



**BIDDERS CHECK-OFF LIST FOR CONSULTANT AND SERVICE
CONTRACTS**



TO BIDDER:

THIS SECTION MUST BE SUBMITTED WITH THE BID AND COMPLETED IN ITS ENTIRETY:

PART III – BID SUBMISSION DOCUMENTS:

- PAGE 69 – Bid Price Submission, must be signed, and if incorporated, sealed. Fill out in both numbers and words. The Total Bid Price should equal the Total Bid Price Amount on the Price Schedule.**
- PAGE 72 – Acknowledgement of Bidder, Fill out in its entirety, must be signed and notarized.**
- PAGE 73 – Affirmation of Taxes Paid, Fill out in its entirety, must be signed and if incorporated, sealed.**
- PAGE 79 – Acknowledgment of Addenda, Fill out in its entirety, as applicable, must be signed.**
- PAGE 85 – Bidder’s Certification of Compliance with Iran Divestment Act, Fill out in its entirety, must be signed and notarized.**

In order for this Bid to be considered, be sure to sign, notarize, and affix the corporate seal on all applicable pages. All signatures must be original and signed in ink. All changes must be initialed.

Complete Schedule B: M/WBE Utilization Plan, Page 97. Applicable <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>

PAGE 97 – Schedule B - Minority/Women Business Enterprise (M/WBE) Subcontractor Utilization Plan. Fill out in its entirety as applicable, must be signed.

➡ **NOTE: Bidders who wish to apply for a waiver of the M/WBE Participation Goals must complete **Part III – REQUEST FOR WAIVER OF M/WBE PARTICIPATION REQUIREMENT** and submit to the Department via fax (718) 999-0177, no later than seven (7) days prior to the bid opening date.**

➡ **NOTE: In order for this **BID TO BE CONSIDERED**, bidders must complete, and sign **Schedule B – M/WBE Utilization Plan**, and submit in a sealed envelop marked “**Schedule B - M/WBE Utilization Plan**” at the time of the bid submission.**

ADDITIONAL INFORMATION:

It is the vendor’s responsibility for ensuring their bid submission is properly completed and submitted. The successful vendor is responsible for all applicable terms and conditions contained herein. At a minimum the vendor should perform the following:

- **Note time, date and location for the Receipt of Bids and if applicable, the date of the Pre-bid Conference on pages 4 and 5. It is the vendor’s responsibility to submit the bids at the appropriate time and location.**
- **Review the entire scope of work contained in the Specifications, page 7.**
- **Review the Schedule of Contract Requirements, Schedule A, page 8 .**
- **Review Insurance requirements located on page 8, Schedule A and further described on pages 39-43.**
- **Review Schedule of Wage Rates and Supplements as applicable, Page 78.**
- **Review the Subcontractor Approval Form requirements on Page 18, Article 22, and Page 80.**
- **Review and acknowledge all bid amendments (addenda) if applicable, Page 79. (Check the FDNY website: <http://nyc.gov/html/fdny/html/contracting/index.shtml> for all addendums).**
- **Review and obtain bonds, if applicable, refer to page 8, page 18**

All qualification requirements as stated herein shall be in effect and current as of the date of the bid submission.

Upon notification, the Bidder shall submit the following documentation within seven (7) days from either written or oral notification.

- Department of Labor Services **Supply and Service Report** (see Page 20).
- Complete, execute, and notarize **Vendex Vendor and Principal Questionnaire** (See pages 26, 76) if aggregate business over the preceding 12 months (including this bid submission) is over \$ 100,000, <http://www.nyc.gov/vendex>.
- Provide a minimum of **three (3) references**. References must include name, telephone number, and a contact person.
- Provide requested information for the **Contractor Questionnaire** (see Page 74).
- Provide a **Certificate of Insurance**.
- All other applicable documents as provided herein.
- Provide a copy of the completed **Subcontractor Approval Form** for each subcontractor as applicable.

Failure to provide all required documentation, information or disclosure statements may result in a determination of non-responsiveness in accordance with the New York City Procurement Policy Board Rules, Section 2-07.



THE CITY OF NEW YORK

FIRE DEPARTMENT

**BUREAU OF FISCAL SERVICES
CONTRACT DEVELOPMENT UNIT**

**COMPETITIVE SEALED BID
AGREEMENT AND SPECIFICATIONS**

PROJECT DESCRIPTION

**SPECIFICATION FOR LICENSING, MAINTENANCE AND
SUPPORT OF NOVELL PRODUCTS FOR THE NEW YORK CITY
FIRE DEPARTMENT**

PIN NO. 057150000837

e-PIN NO. 05715B0002

CONTRACT NO. _____

NYC LAW DEPT. NO. _____

NOTICE TO BIDDERS

As of March 2013 the City has implemented a new web based subcontractor reporting system through the City's Payee Information Portal (PIP), available at www.nyc.gov/pip. In order to use the new systems, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

In order to obtain subcontractor approval under section 3.02 of Appendix A or Article 17 of the Standard Contract and PPB Rule § 4-13 Contractor is required to list the subcontractor in the system. For each subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within 30 days of making the payment. If any of the required information changes throughout the term of the contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages.

Contractor hereby agrees to these provisions.

SPECIAL NOTICE TO BIDDERS

The New York City Department of Small Business Services (SBS), in conjunction with lender partners, has established the [Upfront Capital Loan](#) program to provide financing of mobilization costs for both prime contractors and subcontractors on City projects.

Under this initiative, loans are available for mobilization needs such as insurance, labor, supplies and equipment. Bidders are encouraged to visit www.nyc.gov/CompeteToWin to learn more or contact UpfrontCapital@sbs.nyc.gov or 311 to obtain details and determine preliminary eligibility.

A successful loan applicant will be required to make an assignment of its contract or subcontract payments to the lender until the loan is repaid. If the loan is to a subcontractor, a prime contractor must honor the terms of such an assignment.

A prime contractor may not discriminate against a subcontractor or potential subcontractor by reason of the subcontractor's participation, or nonparticipation, in the loan program.

NOTICE TO BIDDERS

Pursuant to recent amendments to State law expected to take effect prior to the award of this contract, purchase contracts subject to GML §103 (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article eight of the Labor Law) shall be awarded on the basis of best value as defined in the State Finance Law §163. State Finance Law §163(1)(j) defines best value as that bid or offer that optimizes quality, cost, and efficiency. Accordingly, this contract will be awarded on the basis of best value to the City, which will be determined to be the lowest responsive and responsible bidder, provided however that the Mayor may, pursuant to Charter §313(b)(2), direct the agency to award this contract to other than the low bidder in the best interests of the City by determining, in writing, that another bid optimizes quality, cost and efficiency and is thus the best value to the City. An award to other than the low bidder may only be made to a bidder whose bid is within 10% of the lowest responsive and responsible bid.

NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of \$100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act (“WPEA”), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local Law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

NOTICE TO BIDDERS

Bids must be submitted in the form specified in the solicitation including all required signatures, in ink, and including all required pricing information (typewritten or printed in ink).

If a bid price has been materially altered, to include, additions, erasures, cross-outs, white-outs or any other changes – it must be initialed in ink by the Bidder.

If the alteration has not been initialed in ink, and cannot be severed from the items in the bid, the bidder may be subject to a finding of non-responsiveness.

NOTICE TO BIDDERS

All bids received in Section 5S-01-K are time stamped and issued a receipt by the Contract Development Unit. Only Contract Development Unit receipts and time stamps are authorized. U.S. mail or messenger delivery receipts will not be accepted as proof of delivery.

A copy of the Contract Development Unit receipt is attached to the bid package and a duplicate provided to a messenger, if hand delivered. The bidder is responsible for timely delivery of the bid package to Section 5S-01-K. The Fire Department is not responsible for any delays in delivery of the bid. This includes, but is not limited to, outside mail and delivery services, messenger services, internal security delays, transportation delays, or Fire Department Internal Mail Distribution Services.

Bidders are advised that on occasion security delays at the building entrance can exceed one (1) hour. Bidders delivering the bids must be in possession of valid photo identification that may be retained at the security desk until the bidder exits the building.

Bidders utilizing overnight delivery services should note that the delivery of the bid is made directly to the Fire Department mailroom. The bid will be delivered to Contract Development Unit, 5th Floor, Section 5S-01-K by the Fire Department internal mail distribution personnel. Regular mail service is held at the post office for daily pick up by Fire Department Employees. Bidders should be further aware that all mail including overnight packages may not be delivered until the following day. Therefore, if overnight services are utilized, bidders should allow at least two (2) business days for delivery.

Any bid received at Contract Development Unit, 5th Floor, Section 5S-01-K after the time and date set for receipt of bids is late and shall not be considered. (Procurement Policy Board Rules 3-02(k) (1).

NOTICE TO BIDDERS

Effective April 1, 2007, the Procurement Policy Board (PPB) has made extensive changes to the numbering system of its Rules, resulting in a substantial renumbering of the Rules. The section numbers of PPB rules that are cited or referred to in the Contract contained herein may not have been changed to reflect the new numbers, and thus in some instances the section number of a PPB Rule being cited in a particular Contract provision, bidders are referred to the PPB Rule that addresses the subject matter indicated in that Contract provision.

A copy of the PPB Rules may be downloaded from the New York City Procurement Policy Board website:

<http://www.nyc.gov/html/mocs/ppb/html/rules/rules.shtml>

NOTICE TO BIDDERS

ELECTRONIC FUNDS TRANSFER

- A. In accordance with Section 6-107.1 of the New York City Administrative Code, 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, 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 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 herein to payments on contracts entered into pursuant to §315 of the City 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.**

NOTICE TO BIDDERS

Pursuant to Procurement Policy Board Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the VENDEX system, including the Vendor Name Check process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable required fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. 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.

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**PART I: BID INFORMATION, SPECIFICATION, SUBMISSION
REQUIREMENTS**

SECTION A - INFORMATION FOR BIDDERS

1.0 Description of Procurement

The New York City Fire Department requires a Contractor to purchase licenses, and provide maintenance and support of Novell Products.

2.0 Bid Submission Requirements

- PAGE 69 - Bid Price Submission Section, must be signed, and if incorporated, sealed. Fill out in both numbers and words. The Total Bid Price should equal the Total Bid Price Amount on the Price Schedule.

2.1 Time and Place for Receipt of Bids

- a. Sealed bids shall be received by the Fire Department of the City of New York on or before the day, at the time and at the location set forth below:

Time: **4:00 P.M.**

Date: **December 11, 2014**

Place: **9 MetroTech Center, Brooklyn, N.Y. 11201**
5th Floor, 5S-01-K, Contract Development Unit

Attention: **Roman Shpolyansky**

- b. The completed bid must be submitted in a sealed envelope to **Contract Development Unit, 5th Floor, Section 5S-01-K** on or before the date and time indicated in Section A - INFORMATION FOR BIDDERS, (2.1)(a) above. The envelope must be marked with the name of the person, firm or corporation presenting it, the bid opening date, bid number and bid title. The bid and all other documents requiring signature must be signed and notarized, if required. Failure to comply with these instructions may result in rejection of our bid.
- c. All bids received in **Section 5S-01-K** are time stamped and issued a receipt by the Contract Development Unit. Only Contract Development Unit receipts and time stamps are authorized. U.S. mail or messenger delivery receipts will not be accepted as proof of delivery. A copy of the Contract Development Unit receipt is attached to the bid package and a duplicate provided to a messenger, if hand delivered. The bidder is responsible for timely delivery of the bid package to **Section 5S-01-K**. The Fire Department is not responsible for any delays in delivery of the bid. This includes, but is not limited to, outside mail and delivery services, messenger services, internal security delays, transportation delays, **or Fire Department Internal Mail Distribution Services.**

Bidders are advised that on occasion security delays at the building entrance can exceed one (1) hour. Bidders delivering the bids must be in possession of valid identification that will be retained at the security desk until the bidder exits the building. This identification can be

a driver's license, passport, employee id, credit card, bank card, or immigration card (green card).

Bidders utilizing overnight delivery services should note that the delivery of the bid is made directly to the Fire Department mailroom. The bid will be delivered to **Contract Development Unit, 5th Floor, Section 5S-01-K** by the Fire Department internal mail distribution personnel. Regular mail service is held at the post office for daily pick up by Fire Department Employees. Bidders should be further aware that all mail including overnight packages may not be delivered until the following day. Therefore, if overnight services are utilized, bidders should allow at least two (2) business days for delivery.

Any bid received at **Contract Development Unit, 5th Floor, Section 5S-01-K** after the time and date set for receipt of bids is **late and shall not be considered**. Late bids and modifications shall be promptly returned to the bidder unopened. (Procurement Policy Board Rules 3-02(k) (1) and (3)).

d. Pre-Bid Conference

- A pre-bid conference will not be held for this solicitation.
- A pre-bid conference shall be held on the following date, at the time and at the location set forth below:

Time: _____
Date: _____
Place: _____

Bidder attendance at this pre-bid conference is **non-mandatory**; however, the Department strongly recommends that all interested bidders make an effort to attend.

Nothing stated at the pre-bid conference shall change the terms or conditions of the Invitations For Bids unless a change is made by written amendment.

e. Agency Contact

Any questions or correspondence relating to this bids solicitation shall be addressed to:

Name: Roman Shpolyansky
Address: 9 MetroTech, Brooklyn, N.Y. 11201
Telephone: (718) 999-0298/2333
Fax: (718) 999-0177
Email: Contracts@fdny.nyc.gov

All questions must be received ten (10) business days prior to the bid due date. Questions received after this period will not be accepted.

Charter Section 312(a) Certification:

 X The Agency has determined that the contract(s) to be awarded through this procurement action **will not** result in the displacement of any New York City employee within the Agency. See attached Displacement Determination Form.

 The Agency has determined that the contract(s) to be awarded through this procurement action **will** result in the displacement of any New York City employee within the Agency. See attached Displacement Determination Form.

 The contract to be awarded through the procurement action is a task order contract that does not simultaneously result in the award of a first task order; a displacement determination will be made in conjunction with the issuance of each task order pursuant to such task order contract. Determinations for any subsequent task orders will be made in conjunction with such subsequent task orders..

Signature of Agency Chief Contracting Officer

Date

SECTION B – SPECIFICATIONS AND SCOPE OF WORK

FIRE DEPARTMENT OF THE CITY OF NEW YORK

SPECIFICATION FOR LICENSING, MAINTENANCE AND SUPPORT OF NOVELL PRODUCTS FOR THE NEW YORK CITY FIRE DEPARTMENT

I. INVITATION

- A. The New York City Fire Department requires a Contractor to purchase licenses, and provide maintenance and support of Novell Products.

II. DEFINITIONS

- A. “Agreement” means this Agreement as the same may be amended, modified or supplemented from time to time in accordance with the terms of this Agreement.
- B. “Contractor” means the party providing services pursuant to this Agreement.
- C. “FDNY” or “Department” means the Fire Department of the City of New York located at 9 MetroTech Center, Brooklyn, New York 11201-3857.
- D. “FDNY Authorized Representative” means a Fire Department employee designated by the Assistant Commissioner of the Bureau of Technology and Development Systems to coordinate the inspection and approval process.
- E. “Holidays” means New Years Day, Martin Luther King Jr. Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- F. “Licensor” means a vendor who transfers a license right in a proprietary product to authorized users in accordance with the rights and obligations specified in a contract.
- G. “Notice To Proceed” means the written notification to the Contractor to commence the provision of Services pursuant to this Agreement.
- H. “Services” means any or all services performed by the Contractor or its subcontractors pursuant to this Agreement.

III. SCOPE OF WORK

- A. The Department requires a Contractor to purchase licenses, and provide maintenance and support services for Novell Products including but not limited to upgrades, updates and patches.
- B. The Contractor shall purchase for use by FDNY, licenses for the Novell Open Enterprise Server, a platform for delivering shared file print and directory services. The Contractor must purchase requested licenses and provide written confirmation of

such purchase in a form acceptable to the Department within thirty (30) days from request by FDNY.

- C. The Contractor shall maintain software in accordance with manufacturers' published specifications. The Contractor shall register any licenses, support and maintenance with the existing Novell Master License Agreement ("MLA"), which can be obtained from Novell. The services shall include but not be limited to:
 - 1. Revisions of Software released by Licensor during the term of the Agreement that is designated by Licensor as an "Upgrade". An Upgrade shall mean a revision level enhancement that is evidenced by a change either in the version number or the product name. An Upgrade of an applications product will generally be designated by a version number change immediately to either the right or the left of the decimal (e.g., GroupWise 8.1 to GroupWise 9). The Contractor shall provide Upgrades within thirty (30) days after they become commercially available.
 - 2. Revisions of Software released by Licensor during the term of the Agreement that is designated by Licensor as an "Update". An update shall mean replacing the software with a newer version of the same software (e.g., from version 4.2 to 4.3). Typical software updates contain increased functionality, improved security and/or new features.
 - 3. Revisions of Software released by Licensor during the term of the Agreement that is designated by Licensor as a "Patch". A patch shall mean a piece of software designed to fix problems with a computer program or its supporting data. This includes fixing security vulnerabilities and other bugs, and improving software usability and/or performance.
- D. Upgrades, updates, and patches shall be subject to the prior written approval and acceptance by FDNY. If FDNY does not accept any upgrades, updates, or patches, the Contractor shall fully support the pre-existing versions.
- E. The Contractor shall provide electronic access to Licensor's on-line services and a Licensor support engineer via a remote connection to assist in resolving technical problems.
- F. The Contractor shall provide one (1) subscription to the Licensor's Support Encyclopedia (NSEPro), which contains a database of available technical information and Licensor update files pertaining to the Software.

IV. SERVICE CALLS

- A. The Contractor shall provide maintenance and support services, twenty four (24) hours per day, seven (7) days per week ("Regular Service Window") for severity level 1, 2 or 3 inquires.

- B. The determination as to whether a service request is classified as a severity level 1, 2 or 3 problem lies solely with the FDNY.
- C. Severity level 1 inquiries shall include but not be limited to complete system outage, reported or detected failure of any application, or other major system component.
 - 1. In the event of a severity 1 inquiry, the Contractor shall acknowledge requests and commence remote diagnosis of the problems(s) within one (1) hour from the time of notification by the FDNY Authorized Representative.
- D. Severity 2 or 3 inquiries are questions that do not severely and unavoidably reduce FDNY's ability to carry out the functions of the application or its components.
 - 1. In the event of a severity level 2 or 3 inquiry, the Contractor shall acknowledge requests and commence remote diagnosis of the problem(s) within four (4) hours of receiving notification by FDNY.
- E. Should the Contractor fail to correct any problem within one (1) business day from notification utilizing remote diagnosis, the Contractor shall provide a schedule to the FDNY Facility for the estimated time to correct the problem, including any work-around that may be accepted by the FDNY as a temporary solution.

V. QUALITY CONTROL PROGRAM

- A. The Contractor shall be responsible for the monitoring and inspection of all work performed to ensure compliance with the Agreement requirements. The Contractor shall establish a complete Quality Control program to ensure the requirements of the Agreement are provided as specified. The program shall include, but will not be limited to the following:
 - 1. An inspection system covering all services provided by the Contractor.
 - 2. A checklist for use in reviewing performance during regularly scheduled or unscheduled inspections.
 - 3. The results of the inspections, including documentation of all corrective action taken shall be documented in on-going inspection reports along with the names of the individuals performing the inspections. These reports shall be made available to the FDNY Authorized Representative within twenty four (24) hours of oral notification.
- B. The Contractor shall be responsible for all work performed to ensure compliance with the Agreement requirements. The Contractor shall be responsible for correcting all Contractor deficiencies within three (3) calendar days after written or oral notification from the FDNY Authorized Representative.

VI. GENERAL CONDITIONS

- A. All work performed pursuant to this Agreement shall comply with all applicable Federal, State and City laws, rules and regulations and shall also meet or exceed industry standards. All work shall be performed in accordance with the best modern practice with materials and workmanship of the highest quality.
- B. The Contractor shall bear the costs of any repair resulting from damage caused by the Contractor's work practices or its employees. Any vehicle or equipment, building, facility or personal property damaged by the Contractor in connection with the provision of Services pursuant to this Agreement shall be promptly repaired or replaced to their original condition by the Contractor at no additional cost to the Department within three (3) calendar days.
- C. FDNY Facilities are occupied twenty-four (24) hours per day, seven (7) days per week. The provision of Services by the Contractor pursuant to this Agreement shall be provided as expeditiously as possible with a minimum of interference to Department operations and personnel.
- D. The Department will allow employees of the Contractor access to the premises and facilities at all hours consistent with the requirements of this Agreement in accordance with FDNY security procedures. The Contractor's employees shall display identification at all times while working at FDNY Facilities.
- E. The Contractor shall be responsible for the satisfactory completion of all requests for service made prior to the end of the term of this Agreement.
- F. This Agreement is not intended to create any rights in third parties other than the successors and assigns of the parties.
- G. In the event of termination of this Agreement, the Contractor shall remain liable for the full performance of all the terms and conditions of this Agreement that the Contractor was obligated to perform up to the time of such termination. Any and all continuing obligations and liabilities of the Contractor under this Agreement shall survive the termination of this Agreement.

VII. FINAL ACCEPTANCE OF SERVICES

- A. Final acceptance of the Services by FDNY shall be in the form of written notification from the FDNY Authorized Representative that the hosting, maintenance, and technical support are satisfactory and are accepted as complying with the terms and conditions of this Agreement.
- B. The date of final acceptance shall be the date of such written notification.

VIII. CONTRACTOR QUALIFICATIONS

- A. At the time of bid submission, the Contractor shall have a minimum of three (3) years of experience in purchasing licenses, and the provision of maintenance and support of Novell Products similar to that required by this specification. The use of a subcontractor's experience cannot be used to satisfy this requirement. Individual experience as a principal, director, officer, or employee of an organization may not be used to satisfy this requirement.
- B. To support the experience requirements and other qualifications, the Contractor shall provide:
 - 1. At least five (5) references for work similar to that required by this specification.
 - 2. Tax returns and incorporation records (if applicable) indicating that the bidder is an active organization or sole proprietorship, in continuous operation for a period of three (3) years prior to the bid submission.
 - 3. Other supporting documentation such as contracts, purchase orders, employee payroll records, financial statements, vendor or supplier invoices, and state or local certification records.
- C. The Contractor shall be an authorized Novell reseller/distributor pursuant to requirements of this Agreement.

IX. CONTRACTOR PERSONNEL

- A. The Contractor shall have in its employ at all times a sufficient number of capable and qualified employees to enable it to complete the Services pursuant to this Agreement. The employees shall have training and demonstrated ability in the specified areas, and possess all required licenses, permits, and all other applicable certificates and qualifications. In the absence of any licensing requirements by a Federal, State or City authority, the Contractor shall certify in writing that the persons involved in the performance of the work are competent to perform the Services.
- B. The Contractor shall ensure that all of the Services required by this Agreement are satisfactorily supervised. The Contractor shall provide such supervision as is sufficient to carry out all the terms and conditions of the Agreement.
- C. The Contractor shall designate one of its employees to function in the role of primary contact person. The contact person shall be the liaison for the Contractor for the term of the Agreement, and shall handle issues, problems or questions arising from the performance of Services.
- D. The Department reserves the right to review the credentials and qualifications of any Contractor personnel providing Services pursuant to this Agreement, and to instruct

the Contractor not to use for such purposes any individual that FDNY determines to be unqualified to perform the Services.

- E. The Contractor shall comply with all Department security rules. Contractor personnel shall wear clearly visible photo identification with their company's name, address, and telephone number and the employee name, and shall comply with FDNY security procedures and directions at the FDNY Facilities.

X. CONFIDENTIALITY

- A. The Contractor agrees that all records, information, data, plans and software, as intended and/or as created, which it may have access to examine, prepare, maintain or have custody of and deliver hereunder ("Confidential Information") shall be kept strictly confidential. The Contractor shall not at any time during the term of the Agreement, or thereafter, make any disclosure or statements or release to any third party any Confidential Information without the prior written approval of the Department.
- B. The Contractor agrees that it will instruct its officers, employees, and agents, to maintain the confidentiality of any and all Confidential Information.
- C. Upon expiration or termination of this Agreement, the Contractor shall return to the Department any and all Confidential Information in the possession of the Contractor or its subcontractors, and permanently delete any and all Confidential Information maintained in any electronic form by the Contractor or its subcontractors.
- D. A breach of this section shall constitute a material breach of this Agreement for which the Department may terminate the Agreement. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.
- E. This provision shall survive the expiration or termination of this Agreement.

XI. LIQUIDATED DAMAGES

- A. If the Contractor fails to purchase licenses or provide maintenance and support services in accordance with the time frames established herein, then the Contractor shall be subject to fixed and liquidated damages of three hundred dollars (\$300.00) per calendar day or portion thereof beyond the established time frames that the Contractor fails to complete the licensing, maintenance and support work.
- B. All such charges for Liquidated Damages assessed to the Contractor shall be deducted from the money that is due or shall become due to the Contractor from the City. In the event that there is no money due to the Contractor, then the Contractor shall pay the amount of the charges due the City.

XII. COMPENSATION

- A. The Contractor shall submit an all-inclusive fixed unit price to furnish all labor, equipment, tools, parts, materials and supplies required to purchase licenses and provide maintenance and support services for Novell Products.
- B. All prices shall be fully burdened and shall include but not be limited to labor and parts, capital equipment costs, statutory payroll, fringe benefits, overhead, insurance, travel time, transportation costs, tolls, vehicles, tools, consumable materials, and Contractor profit.
- C. The prices shall remain fixed for the duration of the Agreement, and shall not be subject to any additions, mark-ups, percentage multipliers, or cost of living adjustments.
- D. Any Contractor sponsored upgrades, versions, or software modifications shall be provided at no additional charge to FDNY, including all ongoing support for such upgrades, versions, or software modifications.

XIII. TERM OF CONTRACT

- A. The term this Agreement shall be effective from the date of Notice to Proceed, until the expiration of five (5) consecutive years unless otherwise extended or terminated.

SCHEDULE A

(SUMMARY OF GENERAL PROVISIONS)

Items indicated by a blackened box (■) or by (☒) to left will be required under this contract

Provision	Minimum Limits and Special Conditions
<input type="checkbox"/> Security Deposit or Bid Deposit Not Required	Security Deposit <u>N/A</u> of Contractor's Bid Submission or Bid Bond in the amount of \$ <u>N/A</u>
<input type="checkbox"/> Performance and Payment Bonds	Not Required
<input checked="" type="checkbox"/> Liquidated Damages	Specification - Page 7-6
<input type="checkbox"/> Subcontracting Total Maximum Subcontracting	<u>0%</u>
<input checked="" type="checkbox"/> Term of Agreement	Term of Agreement: Five (5) Years
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	Minimum Limits and Special Conditions
<input checked="" type="checkbox"/> Commercial General Liability	\$ <u>1,000,000.00</u> per occurrence \$ <u>2,000,000.00</u> aggregate (applicable separately to this Project) Additional Insureds: 1. City of New York, including its officials and employees, and 2. 3.
<input checked="" type="checkbox"/> Workers' Compensation <input checked="" type="checkbox"/> Disability Benefits Insurance <input checked="" type="checkbox"/> Employers' Liability <input type="checkbox"/> Professional Liability	Workers' Compensation: Statutory per New York State law without regard to jurisdiction Disability Benefits Insurance: Statutory per New York State law without regard to jurisdiction Professional Services: \$ <u>1,000,000.00</u> per claim
<input checked="" type="checkbox"/> Business Automobile Liability Coverage	\$ 1,000,000.00 per accident If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90

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SCHEDULE A

(SUMMARY OF GENERAL PROVISIONS)

PART III. ADDRESS OF COMMISSIONER

Wherever reference is made in Article 7 to documents to be sent to the **Commissioner** (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth below or, in the absence of such address, to the **Commissioner's** address as provided elsewhere in this **Contract**.

Barry Greenspan

Agency Chief Contracting Officer

FDNY Headquarters

9 MetroTech Center

Brooklyn, NY 11201-3857

SECTION D - BID INFORMATION

1. Bid Submission Check List

- a. Bid Form and Affidavits - BID SUBMISSION (PRICE)

2. Definitions

- a. The definitions set forth in Chapter 1 of the Procurement Policy Board Rules shall apply to this Invitation For Bids.
- b. Except for titles, subtitles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of the contract and the Invitation For Bids.

3. Invitation For Bid Documents

- a. Except for titles, sub-titles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of the contract and the Invitation For Bids.
 - 1. The Advertisement and Proposal for Bids.
 - 2. The Bid.
 - 3. The Agreement.
 - 4. The Budget Director's Certificate
 - 5. The Specifications.
 - 6. The Contract Drawings.
 - 7. All addenda issued by the Agency Chief Contracting Officer (ACCO) prior to the receipt of bids.
 - 8. All provisions required by law to be inserted in this contract whether actually inserted or not.
 - 9. The Notice of Award.
 - 10. Performance and Payment Bonds.
 - 11. Notice to Proceed with Work.
- b. For particulars as to this procurement, including quantity and quality of the purchase, extent of the work or labor to be performed, delivery and performance schedule, and any other special instructions, prospective bidders are referred to the Invitation For Bids documents. A copy of such documents can be obtained from 10:00 AM to 4:00 PM, Monday – Friday, at the following location: Fire Department of the City of New York, 9 MetroTech Center, Brooklyn, N.Y. 11201, Attn: Contract Development Unit, 5S-01-K, or by downloading the documents from the Department’s website and clicking on the appropriate solicitation: <http://nyc.gov/html/fdny/html/contracting/index.shtml>
- c. Additional Copies - Additional copies of the Invitation For Bids documents may be obtained, subject to the conditions set forth in the advertisement for bids.

4. Examination of Proposed Contract

- a. Request for Interpretation or Correction - Prospective bidders must examine the Contract Documents carefully and before bidding must request the ACCO in writing for an interpretation or correction of every patent ambiguity, inconsistency or error therein which should have been discovered by a reasonably prudent bidder. Such interpretation or correction, as well as any additional contract provisions the ACCO may decide to include, will be issued in writing by the ACCO as an addendum to the contract, which will be sent by mail or delivered to each person recorded as having received a copy of the contract documents from the Contract Clerk, and which also shall be posted at the place where the contract documents are available for the inspection of prospective bidders.

Upon such mailing or delivery and posting, such addendum shall become a part of the contract documents, and binding on all bidders, whether or not actual notice of such addendum is shown.

- b. Only the Commissioner's or Agency Chief Contracting Officer's Interpretation or Correction Binding - Only the written interpretation or correction by the Fire Commissioner, ACCO or their duly authorized representative shall be binding as to any interpretation or corrections of the terms and conditions of this contract.

5. Form of Bid

- a. Each bid must be submitted in the prescribed form and must contain: a) the name, residence and place of business of the person or persons making the same; b) the names of all persons interested therein, and if no other person is so interested, such fact must be distinctly stated; c) a statement to the effect that it is made without any connection with any other person making a bid for the same purpose and that it is in all respects fair and without collusion or fraud; d) a statement that no Councilman or other officer or employee or person whose salary is payable in whole or part from the City Treasury is directly or indirectly interested therein or in the supplies, materials or equipment and work or labor to which it relates, or in any portion of the profits thereof; e) a statement that the bidder is not in arrears to the City or to any agency upon a debt or contract or taxes, and is not a defaulter as surety or otherwise upon any obligation to the City to any agency thereof, except as set forth in the bid.
- b. The Bid shall be typewritten or written legibly in ink. **The Bid shall be signed in ink. Erasures or alterations shall be initialed by the signer in ink.**

6. Bidder's Oath

- a. The bid shall be properly signed by an authorized representative of the bidder and the bid shall be verified by the written oath of the authorized representative who signed the bid, that the several matters stated and information furnished therein are in all aspects true.
- b. A materially false statement willfully or fraudulently made in connection with the bid or any of the forms completed and submitted with the bid may result in the termination of any contract between the City and the Bidder. As a result, the Bidder may be barred from participating in future City contracts as well as be subject to possible criminal prosecution.

7. Site Visit

Where the Invitation For Bids involves performance of services on City facilities, all bidders are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost or performance of the Contract. In no event will a failure to inspect a site constitute grounds for withdrawal of a bid after opening or for a claim after award of the Contract.

8. Bids Shall Be Typewritten or Written Legibly in Ink

The Bid shall be typewritten or written legibly in ink. **The Bid shall be signed in ink. Erasures or alterations shall be initialed by the signer in ink.**

9. Irrevocability of Bid

The prices set forth in the bid cannot be revoked and shall be effective until the award of the contract, unless the bid is withdrawn as provided for in Section 14, below.

10. Acknowledgment of Amendments

The receipt of any amendment to the contract documents shall be acknowledged by the bidder.

11. Bid Samples and Descriptive Literature

Bid samples and descriptive literature shall not be submitted by the bidder, unless expressly requested elsewhere in the contract or contract documents. Any unsolicited bid samples or descriptive literature which are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of this contract.

12. Proprietary Information/Trade Secrets

The bidder shall identify those portions of its bid that it deems to be confidential, proprietary information or trade secrets, and provide justification why such materials shall not be disclosed by the City. All materials the bidder desires to remain confidential shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof with the word "Confidential". Such materials stamped "Confidential" must be easily separable from the non-confidential sections of the bid.

All such materials so indicated shall be reviewed by the Agency and any decision not to honor a request for confidentiality shall be made in accordance with the NYS Freedom of Information Law (FOIL). Prices, makes and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the bidder.

13. Bid Evaluation and Award

In accordance with the New York City Charter, the Procurement Policy Board Rules and the terms and conditions of this Invitation For Bids, this contract shall be awarded, if at all, to the lowest responsive and responsible bidder, whose bid meets the requirements and evaluation criteria set forth in the Invitation For Bids, and whose bid price is either the lowest bid price or, if the Invitation For Bids so states, the lowest evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation For Bids. Contract award is subject to provisions of the MacBride Principles Law.

The date of award is dependent on the responses of the bidders, determinations of responsiveness and responsibility, resolution of any appeals or disputes, as well as the timely submission of accurate and complete information by the successful contractor. The successful contractor should anticipate that award may not be for a period up to 6 months from the date of bid opening, and may be extended based on processing of relevant information and other approvals.

14. Late Bids, Late Withdrawals and Late Modifications

Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered.

The exception to this provision is that a late modification of a successful bid that makes the bid terms more favorable to the City shall be considered at any time it is received.

15. Withdrawal of Bids

Except as provided for in Section 14, above, a bidder may not withdraw its bid before the expiration of forty-five (45) days after the date of the opening of bids; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual award.

If within sixty (60) days after the execution of the contract, the ACCO fails to fix the date for commencement of work by written notice to the bidder, the bidder, at his option, may ask to be relieved of his obligation to perform the work called for by written notice to the ACCO. If such notice is given the bidder waives all claims in connection with this contract.

16. Mistake in Bids

a. Mistake Discovered Before Bid Opening

A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid.

b. Mistakes Discovered Before Award

1. In accordance with the Procurement Policy Board Rules, if a bidder alleges a mistake in bid after bid opening and before award, the bid may be corrected or withdrawn

upon written approval of the Agency Chief Contracting Officer and Agency Counsel if the following conditions are met:

- i) **Minor Informalities.** Minor informalities in bids are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City.
- ii) **Mistakes Where Intended Correct bid is Evident.** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
- iii) Left intentionally blank.
- iv) **Mistakes Where Intended Correct Bid [for Construction] is Not Evident.** Mistakes may not be corrected after bid opening. A bidder may be permitted to withdraw a low bid where a unilateral error or mistake has been discovered in the bid and the Contracting Officer makes the following determination, which shall be approved by the ACCO:
 - a) the mistake was known or made known to the agency prior to [the awarding of the contract] supplier selection or within three days after the opening of the bid, whichever period is shorter;
 - b) the price bid was based on a error of such magnitude that enforcement would be unconscionable;
 - c) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error;
 - d) the error in bid is actually due to an unintentional and substantial arithmetic error or unintentional omission of a substantial quantity of work, labor, material, goods, of services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn, and
 - e) it is possible to place the City in the same condition that had existed prior to the receipt of the bid.

Upon the approval of the ACCO, the bid may be withdrawn, and the bid bond or other security returned to the bidder. The contract shall either be awarded to the next lowest bidder or resolicited pursuant to these Rules. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.

Upon the approval of the ACCO, the bid may be withdrawn, and the bid bond or other security returned to the bidder. The contract shall either be awarded to the next lowest bidder or resolicited pursuant to these Rules. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.

c. Mistakes Discovered After Award

Mistakes shall not be corrected after award of the contract except where the City Chief Procurement Officer subject to the approval of Corporation Counsel makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

17. Low Tie Bids

a. When two or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation For Bids, the Agency Chief Contracting Officer will break the tie in the following manner and order of priority:

- (i) Award to a certified New York City minority- or woman-owned business entity bidder;
- (ii) Award to a New York City bidder;
- (iii) Award to a certified New York State minority- or woman-owned business bidder; and
- (iv) Award to a New York State bidder.

b. If two or more bidders still remain equally eligible after application of paragraph (a) above, award shall be made by a drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

18. Rejection of Bids

a. **Rejection of Individual Bids.** The Agency Head may reject a bid if:

- (1) The bidder fails to furnish any of the information required pursuant to this solicitation; or if
- (2) The bidder is determined to be not responsible pursuant to the Procurement Policy Board Rules; or if
- (3) The bid is determined to be non-responsive pursuant to the Procurement Policy Board Rules.

b. **Rejection of All Bids.** The Agency, upon written approval by the Agency Chief Contracting Officer, may reject all bids and may elect to resolicit bids in accordance with the Procurement Policy Board Rules or by other method authorized by such rules.

19. Right to Appeal Determinations of Non-Responsiveness or Non-Responsibility and Right to Protest Solicitations and Award.

The bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award, pursuant to **Sections 2-07(e), 2-08(k), (l), (m), and 2-10** respectively, of the Procurement Policy Board Rules.

20. Affirmative Action and Equal Employment Opportunity

This Invitation For Bids is subject to applicable provisions of Federal, State, and Local Laws and executive orders requiring affirmative action and equal employment opportunity.

20a. Minority- or Woman-Owned Business and/or Locally-based Enterprise

Bidders may obtain information concerning the availability of qualified and experienced Certified Minority- or Woman-Owned Business and/or Locally-Based Enterprise that can supply products or services for your organization needs by consulting the New York City Department of Small Business (SBS) Online Directory of Certified Business at www.nyc.gov/sbs. Applications to be a Certified Minority- or Woman-Owned Business and/or Locally-Based Enterprise may be obtained at the following SBS website www.nyc.gov/sbs.

21. VENDEX Questionnaire

Pursuant to **Administrative Code 6-116.2 and Section 2-08** of the rules of the Procurement Policy Board, bidders may be obligated to submit completed VENDEX questionnaires with this bid. Generally, if this bid is one hundred thousand dollars (\$100,000) or more, or if this bid when added to the sum total of all contracts, concessions and franchises the bidder has received from the City and any subcontracts received from City contractors over the passes twelve months, equals or exceeds one hundred thousand dollars (\$100,000) VENDEX questionnaires must be completed and submitted with this bid. Any questions concerning this requirement must be submitted to the Agency Chief Contracting Officer or the contact person for this contract. The Vendex Questionnaires consist of a Vendor Questionnaire and a Principal Questionnaire. The Vendor Questionnaire, the Principal Questionnaire and detailed instructions regarding the completion of the Vendex Questionnaires may be obtained and downloaded from <http://www.nyc.gov/vendex>. The Vendex Questionnaire **must be** completed by the **winning bidder and any subcontractors subsequent to award**, and submitted to the Department before any award of contract or subcontract may be made or before approval is given for a proposed sub-contractor. **Non-Compliance with these submission requirements may result in the disqualification of the Bid or vendor, disapproval of a sub-contract or, subsequent withdrawal of approval for the use of an approved sub-contractor, or the cancellation of the contract after its award.**

22. Subcontractor Approval Form

The winning bidder shall provide a completed Subcontractor Approval Form (see page 83) for each proposed subcontractor at such time as the winning bidder shall propose to engage

the services of the subcontractor. The winning bidder shall review the requirements in the section marked "Agency" on the Subcontractor Approval Form and provide all information as required. **Non-Compliance with these requirements may result in the disapproval of a sub-contract or the cancellation of the contract after its award.**

23. Audit by Comptroller

The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, One Centre Street, Room 835, New York, New York; telephone number (212) 669-7883.

24. Bid Security

- a. Bid Bond. If required in the Schedule of Bonds and Liability Insurance in this Invitation For Bids, no bid will be received or considered which is not accompanied by a Bid Bond (in the form set forth herein) issued by a surety company which is authorized to do business in the State of New York.
- b. The Bid Bond shall insure the City of New York to the extent of not less than ten percent (**10%**) of the amount of the Bid Contract Price.
- c. In lieu of a Bid Bond, the bid may be accompanied by a deposit in approximately the sum of two percent (**2%**) of the amount of the Bid Contract Price. Such deposit shall consist of a certified check upon a state or national bank or trust company or a check of such bank or trust company signed by a duly authorized officer thereof, drawn to the City which the Comptroller shall approve as of equal value with the sum so required.
- d. The bid deposit, in whatever form, must not be enclosed in the envelope containing the bid, but must be submitted separately to the ACCO's representative upon presentation of the bid.
- e. The Bid Bond, or check, or cash as the case may be, shall assure the City of New York and the Agency of the adherence of the bidder to its bid and the execution of the contract, in form as annexed hereto, if its bid is accepted.

25. Performance Bond

If required in the Schedule of Bonds and Liability Insurance in this Invitation For Bids (Schedule A), the successful bidder shall, prior to or at the time of the execution of the contract deliver to the City an executed bond in a form prescribed herein, and having as surety thereunder, such surety company or companies as are approved by the Comptroller, in the amount set forth in said Schedule of Bonds and Liability Insurance to secure the faithful performance and the completion of the contract.

26. Payment Bond

If required in the Schedule of Bonds and Liability Insurance in this Invitation For Bids (Schedule A), the successful bidder shall, prior to or at the time of execution of the contract deliver to the City an executed bond in form prescribed herein, and having as surety

thereunder, such surety company or companies as are approved by the Comptroller in the amount set forth in said Schedule of Bonds and Liability Insurance, as security for the payment for all persons performing Labor or furnishing materials in connection with the contract.

27. Deposits

- a. In lieu of a performance or payment bond, the successful bidder may deposit with the Comptroller money or an obligation of the City of New York which the Comptroller shall approve as of equal value with the amount of the bond or bonds required in the Schedule of Bonds and Liability Insurance.
- b. Whenever the successful bidder deposits obligations of the City of New York in lieu of a performance or payment bond, the Comptroller may sell and use the proceeds thereof, for any purpose for which the principal or surety on such bond would be liable under the terms of the contract. If money is deposited with the Comptroller, the successful bidder shall not be entitled to receive interest on such money from the City.

Note: Deposits in Lieu of Bonds

In lieu of a payment or performance bond, a bidder may deposit (a) cash in the form of a bank check or certified check payable to New York City Fire Department in the amount of one hundred percent (100%) of the bid price or (b) a letter of credit in the amount of one hundred percent (100%) of the contract bid price.

Payment and Performance Bonds

Performance and Payment bonds are required only for construction contracts that are greater than Five Hundred Thousand Dollars (\$500,000.00). Each bond shall be for one hundred percent (100%) of the contract bid price.

28. Failure to Execute Contract

In the event of failure of the successful bidder to execute the contract and furnish any required security and insurance, within ten (10) days after notice of the award of the contract, the deposit of the successful bidder or so much thereof as shall be applicable to the amount of the award made shall be retained by the City, and the successful bidder shall be liable for and hereby agrees to pay on demand the difference between the price bid and the price for which such contract shall be subsequently relet, including the cost of such reletting and less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action in an accepted bid.

29. Power of Attorney

Attorneys in fact who sign performance or payment bonds must file with each bond a certified copy of their power of attorney to sign said bond or bonds.

30. Financial Qualifications

- a. The Agency may require any bidder or prospective bidder to furnish all books of account, records, vouchers, statements or other information concerning the bidder's financial status for

examination as may be required by the Agency to ascertain bidder's responsibility and capability to perform the contract.

- b. If the bidder fails or refuses to supply any of the documents or information set forth in paragraph (a) hereof or fails to comply with any of the requirements thereof, the Agency may reject the bid.

31. Bureau of Office Labor Services Information

- a. Who Must File a Complete Employment Report - In accordance with Executive Order No. 50 (1980) and its implementing Regulations (E.O. 50), the filing of a completed Employment Report (ER) is a requirement of doing business with the City of New York if you meet all of the following conditions:
 - 1. you have been identified as the lowest bidder for a supply or service contract or your proposal for supplies or services has been accepted;
 - 2. your firm employs 50 or more people, and please note that
 - 3. suppliers, sub-contractors or vendors performing on the contract who meet conditions 2 and 3, also must file an ER if the subcontract value is greater than one hundred thousand dollars (\$100,000).

If you are the low bidder, an ER will be sent to you under separate cover.

- b. Who Must File A Less Than 50 Employees Certificate
 - 1. If you company or any of its facilities performing on the contract has fewer than 50 employees, although the contract value exceeds \$50,000, you need only submit a "Less Than 50 Employees Certificate".
 - 2. If there is a sub-contractor, supplier or vendor to the prime Contractor and any of its facilities performing on the contract has fewer than 50 employees, although the sub-contract value exceeds \$50,000, the subcontractor shall submit the "Less Than 50 Employees Certificate".

32. Labor Law and Living Wage Requirements

The successful bidder will be required to comply strictly with all Federal, State and Local laws and regulations, including but not limited to providing on-the-job training opportunities and payment of prevailing wages, and in accordance with all requirements of Local Law §220 and Labor Law § 230 and Executive Order 102 (2007).

I. For public works or building service contracts:

- a. The successful bidder shall be required to enter into written agreements with subcontractors prior to the subcontractors commencing work under the contract, which shall include prevailing wage and supplement requirements.

- b. Compliance with the Labor Law prevailing wage and supplement requirements are material terms of the contract with the City, and in the event a Contractor is found liable for a violation of such requirements, the Contractor shall be liable to the City for all of its costs in enforcing such requirements.
- c. Contractors and subcontractors shall maintain standard sign-in and sign-out logs, or in the alternative, and subject to the approval of the ACCO, an equivalent electronic or biometric, and submit such logs and other payroll records to the Fire Department or the Comptroller upon request.
- d. Contractors and subcontractors shall pay their workers under the Contract by check. For all contractors in excess of one million dollars (\$1,000,000) and all subcontracts in excess of (\$750,000) such checks shall be generated by a payroll system (or an in-house system may be used, subject to the approval of the ACCO), and in either case, provide check stubs or other documentation to the employees at least once each month containing information sufficient to document compliance with the requirements of the Labor Law concerning prevailing wages and supplements.

II. For contracts subject to the Living Wage Law:

- a. The successful bidder shall be required to enter into written agreements with subcontractors prior to the subcontractors commencing work under the contract, which shall include provisions relating to wages, supplements, and health benefits required by the Living Wage Law.
- b. Compliance with the Living Wage Law as material terms of the contract with the City, and in the event a Contractor is found liable for a violation of such requirements, the Contractor shall be liable to the City for all of its costs in enforcing such requirements.
- c. Contractors and subcontractors shall maintain standard sign-in and sign-out logs, or in the alternative, and subject to the approval of the ACCO, an equivalent electronic or biometric, and submit such logs and other payroll records to the Fire Department or the Comptroller upon request.
- d. Contractors and subcontractors shall pay their workers under the Contract by check. For all contractors in excess of one million dollars (\$1,000,000) and all subcontracts in excess of (\$750,000) such checks shall be generated by a payroll system (or an in-house system may be used, subject to the approval of the ACCO), and in either case, provide check stubs or other documentation to the employees at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning prevailing wages, supplements and health benefits.

III. Failure to comply with the requirements of this article may be grounds for default and/or withholding payments due under the contract.

- IV.*** All prime contractors being awarded contracts subject to Prevailing Wage or Living Wage must complete and sign a pre-award statement concerning wage requirements. All subcontractors being considered for contracts subject to Prevailing Wage or Living Wage must complete and sign a pre-approval statement concerning wage requirements where the

subcontract value exceeds \$250,000 as part of the subcontractor approval process. This requirement applies to all Prevailing Wage or Living Wage contract awards.

33. Publicity

- a.** The prior written approval of the Department is required before the Contractor or any of its employees, servants, agents, or independent contractors may, at any time, either during or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through the media of communication bearing on the work performed or data collected under this agreement.
- b.** If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the Department shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

APPENDIX A – August 2011 Final

**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

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

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

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:

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 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; 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.

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 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 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]*

Address _____

City _____ State _____ Zip Code _____

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 _____

By _____

Signature

_____ 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.

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized officer of broker]

[Name of authorized officer (typewritten)]

[Title of authorized officer (typewritten)]

[Contact Phone Number for Broker (typewritten)]

[Email Address of Broker (typewritten)]

Sworn to before me this

_____ day of _____, 201_

NOTARY PUBLIC

AGREEMENT

This agreement made and entered into as of the _____ day of _____ 20_____, by and between the Fire Department Agency Chief Contracting Officer on behalf of the City of New York ("Fire Department Chief Contracting Officer") and _____ ("Contractor") having offices located at _____.

This Agreement consists of the Advertisement and proposal for Bids, the Information for Bidders, The Agreement, Appendix "A", the Specifications, the Bid Documents, all addenda issued by the Commissioner prior to the receipt of Bids, the Notice of Award, the Notice to Proceed with the work, and all provisions required by law to be inserted into this Agreement, whether actually inserted or not.

Each party has full power and authority to enter into and perform this Agreement, and the persons authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read the Agreement, understands it, and agrees to be bound by it.

The Fire Department Agency Chief Contracting Officer on behalf of the City of New York, and the Contractor have executed this Agreement in triplicate, one part of which is to remain with the Fire Department Agency Chief Contracting Officer, one other to be filed with the Comptroller of the City, and the third to be delivered to the Contractor.

THE CITY OF NEW YORK

By _____
Fire Dept. Agency Chief Contracting Officer

(Name of Contractor)

By _____
(Member of Firm or Officer of Corporation)

(Where Contractor is a Corporation, add)

Attest: _____
Secretary

(Seal)

AGREEMENT

Acknowledgement by Agency Chief Contracting Officer

State of New York
County of Kings, ss:

On this _____ day of _____, 20____ before me personally came Barry Greenspan to me known and known to me to be the Agency Chief Contracting Officer of the Fire Department of the City of New York, the person described as such in and who as such executed the foregoing instrument and he acknowledged to me that he executed the same as Agency Chief Contracting Officer for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

AGREEMENT

Acknowledgement by Corporation

State of _____

City of _____, ss:

On this _____ day of _____, 20____ before me personally came _____ who being by me duly sworn, did depose and say that s/he resides in the City of _____; that s/he is the _____ of the _____ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his/her name thereto by like order.

Notary public or Commissioner of Deeds

Acknowledgement by Individual

State of _____

City of _____, ss:

On this _____ day of _____, 20_____ before me personally came _____ to me know and known to me to be the same person described and who executed the foregoing instrument and he acknowledged to me that he executed the same for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

Acknowledgements by Partnership

State of _____

City of _____, ss:

On this _____ day of _____, 20_____ before me personally came _____ to me known and known to me to be a member of _____ for firm described in and which executed the foregoing instrument and he acknowledged to me that s/he subscribed the name of said firm thereto on behalf of said firm for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

AGREEMENT

AUTHORITY

BUDGET DIRECTORS CERTIFICATE NO.....DATED

APPROPRIATION

COMMISSIONER'S CERTIFICATE

In conformity with the provisions of Section 93-C-3.0 of the Administrative Code of the City of New York, it is hereby certified that the estimated cost of the work, materials, and supplies required by the within contract, amounting to _____

_____dollars (\$ _____) is chargeable to the fund of the Department of Fire, entitled.

Code, _____

I hereby certify that the specifications contained herein comply with the terms and conditions of the...**BUDGET.**

Agency Chief Contracting Officer

COMPTROLLER'S CERTIFICATE

The City of New York, _____, 20_____

In pursuance of the provisions of section 93-C-3.0 of the Administrative Code of the City of New York, I hereby certify that there remains unapplied and unexpended a balance of the above mentioned fund applicable to this contract sufficient to pay the estimated expense of executing the same.

viz:\$ _____

Comptroller

PART III - BID SUBMISSION DOCUMENTS

PART III - BID SUBMISSION DOCUMENTS
BID PRICE SUBMISSION

SECTION I

**NOTE TO BIDDERS: FAILURE TO COMPLETE THIS SECTION IN DETAIL WILL
RESULT IN REJECTION OF YOUR BID.**

1. **THE UNDERSIGNED** agrees, if this bid is accepted, that it will, within 10 days after receipt of notice of award, furnish certificates of insurance as may be required, execute the Agreement set forth in this Competitive Sealed Bid and will proceed, when directed to do so, with the work required hereunder in strict compliance with the terms and conditions set forth in this Competitive Sealed Bid **AT THE FOLLOWING BID PRICE:**

TOTAL BID PRICE: _____

(Amount in words) _____

_____ dollars AND

_____ cents.

NOTE: In case of discrepancy between the amount in figures and the amount in words the lesser amount will apply.

2. **THE UNDERSIGNED** hereby certifies to the truth and accuracy of all figures and answers contained in the documentation submitted with the bid, and authorizes the Department to make any necessary examination of the books of account, records and vouchers of the bidder to determine its responsibility.

3. **THE UNDERSIGNED** hereby agrees that the Provisions, re: MacBride Principles, constitute material conditions of this contract.

Bidder (Print) _____

By _____

(Signature of Person Authorized to sign this Bid)

(Type name and title, if any)

attest:

(Corporation Seal)

(Secretary of Corporate Bidder)

**PRICE SCHEDULE FOR LICENSING, MAINTENANCE AND SUPPORT OF
NOVELL PRODUCTS FOR THE NEW YORK CITY FIRE DEPARTMENT
PIN #: 057150000837**

Year One

A. Maintenance and Support Services

Description	Product Number	Unit Price (A)	Estimated Quantity (B)	Total Amount (C) (A) X (B) = (C)
Novell Identify Manager 1 User/1 Year Priority Maintenance	877-007494	\$_____	400	\$_____
Zenworks 10 Configuration Management Standard 1 Year Priority Maintenance	877-001652	\$_____	2950	\$_____
Novell Open Enterprise Server 1 User/1 Year Priority Maintenance	877-001664	\$_____	2950	\$_____
Novell Identity Manager Integration Module for Mainframe for 800 Series MVS 1 User/1 Year Priority Maintenance	877-001742	\$_____	400	\$_____
Novell Identity Manager Integration Module for Linux and Unix 1 User/1 Year Priority Maintenance	877-001734	\$_____	400	\$_____
Novell Open Enterprise Server 2 & Prior 1 User License	873-010895	\$_____	300	\$_____
Zenworks 10 Configuration Management Standard Instance/User License	873-010731	\$_____	300	\$_____
Subtotal				\$_____

B. License Services

Description	Product Number	Unit Price (A)	Estimated Quantity (B)	Total Amount (C) (A) X (B) = (C)
Novell Open Enterprise Server 2 & Prior 1 User License	873-010895	\$_____	300	\$_____
Zenworks 10 Configuration Management Standard Instance/User License	873-010731	\$_____	300	\$_____
Subtotal				\$_____

Total Year One (A+B) = \$ _____

Note: The quantities listed above are estimates used for bid purposes only. The Fire Department will not guarantee a minimum amount of work under this Agreement.

