in accordance with this Section 14.1.

Nokomis Networking, LLC
 Contract Management
 2785 Prairie Lake Road
 Tomahawk, WI 54487

Oneida County
 Attn: Tracy Hartman County Clerk
 1 South Oneida Avenue
 Rhineland, WI 54501

13.2 Severability. If any term or provision of this Agreement is determined to be invalid or unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the original intent of the parties. In any event, all other terms and provisions shall be deemed valid and enforceable to the maximum extent possible.

13.3 Force Majeure. Neither party shall be liable for any loss, damage, or penalty arising from delay due to causes beyond its reasonable control.

13.4 Assignment. Neither party shall assign, delegate or subcontract any portion of

its rights, duties or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed; provided, however, that consent shall not be required in the case of an assignment by either party to the surviving entity in a merger or consolidation in which it participates or to a purchaser of all or substantially all of its assets. Notwithstanding the foregoing, Nokomis may subcontract any portion of its obligations under this Agreement to a third party so long as Nokomis remains responsible for the performance of such obligations.

13.5 Export administration, restricted products. The Parties agree to comply fully with all relevant export laws and domestic usages regulations of the United States or other countries ("Export Laws") to ensure that any Deliverable is not (i) exported directly or indirectly in violation of Export Laws; or (ii) intended to be used for any purposes prohibited by the Export Laws, or Domestic use, including without limitation, intellectual property rights, security matters, or restrictions pertaining to foreign investments.

13.6 Complete Agreement. This Agreement, the Statement of Work, and the documents referenced herein are the complete and exclusive statement of the agreement between the parties regarding the subject matter hereof, which supersedes all proposals, oral or written, and all other communications between the parties relating to such subject matter.

13.7 Modification. Each party agrees that any terms and conditions of any purchase order or other instrument issued by Oneida County in connection with the Agreement that are in addition to or inconsistent with the terms and conditions of this Agreement shall be of no force or effect. This Agreement may be modified only by a written instrument duly executed by an authorized representative of Nokomis and Oneida County. No modification of this Agreement shall be affected by Oneida County's use of any order form, purchase order, acknowledgment or other form containing additional or different terms.

13.8 No Waiver. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver of such provision or the right of such party to enforce such provision or any other provision.

13.9 Legal Protections. It is agreed by the parties that nothing in this Contract, including but not limited to indemnification and duty to defend clauses, in any way constitutes a waiver or estoppel of the County or its insurer, or its right to rely upon the limitations, defenses, privileges, limitations of liability or immunities contained within Wisconsin law, including but not limited to those contained within Wisconsin

Statutes 893.80, 895.52 and 345.05. To the extent that indemnification or duty to defend is available and enforceable, neither the County nor its insurer shall be liable in indemnity or contribution for an amount greater than the limits of liability for claims against counties established by Wisconsin law. To the extent that any provision of this Contract is found by any court of competent jurisdiction to conflict with any such legal protection, then whichever protections, either legal or contractual, provide a greater benefit to the County shall apply, unless the County elects otherwise.

13.10 Open Records Law Compliance. Nokomis understands and agrees that, because Nokomis is a party to this contract, provisions of the Wisconsin Open Records Law and other laws relating to public records may apply to records kept by Nokomis. Nokomis agrees to fully comply with such laws, and to cooperate with County in its compliance with such laws. Cooperation shall include, but not be limited to, the provision of records, or copies of records to County or others upon the request of county. Compliance and cooperation of Nokomis shall be at its sole cost and expense.

13.11 Governing Law.

This contract is to be construed and interpreted in accordance with the laws of the State of Wisconsin, without giving effect to any choice or conflict of laws provision or rule, whether of the State of Wisconsin or any other jurisdiction, that would cause the application of laws of any jurisdiction other than those of the State of Wisconsin. The parties hereby irrevocably submit to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this contract. The parties further agree that the venue for any legal proceedings related to this contract shall be Oneida County, Wisconsin. The foregoing is not intended to be construed to limit the rights of a party to enforce a judgment or order of the above court in any other jurisdictions.

Any legal action relating to this contract is to be tried to a court, rather than a jury, and both parties shall take all action necessary to waive any right to have such action tried to a jury.

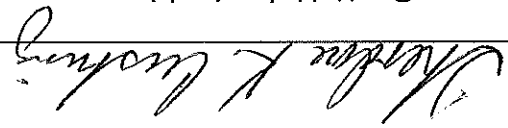
IN WITNESS WHEREOF, the parties hereto are confirm that they are authorized on behalf of their respective organizations to enter into this Agreement and have executed this Agreement as of the Effective Date.

Oneida County

Nokomis Networking, LLC

By:

By:



Name: Scott Holewinski

Title: County Board Chair

Date:

3/21/23

Oneida County

By:

Name: Billy Fried

Title: Administration Committee Chair

Date:

Nokomis Networking – Onida County Statement of Work

Per the Master Services Agreement (the "Agreement") entered into as of March _____, 2023 by and between the undersigned parties, Onida County and Nokomis Networking, LLC:

1. Engagement Description:

Onida County requests services from Nokomis Networking, LLC related to the development and installation of a county-wide broadband service strategy.

2. Services provided:

a. Work collaboratively with Onida County resources to develop and manage a broadband coverage strategy for Onida County residents and businesses. This includes conducting research with potential customers and broadband service providers, evaluation of options, and obtaining quotes from potential contractors for services and products required to design and competitively price the development and installation of a county-funded broadband network.

b. Serve as a technical resource to the ad hoc broadband committee, county board, and county staff.

c. Participate in virtual and/or on-site meetings, vendor presentations, conference calls, and other events related to the development and installation of a county-funded broadband network.

d. Review related documents and participate in other activities related to the project as requested by Onida County.

e. Provide the administrative committee, county board, and county staff with regular progress updates, as requested.

f. Use business/industry best practices and work under Onida County rules and applicable procurement laws to be a good steward of tax-payer funding and funds obtained from any awarded grant or other source.

g. Other services as further mutually defined and agreed upon.

3. Requirements:

a. Onida County will prepare a letter of authorization, providing notice that Nokomis Networking, LLC is authorized to gather information on Onida County's behalf, to the extent that information is related to the project. Under no circumstances will Nokomis Networking, LLC, have authority to incur any charges on behalf of Onida County without previous review and approval, nor will any staff member of Nokomis Networking, LLC, identify themselves as an employee of Confidential and proprietary to Nokomis Networking, LLC and Onida County

Oneida County.

b. Oneida County will make available to Nokomis Networking, LLC, all background information gathered so far related to the project.

4. Term:

Per Oneida County Resolution 109-2022, approved on October 18, 2022, this Statement of Work shall remain in effect for an initial engagement period of 526 billable hours or \$50,000 in billable compensation, whichever occurs first. Further work requests will be authorized via subsequent Statement(s) of Work.

5. Payment/Business Expense Schedule:

Hourly rate: \$95/hour, ¼ hour increments

Travel Rate: \$47.50/hour, ¼ hour increments

Mileage: Prevailing federal mileage rate, currently \$0.655/mile

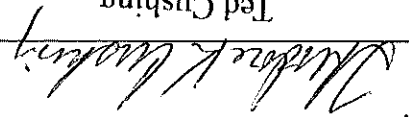
Lodging/Meals/Other related travel expenses: Reasonable costs passed through to Oneida County

By their signatures below, the parties agree to the terms of this Statement of Work.

Oneida County

Nokomis Networking, LLC

By:



Name: Ted Cushing

Title: Oneida County Board Vice-Chair

Date: 3/21/2023

Date:

Name: Russell Berg

Title: Chief Technology Officer

By: