

October 11, 2016

GCOM Software, Inc.
24 Madison Avenue Ext.
Albany , NY 12203
Attn: Sunil Bhatia

Notice to Proceed - Citywide Standby Information Technology and Telecommunications Consulting/
GCOM Software, Inc./ Contract No: 858- 20176000002

Mr. Bhatia:

This is to inform you that the Office of the Comptroller has registered Contract No: 858-**20176000002** for a maximum payable amount of **\$18,750,000.00**. The term of the contract is for three (3) years, from 07/01/16-06/30/19. The DoITT project manager for this contract is Michael Williams, whose telephone number is (212) 788-6186. Please reference the contract number on all correspondence related to this contract and all invoices submitted for payment. Please ensure that all invoices submitted for payment are on company letterhead and contain the information listed below; invoices lacking any of this information may be returned.

1. Address all invoices to: Audits & Accounts, DoITT – City of New York, 75 Park Place – 9th Floor, New York, N.Y. 10007
2. Vendor name, address and contact name and phone number should be prominently displayed (vendor address must be the same as appears on the W – 9 submission)
3. Vendor tax ID number
4. Contract Number
5. Invoice number and date of invoice
6. Invoice service period and date of delivery
7. Detailed description of equipment/service being invoiced (i.e., line item description of services provided, line item description of goods purchased, number of units provided by unit cost and total cost, etc)
8. Time sheets for individuals must include the name of the individual, dates of service, job title as identified in the contract, hourly rate and number of hours worked; and must be signed by the vendor and DoITT Project Managers and the individual to whom the timesheet pertains.
9. Remittance address, if different than the invoice address (Note: the remittance address must appear on the W-9 submission)

PAYEE INFORMATION PORTAL

The City's Payee Information Portal (PIP) allows City vendors to manage their City account information, subcontractor reporting, check payment status, view 1099 data, and research the details of their financial transactions with the City. You must enroll and activate your business in PIP in order to have access to your existing vendor account information. If you have not already enrolled, please follow the instructions at the PIP homepage at <http://nyc.gov/pip>

INSURANCE REQUIREMENTS

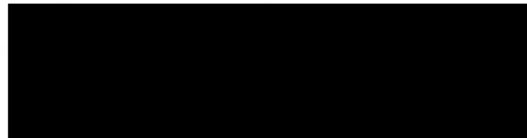
In accordance with Attachment INS of the contract, the contractor shall ensure continuous insurance coverage throughout the contract term. Current insurance certifications must be submitted annually to the Project Manager and e-mail a copy to Robert Aboulafia, Deputy ACCO, raboulafia@doitt.nyc.gov.

ELECTRONIC FUNDS TRANSFERS (EFT)

Please also note that Local Law 43 of 2007, codified as §6-107.1 of the NYC Administrative Code, requires the City to make payments to contractors by electronic funds transfers (EFT) for contracts entered into after January 1, 2008. For contracts entered into prior to January 1, 2008, the City is seeking to enroll the contractor in the EFT program and begin making payments electronically. Please see the attached information and complete the attached enrollment form.

For all issues regarding payment, please contact Audit & Accounts at (212) 788-6354. For all other issues, please contact the Contract Manager, Latanya Ferguson at (212) 788-6691. Thank you for your anticipated assistance.

Very truly yours,



Robert Aboulafia
Deputy Agency Chief Contracting Officer

c: M. Williams, J. Winker, V. Ahern & File
VNC# 858- 050616005980

CONTRACT AGREEMENT

**THE CITY OF NEW YORK
THE DEPARTMENT OF INFORMATION TECHNOLOGY AND
TELECOMMUNICATIONS**

AND

GCOM Software, Inc.

**CITYWIDE STANDBY INFORMATION TECHNOLOGY
AND TELECOMMUNICATIONS CONSULTING SERVICES**

MASTER SERVICES AGREEMENT

EPIN: 85816P0002003

**Bill de Blasio, Mayor
Anne Roest, Commissioner**

DATE: July 25, 2016

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MASTER SERVICES AGREEMENT FOR CITYWIDE STANDBY INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS CONSULTING SERVICES (“Agreement”) between THE CITY OF NEW YORK (“City”), a municipal corporation acting by and through its Department of Information Technology and Telecommunications (“DoITT” or “Department”), and GCOM Software, Inc., a corporation with its principal place of business at 24 Madison Avenue Ext, Albany, NY 12203 (“Contractor”). Either the City or Contractor may be referred to as a “Party” (collectively, “Parties”).

THE PARTIES AGREE AS FOLLOWS:

PROCEDURAL BACKGROUND

Section 1072(a) of the New York City Charter (“Charter”) charges DoITT with the responsibility to “plan, formulate, coordinate and advance information technology and telecommunications policies” for the benefit of the City of New York and its agencies (“Responsibility”), and as part of carrying out this Responsibility, DoITT enters into master services agreements for the provision of IT services available to City agencies.

The City determined that, pursuant to its Responsibility, there is a need for the services set forth herein, and, thus, desires to enter into this Agreement to purchase these services in accordance with the terms and conditions set forth below.

As a result of that determination, DoITT issued a Request for Proposals for Citywide Standby Information Technology and Telecommunications Consulting Services – Procurement Identification Number 85816P0002 on December 1, 2015 (“RFP”).

Contractor submitted a proposal on or before January 19, 2016, in response to the RFP and DoITT has determined that Contractor’s proposal addresses the needs and requirements of the City.

In consideration of the mutual promises and covenants contained herein, the Parties have agreed to enter into this Agreement in accordance with the terms and conditions thereof.

ARTICLE 1 DEFINITIONS

1.1 Defined Terms.

Whenever used in this Agreement, the words and phrases listed below have the meanings given below. Terms not defined in this Agreement have their plain meaning as commonly interpreted in the industry.

“Candidate” means any individual proposed by Contractor in response to a Request for Services.

“Change Order” means any alteration, change, amendment, or modification to this Agreement approved as required by Section 5.5.

“Commissioner” means the Commissioner of DoITT.

“Comptroller” means the Office of the Comptroller of the City of New York.

“Consultant” means an individual selected by a Requesting Agency to perform services pursuant to a Task Order (as defined below).

“Contractor Personnel” means all individuals, including Consultants, furnished by, through, or on behalf of, Contractor including through its agents and suppliers, to perform Contractor’s obligations under this Agreement.

“Effective Date” means the date set forth in the Notice to Proceed (“Notice to Proceed”) that the Department sends to Contractor after registration of this Agreement by the Comptroller.

“Hourly Bill Rate” or “Hourly Rate” means the price per hour per individual that Contractor receives for payment for labor that meets the labor category (labor categories are listed in Attachment PRC) qualifications of a labor category, as prescribed in Attachment PRC.

“Hourly Wage Rate” means the price per hour per individual that Contractor Personnel will receive for services provided under the Agreement.

“Maximum Personnel Markup” means the highest Personnel Markup Contractor will use for any of the respective labor categories. The Maximum Personnel Markup is to be expressed as a percentage.

“Personnel Markup” means, for Contractor Personnel, the price charged to the City, to be expressed as a percentage, above the Total Compensation actually paid to Contractor, Consultant or Subcontractor’s personnel. “Personnel Markup” refers to the price difference between the Hourly Bill Rate the City pays and the Hourly Wage Rate that Contractor, Consultant or Subcontractor receives.

“Primary Vendor” means an entity that: (i) has entered into an agreement pursuant to the RFP; and (ii) has been designated as a Primary Vendor, as more fully described in Article 3 below. Notwithstanding the foregoing, even if Contract has been designated as a Primary Vendor, the term “Primary Vendor” may or may not include Contractor if an exception set forth in Section 5.3.1 below applies.

“Proposal” means a response to a Request for Services submitted by a Primary Vendor. This defined term does not refer to Contractor’s proposal in response to the RFP as described in the “Procedural Background” above.

“Request for Services” or “RFS” means a solicitation sent to all Primary Vendors by a Requesting Agency seeking Candidates specifying the category of expertise, job classification, experience and skills desired by the Requesting Agency and soliciting an offer of candidates and pricing from Contractor.

“Requesting Agency” means a City agency that releases a Request for Services in accordance with the procedures described in this Agreement.

“Secondary Vendor” means an entity that: (i) has entered into an agreement pursuant to the RFP; and (ii) has been designated as a Secondary Vendor, as more fully described in Article 3 below.

“Service-Level Requirements” or “SLRs” refers to the minimum-performance requirements as specified in Appendix B.

“Services” means all work performed under this Agreement, individually and collectively, and includes all work described in all Task Orders and Change Orders.

“Statement of Work” means the agreed-upon description of services and pricing included in a Task Order.

“Task Order” means a document agreed upon by Contractor, the Requesting Agency, and DoITT describing the services Contractor is required to provide to the Requesting Agency.

“Total Compensation” means the combined value of salaries and wages and fringe benefits, paid to or on behalf of the individual, excluding the employer’s share of payroll taxes and any stock-option or other equity based compensation and also excluding discretionary performance based bonuses or similar payments.

1.2 Other Definitions.

The terms defined in Section 1.1 above include the plural and the singular. Unless expressly stated otherwise, the following terms below have the meaning or reference specified. The words “Section” and “Subsection” in the Agreement, an attachment, or an appendix refer to Sections and Subsections of, respectively, the Agreement, the attachment, or the appendix, unless stated otherwise. The words “include” and “including” are not terms of limitation and will be interpreted as “including, but not limited to”. The word “or” means “and/or” unless the context requires otherwise. The word “all” means “any and all”. The words “writing” or “written” mean preserved or presented in retrievable or reproducible written form, whether electronic (including e-mail, but excluding voice-mail) or hard copy. The words “commercially reasonable efforts” means undertaking all available measures that a reasonable person would pursue to satisfy an obligation in good faith. The words “best practices” means employing the method or technique that has consistently shown results superior to those achieved with other means, and

that is a benchmark in the industry. Definitions of City, state or federal agencies, offices, departments, department heads, or employees include, if applicable, any successor in function or interest. The words “applicable law,” “law,” or “laws” mean all federal, state, or local statutes, rules, codes, regulations, or judicial or executive orders applicable to the subject matter of the corresponding obligation, representation, warranty, or acknowledgement, or this Agreement generally.

1.3 References to time.

The words “day,” “month,” and “year” mean, respectively, calendar day, calendar month and calendar year. Notwithstanding the foregoing, “Business Hours” or “Business Day” means 9:00 a.m. through 5:00 p.m. (Eastern Time) Monday through Friday, excluding the following City holidays, unless otherwise agreed to by the parties: New Year’s Day, Martin Luther King, Jr. Birthday, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans’ Day, Thanksgiving Day, and Christmas Day. If one of these days falls on a Saturday, the preceding Friday is a holiday and if one of these days falls on a Sunday, the following Monday is a holiday.

ARTICLE 2 TERM; TERMINATION; DEFAULT; SURVIVAL

2.1 Term.

2.1.1 This Agreement commences on the Effective Date and expires after a period of three (3) years (the “Term”). This Agreement may be renewed for one (1) additional three- (3) year term at the City’s sole discretion (“Renewal”). Contractor acknowledges and agrees that Contractor does not have a right to be heard in any forum before termination of the Agreement by the City for default except as provided in section 2.3 of this Agreement and in sections 10.03 and 10.05 of Appendix A to this Agreement, and Contractor waives any claim of any other right to be heard in any forum before termination of the Agreement by the City for default. Contractor reserves the right to be heard after termination of the Agreement by the City for default according to the procedures set forth in section 4-09 of the rules of the City’s Procurement Policy Board.

2.1.2 Notwithstanding the expiration of this Agreement, individual Task Orders in effect before the expiration date may require Contractor to work beyond the expiration date of this Agreement to completion of a specific project, in which event the terms and conditions of this Agreement will survive expiration of this Agreement and apply through completion of the project.

2.1.3 The City reserves the right to cancel the Agreement or any Task Order, in whole or in part, at any time based on a determination by the Commissioner that cancellation is in the best interests of the City, including termination for consistent failure to perform. The City will accord notice and opportunity to cure, if applicable, as it determines reasonable under the circumstances.

2.2 Renewal. If the City chooses to exercise the Renewal option, then the maximum fee across all labor categories during the Renewal term will be increased by the increase in Information Technology, Hardware and Services Consumer Price Index for all Urban Consumers (CPI-U) that takes place during year 3 of the Term.

2.3 Termination. In addition to the City's right to cancel pursuant to Section 2.1.3 above, the City may terminate this Agreement pursuant to Article 10 of Appendix A.

2.4 Default.

2.4.1 The City may, subject to Section 2.3.2 below, by written notice of default to Contractor by DoITT, terminate this Agreement in whole or in part if Contractor fails to:

- (i) perform the Services within the time specified in this Agreement or any extension;
- (ii) make progress, so as to endanger performance of this Agreement;
- (iii) fail to satisfy any SLR on multiple occasions (including failure to remedy any SLR deficiencies as described in Section 10.4 below); or
- (iv) breach any other material obligation under this Agreement.

2.4.2 The City's right to terminate this Agreement under Sections 2.3.1(ii), 2.3.1(iii) and 2.3.1(iv) above may be exercised only if Contractor does not cure such failure within twenty (20) calendar days (or more if authorized in writing by DoITT) after receipt of the notice from the Contracting Officer specifying the failure.

2.4.3 If the City terminates this Agreement in whole or in part, it may acquire, under the terms and in the manner the City reasonably considers appropriate, supplies or services similar to those terminated, from a successor vendor. If the City has to pay a higher price to, or incurs any additional costs or expenses related to its use of, a successor vendor, Contractor will reimburse the City for (i) the difference between what the City would have paid Contractor and what the City actually pays the successor vendor, and (ii) the additional costs and expenses.. However, Contractor shall continue any portion of its work not terminated.

2.4.4 The rights and remedies of the City in this Section 2.3 are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE 3 DESIGNATION AS PRIMARY OR SECONDARY VENDOR

3.1 Initial Designation. The Notice to Proceed shall inform Contractor whether it has been designated as a Primary Vendor or a Secondary Vendor.

3.2 Future Designations. During the Term and Renewal (if applicable), the City may change Contractor's designation from Primary Vendor to Secondary Vendor and/or vice versa, as

permitted by this Agreement. The City may change Contractor's designation as many times as it reasonably deems necessary during the Term and Renewal (if applicable).

3.3 Designation as Primary Vendor. Only during those portions of the Term and Renewal (if applicable) when the Contractor is designated as a Primary Vendor will the Requesting Agencies distribute an RFS to Contractor and Contractor may submit a Proposal in response thereto.

3.4 Designation as Secondary Vendor.

3.4.1 During those portions of the Term and Renewal (if applicable) when the Contractor is designated as a Secondary Vendor, the following portions of the Agreement shall not apply: Section 3.3, Section 4.1, Section 4.2 and Article 5. Notwithstanding the foregoing, any existing Task Order(s) with Contractor will survive (including the applicability of Section 3.3, Section 4.1, Section 4.2 and Article 5) unless otherwise terminated by the Requesting Agency.

3.4.2 During those portions of the Term and Renewal (if applicable) when Contractor is a Primary Vendor, the City may change such designation to Secondary Vendor if

- (i) Contractor failed to perform the requirements set forth in Section 5.3 below or failed to meet any SLR while it was a Primary Vendor; or
- (ii) it is in the best interests of the City (as determined in the City's sole discretion) based on such relevant factors, possibly including, but not limited to, the quality of performance, the ability for improved performance, the costs to the City of continuing, or any issues specific to a particular project.

3.4.3 Notwithstanding Section 3.4.2 above, any existing Task Order(s) shall survive Contractor's designation to Secondary Vendor, and Contractor shall continue to be bound by such Task Order (s).

ARTICLE 4 PAYMENT

4.1 Consideration.

4.1.1 In exchange for Contractor's satisfactory performance of its obligations under this Agreement, the City shall pay to Contractor the fees in accordance with Attachment PRC. The Total amount of such payments to Contractor may not exceed eighteen million seven hundred and fifty thousand dollars (\$18,750,000.00).

4.1.2 Each payment obligation of the City created by this Agreement is conditioned upon the availability of City funds which are appropriated or allocated for the payment of such obligation. Notwithstanding the foregoing, the City shall pay Contractor for all work performed prior to notice by the City of non-funding, provided that the work was performed pursuant to the terms of this Agreement. In the event a notice for non-funding is provided to Contractor,

Contractor is thereby released from performance of all unfunded obligations to provide future Services effective upon the receipt of such notice.

4.1.3 The City shall pay Contractor in accordance with the Prompt Payment provisions of the Procurement Policy Board Rules and the provisions and procedures set forth in Attachment BI. Contractor shall accept payments under this Agreement from the City by electronic funds transfer, in accordance with the provisions and procedures set forth in Attachment EFT.

4.1.4 Each invoice shall be submitted in accordance with Attachment BI and Attachment PRC. The City may, upon advance notice to Contractor, modify the content, format, submission instructions and the additional documentation required for invoices pursuant to this Agreement. Agreement-specific changes to Attachment BI are deemed effective sixty (60) calendar days following notice to Contractor, unless otherwise stated in the notice.

4.1.5 Contractor shall not seek, ask for, demand, sue for, invoice or recover, as extra compensation or otherwise, any sum for any work other than the compensation agreed upon and fixed in this Agreement, or for any work it performs to remedy deficiencies in Services performed by Contractor under this Agreement.

4.1.6 In no event does payment by the City of any amounts hereunder constitute by itself acceptance by the City of any services or goods.

4.1.7 Contractor shall issue to the City refunds or credits within 30 days of entering into a more favorable agreement with another customer for any prepaid charges that are made contrary to the provisions in this Article 4.

4.1.8 Contractor may not terminate this Agreement for the City's failure to fulfill its payment obligations without providing written notice and reasonable time for the City to process payment, which in no event may be fewer than ninety (90) calendar days after submission of an invoice in accordance with this agreement, including registration of the Task Order under which the applicable Services are performed.

4.2 Hourly Labor Work.

4.2.1 Services provided on a time and materials basis must be billed in accordance with the rates set forth in Attachment PRC (City Labor Categories, Hourly Bill Rates, Personnel Markups and Maximum Personnel Markup). The Hourly Rates are fixed by job category applicable to all consultants engaged by Contractor to perform work pursuant to this Agreement within those job categories.

4.2.2 All fees paid to Contractor (including the Hourly Rate for any Consultant, fees based on fixed price, time and materials and other payment methods) include all auxiliary and incidental support costs such as printing, copying, secretarial, typing, program entry, internal timesheets, invoicing, etc., and further include all expenses for travel, meals and lodging.

Contractor may not bill the City for any expenses fees that Contractor incurs in order to deliver the Services.

4.2.3 Unless otherwise pre-approved in writing by the DoITT Liaison (as described in 8.3.1):

- (i) Contractor shall not invoice the City for more than thirty-five (35) hours per week for Services performed by any individual under this Agreement. Lunch or mealtime must not be included in the number of billable working hours, nor holidays, vacations, or sick leaves taken by the consultant during the engagement;
- (ii) all Services shall be performed during Business Hours; and
- (iii) Contractor shall ensure that Consultant time sheets include a meal period as required by Section 162 of the NYS Labor Law.

4.2.4 The City reserves the right to direct Contractor to reduce the level of staffing provided by Contractor and shall provide reasonable advanced notice.

4.3 Labor Laws.

4.3.1 Contractor shall ensure that all Services are performed in strict compliance with all labor laws, including but not limited to, Sections 220 and 230 of the New York State Labor Law, the Fair Labor Standards Act, and any other prevailing wage laws and regulations (“Prevailing Wage Laws”).

4.3.2 Contractor shall require that its subcontractors comply — including random audits — with all applicable labor laws, including but not limited to Prevailing Wage Laws, in the performance of all of its subcontracts, and shall require its subcontractors and consultants to provide documentation to the City as may be required by law.

4.3.3 Hourly Rates for labor subject to Prevailing Wage Laws (“Prevailing Wage Labor”) must be billed in accordance with the following:

- (i) Whether there will be, and if so the amount of, any mark-up on the prevailing wage labor rate will be agreed to by the Parties on a Task Order-by-Task Order basis and will be added to the applicable hourly Prevailing wage Labor rate (including benefits and wage supplements) derived from the then current prevailing wage schedules published annually by the Comptroller or other governmental authority, as applicable; and
- (ii) The Hourly Rates include all costs incurred by Contractor or its subcontractor(s) attributable to the engagement of Prevailing Wage Labor, including but not limited to overhead, profit and administrative charges.

- (iii) At the discretion of the City, prevailing wage labor will be billed to the City on a fixed price or time and materials basis.

ARTICLE 5 CONTRACTOR'S SERVICES

5.1 General Scope.

5.1.1 Contractor shall supply information technology staff augmentation services in accordance with the terms of this Agreement.

5.1.2 The City reserves the right to add additional job titles and descriptions and update the skill category matrix in Attachment PRC, as the City determines appropriate. This may include adding requirements to an existing position, adding a new position that fits into an existing category, or other modifications.

5.1.3 The City may at any time purchase similar services from other contractors.

5.1.4 The description of the Services in this Article is intended to be a summary of the services available to a Requesting Agency pursuant to a Task Order and is not intended to modify or supersede the description of the Services detailed therein.

5.1.5 Contractor shall assign an employee (other than a Candidate or Consultant) to act as a liaison and as primary contact for this Agreement ("Contractor Liaison")

5.2 Reports.

5.2.1 Contractor shall provide all of the reports described in this Agreement, and in any Attachment or Task Order, in the format and frequency set forth in the respective contract document. The City, in its sole discretion, may modify the content of reports.

5.2.2 Contractor shall meet with DoITT on a monthly basis (and any time within a monthly period upon the City's request) to present reports showing both the current status and the utilization over time of the following as they pertain to this Agreement:

- (i) all Proposals submitted by Contractor; and
- (ii) all Task Orders currently in effect or terminated/expired since the previous monthly DoITT meeting, with such information to include, at a minimum:
 - (a) name of Requesting Agency for each Task Order;
 - (b) the assignment number for each Task Order;
 - (c) start and expiration dates for each Task Order;
 - (d) names of Consultants for each Task Order;

- (e) labor category and Hourly Bill Rate for each Consultant in each Task Order;
- (f) amount expended that month for each Task Order per Requesting Agency and further classified per each labor category;
- (g) any remaining balance for each Task Order; and
- (h) any other relevant information that DoITT may deem necessary.

5.3 Request for Services.

5.3.1 A Requesting Agency shall distribute a Request for Services (referred to in the RFP as a “Tier 2 Project”) to all Primary Vendors.

5.3.2 The Requesting Agency shall include the following in all Requests for Services:

- (i) the category of expertise needed;
- (ii) labor category or categories of the position(s) required;
- (iii) a description of mandatory and preferred experience and expertise for the position(s) required;
- (iv) the number of Consultants required for the assignment;
- (v) the minimum or maximum number of Candidate resumes that Contractor must include in its response to the Request for Services;
- (vi) project description and timeline of the assignment, including working hours;
- (vii) additional security requirements (including background checks) that a Candidate must meet;
- (viii) evaluation criteria and their respective weights, to be used by the Requesting Agency in selecting a Candidate for the assignment. Unless otherwise stated in the Request for Services the evaluation criteria shall be as follows (collectively, “Default Evaluation Criteria”):
 - (a) experience (40%);

- (b) technical ability (35%); and
- (c) cost (25%).

5.3.3 If a Requesting Agency requests that Contractor conduct recruitment for a Consultant-to-Hire position per Section 5.3.4 below, the Requesting Agency shall include in its Request for Services the following information, in addition to what is required by Section 5.3.2:

- (i) the salary range for the employment position;
- (ii) a preliminary job description or, if already posted, the posting for the employment position;
- (iii) the procedure for onboarding of an individual as a City employee (regardless of whether the on-boarded individual will be the corresponding Consultant); and
- (iv) the procedure for onboarding of the successful candidate for the employment position (which may or may not be the Consultant).

5.3.4 Request for Services for Possible Consultant-to-Hire Positions. A Requesting Agency may submit a Request for Services for recruitment for Consultant-to-Hire services for selected IT positions. In such a case:

- (i) the requirements for a Request for Services and all Proposals are the same as for all other Request for Services, except that:
 - (a) the desired outcome of the selection process will be the Requesting Agency's selection of a Consultant who may be considered for a position as a City employee; and
 - (b) Contractor shall inform all Candidates that:
 - (i) becoming a Consultant does not guarantee that s/he will become a City employee; and
 - (ii) If the Consultant is hired, by the City as an employee, the then-former Consultant will have to provide proof of eligibility to work in the United States and, specifically, for the City of New York within three (3) business days of being hired. Eligibility to work in the United States shall be as determined by the U.S. Department of Homeland Security.
- (ii) Other than when the City makes use of recruitment-for-hire services that might be offered by the Contractor, Contractor is not entitled to a "finder's fee," commission or any other form of remuneration from the City should

a Consultant become a City employee under this Section, other than payment for the Services provided to the City by the Consultant.

- (iii) If a consultant becomes a City employee within the first ninety (90) days of being engaged by the City as a consultant, and the employee remains a City employee for at least an additional one hundred and eighty (180) days, then Contractor may invoice the City for 20% of the annual salary of the employee.

5.3.5 Contractor must identify and recruit qualified IT professionals as Candidates. Contractor must use strict screening processes to ensure that the City will only review the qualified candidates. Candidates must be available for the two (2) weeks immediately following Contractor's submission of the Proposal to the Requesting Agency and Contractor must advise its Candidates of this availability requirement prior to submitting the proposal.

5.3.6 Prior to submitting a Proposal, at no additional cost to the City, Contractor must:

- (i) identify a pool of qualified and diverse potential Candidates;
- (ii) conduct initial interviews of potential Candidates;
- (iii) verify all Candidates' professional license(s) and certification(s) if applicable;
- (iv) verify that Candidates have appropriate documentation to be employed in the United States and, specifically, by the City of New York;
- (v) test/verify/confirm technical skills if required (e.g. web-based testing);
- (vi) require at least three (3) references from each Candidate and then check all references each Candidate provides;
- (vii) perform industry-standard background checks

5.3.7 Contractor may only include as Candidates those individuals about whom Contractor has completed the procedures in Section 5.3.6 above and has obtained satisfactory results for each such procedure.

5.3.8 Retired or former employees of the City may be subject to various laws governing conflicts of interest. Contractor must advise the Requesting Agency of a Candidate's previous City employment and be aware of any possible conflicts of interests when proposing such individuals as Candidates under this Agreement. It is the responsibility of Contractor to be aware of, and not participate in the violation of, any legal restrictions (i.e. Chapter 68 of the Charter) applicable to the employment of current or former City employees.

5.3.9 Contractor shall take all necessary and appropriate steps to determine that each Candidate proposed by Contractor is legally eligible to work in the United States (and specifically for the City of New York) and that eligibility will be maintained at all times that such individual is a Consultant with access to any City facilities, information systems or data contained therein.

5.3.10 Contractor shall inform each Candidate that, on the day s/he begins work at a Requesting Agency as a Consultant, Candidate must provide to that Requesting Agency the documentation referenced by Section 5.3.6(iv) above. (Section 5.3.4(i)(b)(ii) above (documentation requirements for Consultants becoming City employees) is separate and distinct from this Section 5.3.10.)

5.3.11 Contractor shall inform each Candidate that the City may terminate the Candidate's assignment with the Requesting Agency for any lawful reason, including the City's determination that he or she is not performing to the City's satisfaction, as well as such other reasons set forth in Section 5.8.1 below.

5.3.12 Contractor must submit responsive Proposals in response to at least seventy-five percent (75%) of the Request for Services issued in any twelve- (12) month period, starting from the Effective Date or anniversary of the Effective Date, as applicable. Notwithstanding the foregoing, in determining whether Contractor has satisfied the requirement of the preceding sentence, if Contractor is a Secondary Vendor as of the Effective Date (or the anniversary of the Effective Date as applicable) and is designated a Primary Vendor before the next anniversary of the Effective Date, Contractor shall be deemed to have submitted responsive Proposals in response to every RFS issued during the time Contractor had been a Secondary Vendor beginning at the Effective Date (or anniversary of the Effective Date, as applicable). However, and notwithstanding the foregoing, if Contractor is a Primary Vendor as of the Effective Date (or the anniversary of the Effective Date, as applicable) and is designated a Secondary Vendor before the next anniversary of the Effective Date, the first sentence of this Section 5.3.12 will not apply to that twelve-month period in which Contractor is designated as a Secondary Vendor. A Proposal is responsive if it:

- (i) contains the resumes of Candidates (the number of which must be at least the minimum number required by the Requesting Agency) who:
 - (a) possess the minimum education, training, experience and certifications (as required by the Requesting Agency) to perform the tasks of the respective Consultant (the resumes themselves must state in detail that (and how) the respective Candidates meet the minimum education, training, experience and certifications);
 - (b) are available to be interviewed by the Requesting Agency as specified in the Request for Services (or, if not, specified, then in a reasonably available manner); and

- (c) are available for the proposed start date and for the duration of the project.;
- (ii) specifies the Hourly Bill Rate and Personnel, if applicable, Markup for each labor category to be used in the Task Order(s). Specified Personnel Markup(s) may be specified as ranges, but in no case may any Personnel Markup exceed the applicable Maximum Personnel Markup. Contractor shall include in its Proposal a calculation showing how the applicable Hourly Bill Rate(s) do not exceed the applicable Maximum Personnel Markup(s);
- (iii) complies with all other applicable requirements of a Proposal as set forth in this Agreement; and
- (iv) is submitted no later than the deadline stated in the Request for Services (or extension, if any).

5.3.13 Service-Level Requirements. For the entire Term, Contractor must meet or exceed the minimum Service-Level Requirements (SLR), as defined in Appendix B.

5.4 Task Orders.

5.4.1 Should Contractor's Proposal be selected, the Requesting Agency and Contractor shall commence negotiation of a Task Order, provided, however, that Contractor may not attempt to negotiate removal of any requirement in the RFS or this Agreement. Selection of a Proposal for negotiation does not guarantee that the City will enter into a Task Order.

5.4.2 Task Orders must be signed by both Parties and will be effective upon registration by the Comptroller, unless specified in the Task Order.

5.4.3 Each Task Order awarded under this Agreement is deemed to incorporate all the terms and conditions of this Agreement, the applicable Request for Services and the applicable Proposal.

5.4.4 Task Orders do not constitute amendments, modifications, or Change Orders to this Agreement. The terms and conditions of this Agreement take precedence over any Task Orders, and any conflict will be interpreted in favor of this Agreement. This Agreement may only be modified by the Parties in an amendment signed by the Parties, and any provision of a Task Order that is inconsistent with a provision of this Agreement shall be null and void.

5.4.5 Task Orders must be issued prior to expiration of the Term (or Renewal, if applicable). If a Task Order extends beyond the Expiration Date, the Consultant will be required to work beyond that date to the completion of the assignment, in which event the terms and conditions of the Agreement shall survive the expiration of the Agreement and apply through the completion of the assignment and acceptance by the Requesting Agency. The duration of a Task Order may, upon written agreement of the Parties, and upon compliance with applicable New

York City procedural requirements, be extended for an additional period or periods of time. The Requesting Agency may extend an assignment beyond the expiration date of the Agreement until such time as the assignment can be brought to a successful completion.

5.4.6 Contractor must provide the Consultant(s) who were offered to and selected by the Requesting Agency at the agreed-upon rate(s). All Consultants shall appear for work at the location(s) designated by the Requesting Agency on the start work date for the project designated in the corresponding Task Order. If the start work date for the assignment that was designated in the consultant's Task Order is delayed, and if the consultant(s) who were offered to and selected by the Requesting Agency remain available for the assignment, then the Contractor is required to provide the consultant(s) at the agreed-upon rate(s).

5.4.7 Depending upon the particular requirements that are set forth in a Request for Services, Contractor may need to modify the format or content of a Task Order that it prepares to correspond to the Request for Services, but in general the Task Order will include the following:

- (i) project objectives for which consultants are needed;
- (ii) skills required by the Consultant for the project;
- (iii) cost, including Hourly Rates by job title and total cost and payment structure; and
- (iv) the assignment period of performance (projected start and end dates and overall assignment duration).

5.4.8 The Task Orders awarded from this Agreement will contain Hourly Rates for each of the job titles to be provided, which will be the basis for determining the costs of the Task Orders. Hourly rates charged in Task Orders for contractor or subcontractor staff may be lower than, but cannot exceed, the hourly rates contained in this Agreement.

5.4.9 The Task Order will be reviewed by the Department and any oversight agencies as necessary to ensure that it meets the best interests of the City; is an appropriate use of, and is in accordance with the terms and conditions of this Agreement; and that the statement of work comprehensively addresses the City's needs.

5.4.10 The City may employ a project monitoring/quality assurance contractor to review Contractor Timesheets and/or Consultant Timesheets to ensure that they are in compliance with this Agreement.

5.4.11 Contractor shall prepare all Task Orders at no charge to the City.

5.5 Contract Changes.

5.5.1 Changes to this Agreement may be made only by a fully executed Change Order authorized by the Department's Agency Chief Contracting Officer or his or her designee and in

accordance with the PPB Rules. Any amendment or change to this Agreement will not be valid unless the Change Order is signed by authorized representatives of both Parties and registered by the Comptroller. Contractors deviating from the requirements of this Agreement without a duly approved and executed written Change Order, do so at their own risk.

5.5.2 In the event that any change is required in the Services, or additional Services are required, to be provided under this Agreement because of negligence or error of Contractor, Contractor must make the change without additional compensation.

5.6 Timesheets and Invoices.

5.6.1 Contractor shall submit monthly invoices directly to the Requesting Agency. Lunch or mealtime must not be included in the number of billable working hours, nor City holidays, vacations, or sick leave taken by the Consultant during the engagement. Services performed by a Consultant after Business hours, over a weekend or on a City holiday must be pre-approved by the Requesting Agency. Services, if any, authorized to be provided after Business Hours, on weekends, or on City holidays are billable in accordance with the Hourly Bill Rate for the Consultant's labor category.

5.6.2 Contractor shall instruct Consultants to comply with the Requesting Agency's timekeeping policies, including that Consultants must submit timesheets to the Requesting Agency for approval ("Consultant Timesheets"). Consultant Timesheets must be submitted on a weekly basis. Contractor is encouraged to review the Consultant Timesheets for accuracy before submission to the Requesting Agency. Each Consultant Timesheet must include the following for the applicable time period:

- (i) the number of hours worked per day rounded to the nearest quarter hour;
- (ii) lunch hours or other work breaks;
- (iii) a reasonably detailed narrative description by project or activity per day tied to the applicable/identified Consultant and tracking a specific Task Order activity, task or project deliverable, and rounded to the nearest quarter hour;
- (iv) work location (meaning on-site or off-site) for reported hours; and
- (v) certification by the Consultant.

5.6.3 Contractor must submit monthly timesheets to Requesting Agency for work performed by its Consultants ("Contractor Timesheets"). Contractor Timesheets must be submitted within thirty (30) days of the last day of month to which they pertain (Requesting Agency may, under extraordinary circumstances approve in writing, an extension). Each Contractor Timesheet must include the following for the applicable month:

- (i) the number of hours worked per day rounded to the nearest quarter hour;

- (ii) lunch hours or other work breaks;
- (iii) a reasonably detailed narrative description by project or activity per day tied to the applicable/identified Consultant and tracking a specific Task Order activity, task or project deliverable, and rounded to the nearest quarter hour;
- (iv) work location (meaning on-site or off-site) for reported hours; and
- (v) certification by Contractor.

5.6.4 The City may pay Contractor only for the invoices (or portions thereof) where the Requesting Agency has approved the applicable certified Contractor Timesheets. The Requesting Agency shall approve a certified Contractor Timesheet where the reported hours and work descriptions are reasonable based on inquiries (when necessary) with Contractor, the Consultant and other Requesting Agency employees, Task Order tracking, and any Contractor Timesheet reconciliations.

5.6.5 All Contractor Timesheets submitted for the period billed in each payment request must be tied to trackable Task Order activities or deliverables. A designated agency employee must require the resubmission of any Contractor Timesheets showing discrepancies of the hours worked or the Hourly Bill Rate, or inadequate progress on deliverables, after further appropriate review and reconciliation by the Requesting Agency.

5.6.6 Failure of Contractor to ensure the accuracy of the Consultant Timesheets or Contractor Timesheets may result in adjustments of those timesheets by the Requesting Agency, and reductions in fees payable to Contractor.

5.6.7 It is the exclusive responsibility of Contractor to administer its payroll to Consultants. A Requesting Agency is not responsible for the distribution of the Consultant's paycheck or related material.

5.6.8 No overtime or schedule differentials premiums will be paid to Contractor for Consultants that perform work after/outside of Business Hours. All hours worked will be paid in accordance with the Hourly Bill Rate the Consultant's labor category.

5.7 Documentation. For any Consultant selected from its Proposal, Contractor shall take all necessary and appropriate steps (beginning with but not limited to having the Consultant sign an agreement) to ensure that:

5.7.1 the Consultant will return all documentation provided to him/her by the City for the project at issue; and

5.7.2 all access cards and other materials, equipment and/or devices issued by the Requesting Agency to the Consultant during the project are returned to the Requesting Agency. Final payment from the City to Contractor may be withheld until the Requesting Agency receives

all such materials.

5.8 Removal and Replacement.

5.8.1 At any time during this Agreement, the City may require Contractor to remove Consultant for any reason, including but not limited to, failure to meet the requirements of the relevant labor category, lack of technical competency, performance-related or security concerns, or the violation of a law or City rule, policy or practice. The City shall provide notice to Contractor of the effective date of removal and whether the Consultant must be replaced. Contractor shall cause the individual to cease work on the effective date.

5.8.2 Without limiting any other right of the City, the City may, at any time, without notice, deny access to its premises, facilities, networks or computer equipment to any individual for any reason.

ARTICLE 6 CONTRACTOR PERSONNEL

6.1 Acts/Omissions of Contractor Personnel. Contractor is fully responsible to the City for the acts and omissions of all Contractor Personnel.

6.2 Employment Eligibility.

6.2.1 Contractor shall ensure and require that all Services are performed in the United States. If Contractor proposes that any Services be performed at a facility outside of the United States, then Contractor shall include with its proposal external security audit information for review and approval by the City's Chief Information Security Officer. The City shall consider such proposal in its sole discretion.

6.2.2 Contractor shall take all necessary and appropriate steps to determine that each of the Contractor Personnel is legally eligible to work in the United States, and specifically New York, and that such eligibility is maintained at all times that any such personnel perform Services.

6.2.3 Contractor Personnel shall be available to meet or conference with City resources during all Business Hours regardless of the location where Contractor Personnel are performing Services.

6.2.4 Contractor acknowledges that it is aware of the applicable legal restrictions (under Chapter 68 of the Charter) applicable to the employment of current or former City employees.

ARTICLE 7 SUPPLIERS AND SUBCONTRACTING

7.1 Supplier Network.

7.1.1 Contractor shall maintain a supplier network ("Supplier Network"). The Supplier Network may be made up of independent contractors with whom Contractor has entered into contracts to assist in providing the Services under this Agreement. Contractor is solely responsible for supplying Services that meet the City's performance specifications, as outlined in

individual Task Orders. To ensure that performance specifications are met, Contractor has certain enrollment criteria for its Supplier Network, including, but not limited to:

- (i) supplier agreement, signed by an authorized representative of the company;
- (ii) W-9 with EIN number;
- (iii) Certificates of Insurance for Comprehensive liability with at least two hundred thousand dollars (\$200,000) in aggregate coverage;
- (iv) Workers Compensation Insurance; and
- (v) signed Non-Disclosure Agreement.

7.1.2 Contractor shall use documented best efforts to ensure that at least twenty percent (20%) of its Supplier Network be made up of suppliers certified, at the state or local level, to be minority-owned or women-owned business enterprises. Such percentage shall be determined against the total dollar value of the minority-owned/women-owned annual participation goals that are established pursuant to the Agreement, unless a full or partial waiver is obtained or such goals are modified by DoITT.

7.1.3 Contractor shall make best efforts to use local suppliers whenever possible. Contractor shall ensure the promotion of equal employment opportunity for all qualified persons working with, or seeking work with, the Contractor.

7.2 **[INTENTIONALLY DELETED]**

7.3 Status of Candidates and Consultants.

7.3.1 Neither Candidates nor Consultants are third-party beneficiaries of this Agreement.

7.3.2 Consultants shall be employees or independent contractors of Contractor and in no case shall be considered employees or independent contractors of the City. Contractor shall be responsible for:

- (i) acts, personal conduct, and quality of work performance of the Candidates whom Contractor provides;
- (ii) payment of wages and compensation, providing fringe benefits, if any, insurance, and the withholding of taxes and such other appropriate charges to any Consultant whom Contractor provides;
- (iii) all other terms and conditions of employment, if any, of Candidates or Consultants who Contractor provides;
- (iv) informing its Consultants of:
 - (a) start times and work hours for them at the Requesting Agency;
 - (b) the requirement that Consultants must execute a nondisclosure agreement with the City, provided as Attachment NDA;
 - (c) confidentiality and security policies to which the Consultants must adhere, which can be found on the Internet at <http://www.nyc.gov/infosec> and on the City's intranet at <http://cityshare.nycnet/infosec>; and
 - (d) the documentation requirements as described in Section 5.7 above; and
- (v) informing the Requesting Agency of lateness, illness or other absences of its Consultants in advance where possible.

7.3.3 Unless stated otherwise in the applicable Task Order, Consultants must be present and perform the relevant work at the facility(ies) designated by the Requesting Agency between 9:00 a.m. and 5:00 p.m. Eastern Time on Business Days. Notwithstanding the foregoing, Consultants will be provided one (1) unpaid hour for meals for each day containing at least seven (7) work hours.

ARTICLE 8 CITY RIGHTS AND RESPONSIBILITIES

8.1 Requesting Agency's Rights.

8.1.1 A Requesting Agency may:

- (i) select more than one Candidate (or no Candidate) for a particular Request for Services;
- (ii) enter into individual Task Orders with multiple Primary Vendors for the same Request for Services;
- (iii) select Candidate(s) from more than one Primary Vendor from the same Request for Services;
- (iv) change the hours of work of Consultant, including, in the case of an emergency requiring the Consultant to work evenings, weekends and/or holidays, .
- (v) terminate a Task Order for any reason. Contractor may invoice the City for any undisputed monies then due to Contractor under the Task Order.
- (vi) remove a Candidate or Consultant from City premises if the City deems it appropriate, in the City's sole discretion, for any reason.

8.1.2 A Requesting Agency shall evaluate the Candidates' resumes and proposed hourly rates in accordance with the evaluation criteria defined in the Request for Services or Default Evaluation Criteria, as applicable. As part of the evaluation, the Requesting Agency may (but need not) require in-person or phone interviews with Candidates.

8.2 Requesting Agency's Responsibilities.

8.2.1 A Requesting Agency shall:

- (i) assign a supervisor and/or a staff member to act as a liaison and as primary contact for the selected consultant ("Requesting Agency Liaison");
- (ii) provide appropriate access to facilities and arrange workspace for the consultants at City locations;
- (iii) brief the Consultants on Agency rules and procedures; and
- (iv) review and approve each Consultant Timesheet and Contractor's invoices; however, Contractor shall nonetheless remain responsible for ensuring the integrity of the Consultant Timesheets.

8.2.2 If a Project Manager for a specific project is selected from Contractor to perform as a Programmer, Analyst, Technician or Specialist for the same project, the Requesting Agency will monitor the Project Manager's role carefully to safeguard against a potential conflict of interest or downstream involvement during the course of that assignment or future assignments.

8.3 DoITT's Responsibilities.

8.3.1 DoITT will serve as the primary point of contact between Contractor and Requesting Agencies under this Agreement. DoITT shall assign an employee to act as the overall Agreement liaison ("DoITT Liaison").

8.3.2 DoITT must review and approve proposed Task Orders and Change Orders before a Task Order becomes effective.

ARTICLE 9 SECURITY AND ARCHITECTURE REQUIREMENTS

Contractor shall comply with all requirements of Attachment SCY (Security Requirements).

ARTICLE 10 SERVICE-LEVEL REQUIREMENTS

10.1 For the entire Term, Contractor must meet or exceed any SLRs set forth in Section 5.3.13.

10.2 This Section 10.2 is intentionally omitted.

10.3 For any and all SLRs, the City may require Contractor to submit monthly or quarterly reports on the current status of SLR achievement and must be submitted no later than the fifteenth (15th) calendar day of the succeeding month/quarter (as appropriate).

10.4 If Contractor or the City identifies any SLR deficiencies:

10.4.1 Contractor and City representatives will determine a plan of action at the following meeting to ensure that the level of service improves, with remedies prescribed for missing specific targets; and

10.4.2 if three (3) consecutive quarterly reports occur with minimal or no improvement (as determined by the City in its sole discretion) in identified deficiencies, Contractor will be considered in default and the City may terminate this Agreement pursuant to Section 10.03(A) of Appendix A.

10.5 This Section 10.5 is intentionally omitted.

ARTICLE 11 MISCELLANEOUS

11.1 Notices.

11.1.1 Unless otherwise stated in this Agreement, any notices required or permitted to be given or delivered hereunder must be in hard-copy writing. Notwithstanding the foregoing, notice of any circumstance with respect to a material breach or event of default must be delivered by hand or sent by registered or certified mail or by Federal Express, Express Mail or other reliable overnight mail service that provides a receipt to the sender. Receipt of a notice by the Party to whom the notice is transmitted will be considered to have occurred upon receipt if hand-delivered; five (5) Business Days from the date of mailing if mailed; or the next Business Day after transmittal overnight by Federal Express, UPS, U.S.P.S. Express Mail or other reliable overnight delivery service that provides a receipt to the sender. In all other circumstances, notice may also be delivered by e-mail (with e-mail acknowledgement of receipt); receipt of which will be considered to have occurred upon transmittal. All notices and correspondences shall be delivered to the respective addresses below:

In the case of the City:

Agency Chief Contracting Officer NYC
Department of Information
Technology and Telecommunications
255 Greenwich Street, 9th Floor
New York, NY 10007
Phone: (646) 769-2037
Email: jkatsorhis@doitt.nyc.gov

with a copy to:

General Counsel
NYC Department of Information
Technology and Telecommunications
255 Greenwich Street, 9th Floor
New York, NY 10007
Phone: (212) 788-6640
Email: legalservices@doitt.nyc.gov

In the case of Contractor:

[GCOM SOFTWARE, INC.]
[ATTN: SUNIL BHATIA_]
[24 MADISON AVE EXT.]
[ALBANY, NY 12203_]
Phone: 917-399-4000
Email: sunil@gcomsoft.com

with a copy to:

[GCOM SOFTWARE, INC.]
[ATTN: HOLLY SAVARESE]
[24 MADISON AVE. EXT.]
[ALBANY, NY 12203]
Phone: 917-399-6066
Email: holly@gcomsoft.com

11.1.2 Either Party may from time to time designate another address or other addressees by notice to the other Party in compliance with this Section.

11.1.3 Nothing in this Article serves as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by New York law including the New York Civil Practice Law and Rules.

11.2 Fee(s) for the Administration of the VENDEX System. Pursuant to Procurement Policy Board Rule 2-08(f)(2), Contractor will be charged a fee for the administration of the VENDEX system, including Contractor name check process, if a Contractor name check review is required to be conducted by the City's Department of Investigation. Contractor shall also be required to pay the applicable required fees for any of its subcontractors for which Contractor name check reviews are required. The fee(s) will be deducted from payments made to Contractor under this Agreement. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350.

11.3 Contract Documents; Conflicts. This Agreement consists solely of this document, the Attachments listed in this Section, all of which are annexed hereto, and all other documents listed in this Section (collectively, "Contract Documents"). This Agreement shall be construed wherever appropriate to avoid conflict between the provisions of the Contract Documents. However, where a conflict or inconsistency exists between two or more of the Contract Documents, provisions shall govern in the following descending order of precedence:

11.3.1 This document (titled "Master Services Agreement for Citywide Standby Information Technology and Telecommunications Consulting Services");

11.3.2 Appendix A (General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services)

11.3.3 Attachment SCY (Service Requirements);

11.3.4 Attachment PRC (City Labor Categories, Hourly Bill Rates, Personnel Markup and Maximum Personnel Markup);

11.3.5 Attachment NDA (Non-Disclosure Agreement);

11.3.6 Attachment INS (Insurance);

11.3.7 Attachment BI (Billing and Invoicing);

11.3.8 Attachment EFT (Electronic Funds Transfer);

11.3.9 Attachment DB (Doing Business Data Form);

11.3.10 the applicable Task Order; and, finally,

11.3.11 the Requesting Agency's applicable Request for Services.

IN WITNESS WHEREOF, the Parties have executed this Agreement in quadruplicate (each of which shall constitute an original), two (2) executed copies of which are to remain with the Department, one (1) executed copy of which is to be filed with the Comptroller, and one (1) executed copy of which is to be delivered to Contractor.

THE CITY OF NEW YORK

By: 

Name: Amc Roest

Title: Commissioner

Date: 7/25/16

GCOM SOFTWARE, INC.

By: 

Name: Girish Bhatia

Title: CEO

Date: 07.22.16

Approved as to Form and
Certified as to Legal Authority:

Acting Corporation Counsel

STATE OF NEW YORK)

:SS:

COUNTY OF NEW YORK)

On this 25th day of JULY, 2016, before me personally came Anne Roest, to me known and known to me to be the Commissioner of the Department of Information Technology and Telecommunications of the City of New York, the person described in and who is duly authorized to execute the foregoing instrument, and she acknowledged to me that she executed the same for the purpose therein mentioned.



NOTARY PUBLIC

SHARON BOATSWAIN
Notary Public, State of New York
No. 01BO4780372
Qualified in Queens County
Certificate Filed in New York County
Commission Expires April 20, 2019

STATE OF New York

:SS:

COUNTY OF Albany)

On this 22 day of JULY, 2016, before me personally came Girish BHATIA, to me known, who, being by me duly sworn, did depose and say that s/he resides at 24 Madison Ave Albany NY, that s/he is the CEO of SCOM Software Inc, the corporation described in and which executed the above instrument; that s/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that s/he signed her/his name thereto by like order.



NOTARY PUBLIC

HOLLY SAVARESE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SA6172893
Qualified In Albany County
My Commission Expires August 20, 19

APPROVAL AS TO FORM OF A CONTRACT BY STANDARD TYPE OF CLASS

AGENCY: DOITT

EPIN: 85816P0002003

CONTRACT: Citywide Standby Information Technology and Telecommunications Consulting Services (ITCS)

I hereby approve as to form the annexed contract by standard type of class. This approval is valid until 05/18/2017 and for a maximum of 8 contracts. The above approval is made on the express understanding that the substantive language of the subject contracts will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the contracts requiring names, dates, dollar amounts or other similar details may be completed.

Expiration	Additional Number Allowed	Total Number Allowed	Date Added	Approved By
05/18/2017	8	8	05/18/2016	Electronically Signed By AMRITA BARTH
/ /	0	0	/ /	

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Electronically Signed By AMRITA BARTH

ACTING CORPORATION COUNSEL

DATE: 05/18/2016 13:48

ATTACHMENT BI (Billing and Invoicing)

In order to process your payment pursuant to Article 4 of this Agreement promptly and efficiently, please ensure that all invoices are submitted on company letterhead and contain the following information:

1. Address invoices to the Requesting Agency.
2. Contractor name, address and contact name and phone number must be prominently displayed — NOTE: Contractor name on the invoice must be on file with the NYC Comptroller's Office via a W-9 form submission. If a W-9 is not on file, please contact DoITT's Audits and Accounts Unit for further instructions.
3. Current Contractor Contract number (CT)/purchase order (PO)/PG number (in reference to a NYC Requirements Contract — CE).
4. Invoice number and date of invoice
5. Invoice service period and date of delivery
6. Invoices shall be submitted in both hard copy and soft copy format.
7. Appropriate backup and all other supporting documentation to substantiate the invoice charges must be attached:
 - Monthly Payments: For work provided on a fixed-price basis, with fixed monthly payments, the City Contract Number must be included with the invoice.
 - Payment Milestones: For work provided on a fixed-price basis, with milestone payments, documentation evidencing the City's acceptance of the applicable payment milestone(s) must be included with the invoice.
 - Time and Materials: For work provided on a time and materials basis, consolidated timesheets for teams of individuals for which charges are being made must contain the day and dates of service, and job titles must match those identified in the Agreement, change order, or purchase order, hourly rates, Markup and number of hours worked. Timesheets must include a reasonably detailed narrative descriptions of all work done each day by each identified Consultant, tied to a specific, trackable Contract activity or deliverable, and rounded to the nearest quarter hour; lunch hours or other work breaks; work locations for each project or activity; and Certifications by the Consultant and by his/her on-site supervisor. Certification by off-site supervisors is only permitted in the case of the highest level Consultant manager on site. If work is not conducted on-site, or an individual Consultant has no on-site supervisor, the agency official responsible for managing that Consultant must certify the Consultant's Timesheet, attesting at a minimum that he or she has regularly observed or communicated with the Consultant during the period and believes the time reported reasonable corresponds to the effort and/or progress made during that period.

8. Contractor's remittance address is:

[GCOM SOFTWARE, INC.]

[24 MADISON AVE. EXT.]

[ALBANY, NY 12203____]

(correspondence only – payments are thru NYC PIP)

9. Contractor shall concurrently provide the DoITT Liaison with a soft copy of the invoice and applicable supporting documentation.

Should Contractor require additional information, it should contact DoITT's Office of the Director of Audit & Accounts: (212) 788-6354.

[END OF ATTACHMENT B!]

ATTACHMENT DB (Doing Business Data Form)

ATTACHMENT EFT (Electronic Funds Transfer)

- A. In accordance with Section 6-107.1 of the New York City Administrative Code, Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance with information necessary for Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by Contractor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.
- B. The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

[END OF ATTACHMENT EFT]

ATTACHMENT INS (INSURANCE)

1 Agreement to Insure

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

2 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

3 Professional Liability Insurance

A. At the Department’s direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

4 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

5 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

6 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

7 General Requirements for Insurance Coverage and Policies

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

8 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 2(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 8 (A) and Section 8(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City

Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

9 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

[END OF ATTACHMENT INS]

ATTACHMENT NDA (Non-Disclosure Agreement)

CONSULTANT NON-DISCLOSURE AND WORK-FOR-HIRE AGREEMENT

Requesting Agency: _____

Name of Contractor Providing the Consultant:

Name and Address of the Assigned Consultant ("Consultant"):

Task Order No. _____ ("Task Order")

This Consultant Non-Disclosure and Work-For-Hire Agreement ("NDA") is between the City of New York ("City") by and through the Requesting Agency and the Consultant. This NDA describes certain rights and obligations of the City and the Consultant with respect to certain information that the Requesting Agency will disclose to the Consultant.

The information or materials acquired by the Consultant during performance pursuant to the Task Order, including activities performed and documents and deliverables produced by the Consultant in connection with this project (collectively, "Confidential Information"), are to be kept strictly confidential by the Consultant and may not be reproduced, except for internal use by the members of the project team for the purpose of providing services to the Requesting Agency, without prior written consent from the Requesting Agency unless such information is: a) previously known by Consultant without a duty to keep such information confidential; b) generally available to the public; c) subsequently disclosed to Consultant by a third party who is not under an obligation of confidentiality with respect to the City; or d) independently developed by the Consultant prior to his or her engagement on this project.

The Consultant agrees that, upon the request of the Requesting Agency, he or she shall promptly return to the Requesting Agency or destroy the Confidential Information in the Consultant's possession, including any copies, extracts, descriptions and summaries thereof.

All work product created by the Consultant pursuant to the Task Order is owned by the City of New York upon creation. The Consultant, Vendor(s), subcontractor(s), or supplier(s) to the Vendor shall not have or retain, and may not convey or attempt to convey, any right or interest in any such work product. Specifically, without limitation of the foregoing, any reports, documents, data, photographs, deliverables, and/or other materials created by the Consultant ("Covered Materials") pursuant to the Task Order immediately become "work-made-for-hire" for the City. The City shall own all rights, including copyrights and all other intellectual property rights, to the Covered Materials and to all aspects, elements and components thereof in which copyright and/or other intellectual property rights might exist. To the extent, if any, that the

Covered Materials do not qualify as “work-made-for-hire” for the City, the Consultant hereby irrevocably transfers, assigns and conveys exclusive ownership of all copyrights and other intellectual property rights in and to the Covered Materials to the City, free and clear of any liens, claims, or other encumbrances. The Consultant shall retain no copyright or other intellectual property right or interest in the Covered Materials. The Covered Materials shall not be used by the Consultant for any purpose other than the performance of the Task Order except with the prior written permission of the City.

The Consultant may not: a) perform any work in connection with any private business during time that is being billed to the City; b) use any City equipment, supplies, telephones, computers, letterhead, personnel or any other City resource for any purpose other than the Consultant’s performance of the Task Order, except as permitted by employees under the City’s Policy on Limited Personal Use of City Office and Technology Resources, which is hereby incorporated into this NDA and which is viewable at http://cityshare.nycnet/subs/doitt/downloads/pdf/hr/limited_personal_use_policy.pdf (“Personal Use Policy”); c) disclose to any person any Confidential Information, except as necessary to the Consultant’s performance of the Task Order; d) disclose to any employer, officer, etc. of the Consultant, except for those with a need to know to enable Consultant to perform under the Task Order; or e) use any Confidential Information for any purpose other than the Consultant’s performance of the Task Order.

The Consultant shall comply with the City’s Information Security Policy for Service Providers (in which the Consultant is referred to as a “Service Provider”), which is hereby incorporated into this NDA and which is viewable at http://www.nyc.gov/html/doitt/downloads/pdf/service_provider_policy.pdf. The Consultant shall also comply with the User Responsibilities Policy, which is hereby incorporated into this NDA and which is viewable at http://www.nyc.gov/html/doitt/downloads/pdf/user_responsibilities.pdf (both policies together with the Personal Use Policy, the “Policies”). The City reserves the right to revise and otherwise change the Policies at any time and without notice. Any modification is effective immediately upon posting, unless otherwise stated. The Consultant should periodically visit the pages on which the Policies are located to ensure s/he is up-to-date with its terms.

It is understood and agreed that money damages alone would not constitute a sufficient remedy for any breach of this NDA by the Consultant and that the City shall be entitled to specific performance and injunctive relief. Such remedies shall not be deemed to be the exclusive remedies available to the City for a breach of this NDA by the Consultant, but shall be in addition to other remedies available to the City at law or in equity. This paragraph shall survive expiration of this NDA.

Only the City may terminate this NDA.

This NDA embodies the entire understanding between the City and the Consultant and supersedes and replaces any and all prior understandings, arrangements and agreements, whether oral or written. This NDA shall be governed by the laws of the State of New York without regard to its conflict-of-laws principles. This NDA supersedes any inconsistent or less strict provision of any previous nondisclosure agreements the Consultant may have signed with regard to this Task Order and is retroactive to the Consultant's first work under the Task Order.

The Consultant agrees to adhere to the above provisions:

Print Consultant Name: _____

Consultant Signature: _____ Date: _____

[END OF ATTACHMENT NDA]

ATTACHMENT PRC

(City Labor Categories, Hourly Bill Rates, Personnel Markups and Maximum Personnel Markup)

City Labor Category (see category descriptions below chart)	Job Level	Relevant Job Titles (not comprehensive)	Hourly Bill Rate for this Agreement	Personnel Markup* (as a percentage)
Project Manager	PM1	<ul style="list-style-type: none"> • Project Manager • Project Coordinator • Program Manager • Technical Lead • Deployment Manager • Release Manager 	\$75.40	45%
Project Manager	PM2		\$116.00	45%
Project Manager	PM3		\$181.25	45%
Analyst	AN1	<ul style="list-style-type: none"> • Business Analyst • Solution Designer • UI Designer • Functional Tester • Performance Tester • Technical Writer • Trainer • Data Analyst • Data Administrator • Solutions Architect 	\$65.25	45%
Analyst	AN2		\$104.40	45%
Analyst	AN3		\$159.50	45%
Programmer	PGM1	<ul style="list-style-type: none"> • Application Developer • Mobile Developer • Front-End Developer • GIS Developer • Application Support Engineer • Reports Developer 	\$72.50	45%
Programmer	PGM2		\$104.40	45%
Programmer	PGM3		\$166.75	45%
Technician	TEC1	<ul style="list-style-type: none"> • Systems 	\$87.00	45%

Technician	TEC2	<ul style="list-style-type: none"> • Administrator • Database Administrator • Voice/Data Engineer • Network Engineer • Systems Engineer • Radio Engineer 	\$116.00	45%
Technician	TEC3		\$182.70	45%
Specialist	SP1	<ul style="list-style-type: none"> • Security Engineer • Technical Architecture Specialist 	\$104.40	45%
Specialist	SP2		\$123.25	45%
Specialist	SP3	<ul style="list-style-type: none"> • UX Designer • Data Warehouse Architect • Any title under the other labor categories which requires more extensive or specific experience, knowledge or skill level. 	\$203.00	45%

City Labor Category Descriptions

Project Manager I - Minimum of 2 years experience in overseeing small scale, non-complex projects, comprising a small number of deliverables and/or a small number of phases; typically coordinates and delegates the assignments for a consultant project staff numbering up to 10; focal point of contact for the Requesting Agency regarding project status, meetings, reporting requirements, scope changes, and issues and concerns raised by consultant staff or the Requesting Agency.

Project Manager II - Minimum of 4 years experience in overseeing medium scale projects comprising sub-projects and distinct deliverables; typically coordinates and delegates the assignments for a consultant project staff numbering over 10; focal point of contact for the Requesting Agency regarding project status, meetings, reporting requirements; scope changes, and financial, administrative, and technical issues and concerns raised by consultant staff or the Requesting Agency.

Project Manager III – Minimum of 8 years experience in overseeing medium to large scale projects comprising sub-projects and distinct deliverables, often comprising a program with multiple work streams; typically coordinates and delegates the assignments for a consultant project staff numbering over 15; focal point of contact for the Requesting Agency regarding project status, meetings, reporting requirements, scope changes, and financial, administrative, and technical issues and concerns raised by consultant staff or the Requesting Agency.

Analyst I - Minimum of 2 years experience providing specialized knowledge of system requirements and programming specifications. Designs solutions based on customer needs and technical considerations. Analyzes job tasks, organizational structure and user requirements to provide system-wide solutions. Applies analytical expertise to assist in defining, analyzing, validating and documenting complex operating environments, states of technology and current processes.

Analyst II - Minimum of 4 years experience providing specialized knowledge of system requirements and programming specifications. Designs solutions based on customer needs and technical considerations. Analyzes job tasks, organizational structure and user requirements to provide system-wide solutions. Applies analytical expertise to assist in defining, analyzing, validating and documenting complex operating environments, states of technology and current processes.

Analyst III - Minimum of 8 years experience providing specialized knowledge of system requirements and programming specifications. Designs solutions based on customer needs and technical considerations. Analyzes job tasks, organizational structure and user requirements to provide system-wide solutions. Applies analytical expertise to assist in defining, analyzing, validating and documenting complex operating environments, states of technology and current processes.

Programmer I - Minimum of 2 years experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid-range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

Programmer II - Minimum of 4 years experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid-range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

Programmer III - Minimum of 8 years experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and

implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid-range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

Technician I - Minimum of 2 years experience providing specialized knowledge of complex customer processes and requirements. Applies technical expertise to assist in defining, analyzing, validating, and documenting complex operating environments, states of technology and current engineering processes. Conducts complex technical investigations through advanced research techniques, analysis or development phases of engineering projects.

Technician II - Minimum of 4 years experience providing specialized knowledge of complex customer processes and requirements. Applies technical expertise to assist in defining, analyzing, validating, and documenting complex operating environments, states of technology and current engineering processes. Conducts complex technical investigations through advanced research techniques, analysis or development phases of engineering projects.

Technician III - Minimum of 8 years experience providing specialized knowledge of complex customer processes and requirements. Applies technical expertise to assist in defining, analyzing, validating, and documenting complex operating environments, states of technology and current engineering processes. Conducts complex technical investigations through advanced research techniques, analysis or development phases of engineering projects.

Specialist I - Minimum of 4 years experience in a particular technical and/or business application, product, platform, methodology or skill set that is beyond the requirements addressed in the other labor categories.

Specialist II - Minimum of 8 years experience in a particular technical and/or business application, product, platform, methodology or skill set that is beyond the requirements addressed in the other labor categories.

Specialist III - Minimum of 12 years experience in a particular technical and/or business application, product, platform, methodology or skill set that is beyond the requirements addressed in the other labor categories.

* **Maximum Personnel Markup**

The Maximum Personnel Markup is the highest Personnel Markup in the far-right column of the chart in this Attachment PRC, namely, forty-five percent, (45%).

[END OF ATTACHMENT PRC]

ATTACHMENT SCY (Security Requirements)

Terms defined herein shall apply solely to this Attachment SCY. All other capitalized terms shall have the same meaning as defined elsewhere in the Agreement.

1. Definitions

- (a) *“City”* means the City of New York and any regulatory or administrative division, department or office thereof, including the Department of Information Technology and Telecommunications (“DoITT”) and all Requesting Agencies (“Contractor”).
- (b) *“City Information Assets”* means all City computer systems, electronic data stored, processed, transmitted, or printed by City computer systems, and such systems’ peripheral equipment, networks, or magnetic data.
- (c) *“Confidential Information”* means all non-public information concerning or embodying the scientific, statistical, or technical data, including designs, drawings, processes, statistics, software, components, data, databases, know-how, prototypes, samples, research and developments, meeting reports, systems, programs, research, development, strategic plans, or the like with respect to the operations and activities of the City or Contractor that may be disclosed by either Party or its agents, officers, employees or sub-contractors under the Agreement, regardless of whether such disclosure is in oral, written, or electronic form.
- (d) *“Facility(ies)”* means a physical structure operated by the City of New York.
- (e) *“Person”* means an officer, agent or employee of Contractor or a subcontractor.
- (f) *“Project”* means any type of work to be performed by Contractor pursuant to the Agreement (and not limited to the work pursuant to Task Orders).
- (g) *“Security Investigation”* means a criminal history and background investigation in accordance with the requirements set forth herein. The City reserves the right to modify the scope of requisite investigations upon provision of reasonable notice to Contractor.

2. Citywide Information Security Policy

All Persons, who may have access to any Confidential Information or City Information Assets, in the course of carrying out their responsibilities or job function must comply with the Citywide Information Security Policies and Standards (“Policies and Standards”) established by DoITT as it may be modified from time to time, which are available on Cityshare at (<http://cityshare.nycnet/infosec>) and will also be provided upon request.

3. DoITT User Responsibility Policy

Contractor shall require that all Persons in Contractor's or subcontractors' organizations who may have access to any City Information Assets in the course of performing work pursuant to the Agreement will be provided a copy of DoITT's "User Responsibility Policy" ("URP"); and shall be required to sign the acknowledgement of same, prior to performing work. Contractor shall provide a signed copy of the URP for each such Person to the DoITT Liaison within fifteen (15) calendar days after a Person is assigned to a Project.

4. Security Investigation

- (a) The City may, prior to or during the course of a Project, request that Contractor require a Person, or Persons, associated with a Project to undergo a Security Investigation before being granted access, or continued access, to Facilities, Confidential Information or City Information Assets.
- (b) If Security Investigations are requested or required by the City prior to the commencement of a Project, Contractor is required to submit the results of the Security Investigation for each Person that it proposes to assign to perform services on the Project sufficiently in advance to ensure that all security clearance procedures are complete without delaying Contractor's work performance. The City shall not be liable for payments or damages of any kind if Contractor's work is delayed or Contractor is required to assign different individuals on account of the City's reasonable delay or refusal to grant an individual a security clearance under the Agreement.
- (c) Contractor shall assume, without any reimbursement by the City, all costs incurred in connection with the investigations.
- (d) Where an emergency or other circumstance occurs which renders immediate compliance impractical, the City may, in its sole judgment, defer a Person's compliance and grant temporary access, pending the results of the Security Investigation. Such deferment shall not be construed as a waiver of the City's right subsequently to require that a Security Investigation be performed.
- (e) The City reserves the right, in its sole discretion, to refuse access to City Facilities, Confidential Information or City Information Assets: (i) to any individual who refuses to comply with the security or non-disclosure procedures required by the City; or (ii) where the City determines (in its sole discretion) that the individual may present a risk to its security interests.

5. Compliance with Other Security Policies and Procedures

Contractor shall require that all Persons working on the Project comply with all applicable facility, data processing and other security policies and procedures of the City in effect for the duration of the Project, including but not limited to Internet usage, office equipment usage and timekeeping procedures. This may include being required to sign in and out and enter time worked into a timekeeping system provided by the City.

6. Notification of Termination, Reassignment or Cessation of Access

Contractor shall promptly notify the DoITT Liaison assigned to the Project, in writing, when any Person previously engaged by Contractor to gain access to any City Facilities, Confidential Information or City Information Assets is no longer authorized by Contractor to do so, and Contractor shall take reasonable efforts to prevent any such Person from accessing the City's facilities, information systems, or data from the point in time that such individual's authorization ceases.

7. Non-Disclosure Agreement

If required by this Agreement or otherwise reasonably requested by the City, Contractor shall require its officers, agents, employees and subcontractors who either work in direct support of this program or who may reasonably be anticipated to unintentionally receive Confidential Information to execute a Non-Disclosure Agreement in an appropriate form.

8. Contractor-Provided Equipment

Contractor shall ensure that any products, services and other deliverables it provides to the City are compliant with the Policies and Standards.

9. No Introduction of Viruses

Contractor shall use industry standards to ensure that it does not introduce viruses or other form of malicious code to City systems.

10. Cooperation with Accreditation

Contractor shall cooperate with and facilitate the successful completion of any security accreditation tasks and processes relevant to the services and/or deliverables it provides.

11. Contractor's Policies

Upon request, Contractor shall, provide a copy of its information security policies strictly relevant to this Agreement.

12. City Audit(s)

The City reserves the right to audit the IT infrastructure and information security controls and processes of Contractor and to perform relevant tests to ensure that it is compliant with the Policies and Standards. Contractor will permit the City to perform an IT audit, including an audit of physical security of any of Contractor's premises applicable to the services provided pursuant to this Agreement and will cooperate and furnish all requested materials in a timely manner, provided that any such audits shall not interfere with Contractor's operations, shall not be performed unless accompanied by an authorized representative of Contractor and shall not include access to any information or facilities relating to or utilized to provide service to other customers of Contractor.

13. Independent Review(s)/Audit(s)

Upon request, Contractor shall provide evidence of an independent IT security review or audit commensurate with the security requirements of the project within a time agreed upon by the City and Contractor. The scope of the review/audit and the time by which Contractor must provide evidence of the review/audit shall be determined by mutual agreement of the City and Contractor.

14. Suggestions

Contractor shall surface issues, suggest options, and make recommendations to the City with regard to the Policies and Standards where appropriate.

15. Liaison

Within one (1) week after the Effective Date, Contractor shall identify and provide contact information for the Person who has been assigned overall responsibility for information security within its Project.

16. No Exporting of Confidential Data Outside United States

Contractor may not export Confidential Information outside the United States (even for transit purposes) except with the express written permission of the Commissioner of DoITT and then only for the Confidential Data specified in that permission.

17. Remote Access Methods

Contractor must obtain written permission from DoITT for each method of remote access it wishes to use to access City Information Assets.

18. What to Do in Case of a Breach

Should Contractor learn or suspect that there has been a breach of its obligations under this Attachment, it shall immediately notify its DoITT liaison via email and the DoITT Service Desk via telephone at (212) 692-4357. Contractor shall then cooperate fully in any government investigation (by the City or other government entity) into any such possible breach.

19. Material Breach

Violations of any part of this Attachment or any of the Policies and Standards shall constitute a material breach of this Agreement.

[END OF ATTACHMENT SCY]

APPENDIX A

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR
CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN AND CLIENT SERVICES**

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

A. “Agency Chief Contracting Officer” or “ACCO” shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

B. “Agreement” shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” shall mean The City of New York.

D. “City Chief Procurement Officer” or “CCPO” shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. “Commissioner” or “Agency Head” shall mean the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

F. “Comptroller” shall mean the Comptroller of the City of New York.

G. “Contractor” shall mean the entity entering into this Agreement with the Department.

H. “Days” shall mean calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” shall mean the City agency that has entered into this Agreement.

J. “Law” or “Laws” shall mean the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. “PPB Rules” shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 et seq.

M. “State” shall mean the State of New York.

**ARTICLE 2 - REPRESENTATIONS
AND WARRANTIES**

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees and members of their immediate families may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees and members of their immediate families are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees and members of their immediate families may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

Section 2.03 Fair Practices

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy or directive, the prices and other material terms set forth in this Agreement which have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section.

Section 2.04 VENDEX

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Political Activity

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.06 Religious Activity

There shall be no religious worship, instruction or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

Section 2.08 Bankruptcy and Reorganization

In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

Section 3.02 Subcontracting

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five

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Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the City and the Contractor;
2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;
3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and
4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

D. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The

City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

G. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e

A. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by New York State Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

B. The provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

Section 4.06 Non-Discrimination: Admin. Code § 6-108

If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by New York City Administrative Code § 6-108, that:

A. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

C. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity

A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence, and to utilize appropriate accounting procedures and practices, which sufficiently

and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section.

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are

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subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section.

Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

Section 5.06 Electronic Records

As used in this Appendix A, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of

New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of

accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

1. The term “license” or “permit” as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term “person” as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term “entity” as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

4. The term “member” as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and

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using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original

material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

Section 7.03 Professional Liability Insurance

A. At the Department’s direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 7.04 Workers’ Compensation, Disability Benefits, and Employer’s Liability Insurance

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers’ Compensation Insurance, Disability Benefits Insurance, and Employer’s Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 7.07 General Requirements for Insurance Coverage and Policies

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.08 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);

4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or

5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims

Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

Section 8.02 Protection of City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be

subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

Section 8.07 Withholding of Payments

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers and employees.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement

prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.02 Reductions in Federal, State and/or City Funding

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

Section 10.03 Contractor Default

A. The City shall have the right to declare the Contractor in default:

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1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily

suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

Section 10.04 Force Majeure

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this

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Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and
5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation

necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following

circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing (“Notice of Dispute”) to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head’s ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute,

shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

3. **Agency Head Determination.** Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. **Time, Form, and Content of Notice.** Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. **Agency Response.** Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the

ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

Section 12.06 General Release

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

Section 13.04 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor’s compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan (“Compliance Plan”) which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor’s failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

Section 13.06 Voter Registration

A. Participating Agencies. Pursuant to Charter § 1057-a, if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children’s Services; the City Clerk;

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the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

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6. For the purposes of Paragraph A of this Section, the word “Contractor” shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor’s or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor’s employees shall not:

a. seek to influence an applicant’s political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.

F. The provisions of this Section do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

Section 13.07 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

Section 13.08 MacBride Principles

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

Section 13.09 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing

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Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter § 1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce

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Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

Section 13.10 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: Administration for Children's Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency’s plans developed pursuant to E.O. 150.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except _____.

Full name of Proposer or Bidder [below]

GCom Software, Inc

Address

24 Madison Avenue Extension

City

Albany

State

N.Y.

Zip Code

12203

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

- B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

- C - Corporation

EMPLOYER IDENTIFICATION NUMBER

20-2902922

By _____

Signature

DIR HR

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

- * Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

Aurora, Inc.
[Name of broker or agent (typewritten)]

120 Broadway, Albany, NY 12204
[Address of broker or agent (typewritten)]

wkemp @ aurorainsurance.com
[Email address of broker or agent (typewritten)]

518-449-3180 / 518-449-1182
[Phone number/Fax number of broker or agent (typewritten)]


[Signature of authorized official, broker, or agent]

Marta Masher / Director HR
[Name and title of authorized official, broker, or agent (typewritten)]

State of New York.....)

) ss.:

County of Albany.....)

Sworn to before me this 24 day of May 2016



NOTARY PUBLIC FOR THE STATE OF New York

HOLLY SAVARESE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SA6172893
Qualified In Albany County
My Commission Expires August 20. 19

**APPENDIX B
SERVICE LEVEL AGREEMENTS**

Metric	Definition	Target/SLA
Rate of Response to Service Requests	% of Service Requests for which resumes are submitted	75% or higher
Candidate Availability after Resume Submission	% of instances where candidates remain available for selection for at least 10 days from the submission of the candidate's resume	90% or higher
Candidate Availability for Interviews	% of instances where all candidates are available for interviews with the Requesting Agency for all of the interview dates specified in the Service Request	90% or higher
Onboarding Timeliness	% of instances where the successful candidate is on board by the start date included in the Notice to Proceed	95% or higher
Resume Turnaround Time for Replacements	Number of days from a replacement request to receipt of resumes	3 business days
Attrition Rate	% of resource turnover due to unplanned situations	5% or lower
Performance Removal	% of resource turnover due to inadequate performance	3% or lower
Overall Satisfaction	Survey results provided by PM at the conclusion of an assignment	90% satisfied

APPENDIX C

PAID SICK LEAVE LAW CONTRACT RIDER

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.¹ Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSSL may use sick time for any of the following:

- such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
- such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

Exemptions and Exceptions

Notwithstanding the above, the PSSL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSSL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSSL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSSL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSSL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

Records

An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

APPENDIX D

IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law ("SFL") §165-a and General Municipal Law ("GML") §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder's certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

**BIDDER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[Please Check One]

BIDDER'S CERTIFICATION

By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: Albany, New York
May 24, 2016


SIGNATURE

Marta A. Masher
PRINTED NAME

Director HR
TITLE

Sworn to before me this
May of 24, 2016


Notary Public

Dated: 5/24/16

HOLLY SAVARESE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SA6172893
Qualified in Albany County
My Commission Expires August 20, 19

APPENDIX E
LIVING WAGE LAW PROVISIONS
FOR NEW YORK CITY CONTRACTORS

Section 6-109 of title 6 of the Administrative Code of the City of New York (“Section 6-109”) regulates the wages of certain employees performing services pursuant to contracts with the City of New York for homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services or temporary services, as those services are defined in Section 6-109. Therefore, in accordance with Section 6-109, the contractor agrees:

A. The Contractor agrees to comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

B. The Contractor agrees not to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

C. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such

hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).

D. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

E. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements, and include in any contract or agreement with its subcontractors a provision requiring them to comply with those requirements.

F. Each year throughout the term of the Agreement and whenever requesting Agency approval of a subcontractor, the Contractor shall submit to the Agency an updated

certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

G. The Contractor agrees that failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within thirty (30) days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, may assess any administrative charge established by the Department, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law.

HIRING AND EMPLOYMENT RIDER:
HIRENYC AND REPORTING REQUIREMENTS

Introduction

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services’s (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor shall enroll with the HireNYC system, found at www.nyc.gov/sbs, within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor ([see Column F of https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls](https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls)). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process,

and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (\$500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

Audit Compliance

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

Other Reporting Requirements

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

Construction Requirements

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

Federal Hiring Requirements

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.