Company Name _____

Date _____

Printed Name _____

Title _____

Signature _____

Phone _____

**PRICE SCHEDULE FOR LICENSING, MAINTENANCE AND SUPPORT OF
NOVELL PRODUCTS FOR THE NEW YORK CITY FIRE DEPARTMENT
PIN #: 057150000837**

Year Two

A. Maintenance and Support Services

Description	Product Number	Unit Price (A)	Estimated Quantity (B)	Total Amount (C) (A) X (B) = (C)
Novell Identify Manager 1 User/1 Year Priority Maintenance	877-007494	\$_____	400	\$_____
Zenworks 10 Configuration Management Standard 1 Year Priority Maintenance	877-001652	\$_____	3250	\$_____
Novell Open Enterprise Server 1 User/1 Year Priority Maintenance	877-001664	\$_____	3250	\$_____
Novell Identity Manager Integration Module for Mainframe for 800 Series MVS 1 User/1 Year Priority Maintenance	877-001742	\$_____	400	\$_____
Novell Identity Manager Integration Module for Linux and Unix 1 User/1 Year Priority Maintenance	877-001734	\$_____	400	\$_____
Novell Open Enterprise Server 2 & Prior 1 User License	873-010895	\$_____	300	\$_____
Zenworks 10 Configuration Management Standard Instance/User License	873-010731	\$_____	300	\$_____
Subtotal				\$_____

B. License Services

Description	Product Number	Unit Price (A)	Estimated Quantity (B)	Total Amount (C) (A) X (B) = (C)
Novell Open Enterprise Server 2 & Prior 1 User License	873-010895	\$_____	300	\$_____
Zenworks 10 Configuration Management Standard Instance/User License	873-010731	\$_____	300	\$_____
Subtotal				\$_____

Total Year Two (A+B) = \$ _____

Note: The quantities listed above are estimates used for bid purposes only. The Fire Department will not guarantee a minimum amount of work under this Agreement.

Company Name _____

Date _____

Printed Name _____

Title _____

Signature _____

Phone _____

**PRICE SCHEDULE FOR LICENSING, MAINTENANCE AND SUPPORT OF
NOVELL PRODUCTS FOR THE NEW YORK CITY FIRE DEPARTMENT
PIN #: 057150000837**

Year Three

A. Maintenance and Support Services

Description	Product Number	Unit Price (A)	Estimated Quantity (B)	Total Amount (C) (A) X (B) = (C)
Novell Identify Manager 1 User/1 Year Priority Maintenance	877-007494	\$ _____	400	\$ _____
Zenworks 10 Configuration Management Standard 1 Year Priority Maintenance	877-001652	\$ _____	3550	\$ _____
Novell Open Enterprise Server 1 User/1 Year Priority Maintenance	877-001664	\$ _____	3550	\$ _____
Novell Identity Manager Integration Module for Mainframe for 800 Series MVS 1 User/1 Year Priority Maintenance	877-001742	\$ _____	400	\$ _____
Novell Identity Manager Integration Module for Linux and Unix 1 User/1 Year Priority Maintenance	877-001734	\$ _____	400	\$ _____
Novell Open Enterprise Server 2 & Prior 1 User License	873-010895	\$ _____	300	\$ _____
Zenworks 10 Configuration Management Standard Instance/User License	873-010731	\$ _____	300	\$ _____
Subtotal				\$ _____

B. License Services

Description	Product Number	Unit Price (A)	Estimated Quantity (B)	Total Amount (C) (A) X (B) = (C)
Novell Open Enterprise Server 2 & Prior 1 User License	873-010895	\$ _____	300	\$ _____
Zenworks 10 Configuration Management Standard Instance/User License	873-010731	\$ _____	300	\$ _____
Subtotal				\$ _____

Total Year Three (A+B) = \$ _____

Note: The quantities listed above are estimates used for bid purposes only. The Fire Department will not guarantee a minimum amount of work under this Agreement.

Company Name _____ Date _____

Printed Name _____ Title _____

Signature _____ Phone _____

**PRICE SCHEDULE FOR LICENSING, MAINTENANCE AND SUPPORT OF
NOVELL PRODUCTS FOR THE NEW YORK CITY FIRE DEPARTMENT
PIN #: 057150000837**

Year Four

A. Maintenance and Support Services

Description	Product Number	Unit Price (A)	Estimated Quantity (B)	Total Amount (C) (A) X (B) = (C)
Novell Identify Manager 1 User/1 Year Priority Maintenance	877-007494	\$_____	400	\$_____
Zenworks 10 Configuration Management Standard 1 Year Priority Maintenance	877-001652	\$_____	3850	\$_____
Novell Open Enterprise Server 1 User/1 Year Priority Maintenance	877-001664	\$_____	3850	\$_____
Novell Identity Manager Integration Module for Mainframe for 800 Series MVS 1 User/1 Year Priority Maintenance	877-001742	\$_____	400	\$_____
Novell Identity Manager Integration Module for Linux and Unix 1 User/1 Year Priority Maintenance	877-001734	\$_____	400	\$_____
Novell Open Enterprise Server 2 & Prior 1 User License	873-010895	\$_____	300	\$_____
Zenworks 10 Configuration Management Standard Instance/User License	873-010731	\$_____	300	\$_____
Subtotal				\$_____

B. License Services

Description	Product Number	Unit Price (A)	Estimated Quantity (B)	Total Amount (C) (A) X (B) = (C)
Novell Open Enterprise Server 2 & Prior 1 User License	873-010895	\$_____	300	\$_____
Zenworks 10 Configuration Management Standard Instance/User License	873-010731	\$_____	300	\$_____
Subtotal				\$_____

Total Year Four (A+B) = \$_____

Note: The quantities listed above are estimates used for bid purposes only. The Fire Department will not guarantee a minimum amount of work under this Agreement.

Company Name _____ Date _____

Printed Name _____ Title _____

Signature _____ Phone _____

**PRICE SCHEDULE FOR LICENSING, MAINTENANCE AND SUPPORT OF
NOVELL PRODUCTS FOR THE NEW YORK CITY FIRE DEPARTMENT
PIN #: 057150000837**

Year Five

A. Maintenance and Support Services

Description	Product Number	Unit Price (A)	Estimated Quantity (B)	Total Amount (C) (A) X (B) = (C)
Novell Identify Manager 1 User/1 Year Priority Maintenance	877-007494	\$ _____	400	\$ _____
Zenworks 10 Configuration Management Standard 1 Year Priority Maintenance	877-001652	\$ _____	4150	\$ _____
Novell Open Enterprise Server 1 User/1 Year Priority Maintenance	877-001664	\$ _____	4150	\$ _____
Novell Identity Manager Integration Module for Mainframe for 800 Series MVS 1 User/1 Year Priority Maintenance	877-001742	\$ _____	400	\$ _____
Novell Identity Manager Integration Module for Linux and Unix 1 User/1 Year Priority Maintenance	877-001734	\$ _____	400	\$ _____
Novell Open Enterprise Server 2 & Prior 1 User License	873-010895	\$ _____	300	\$ _____
Zenworks 10 Configuration Management Standard Instance/User License	873-010731	\$ _____	300	\$ _____
Subtotal				\$ _____

B. License Services

Description	Product Number	Unit Price (A)	Estimated Quantity (B)	Total Amount (C) (A) X (B) = (C)
Novell Open Enterprise Server 2 & Prior 1 User License	873-010895	\$ _____	300	\$ _____
Zenworks 10 Configuration Management Standard Instance/User License	873-010731	\$ _____	300	\$ _____
Subtotal				\$ _____

Total Year Five (A+B) = \$ _____

Grand Total Years One Through Five = \$ _____

Note: The quantities listed above are estimates used for bid purposes only. The Fire Department will not guarantee a minimum amount of work under this Agreement.

Company Name _____ Date _____

Printed Name _____ Title _____

Signature _____ Phone _____

STATEMENTS AND REPRESENTATIONS OF BIDDER

BIDDER MAKES THE FOLLOWING STATEMENTS AND REPRESENTATIONS AS PART OF THIS BID:

1. That the bidder, if an individual, is of lawful age. That the bidder is the only one interested in this bid; and that no person, firm or organization other than herein above named has any interest in this bid, or in the contract proposed to be taken.

2. That the bidder and each person signing on behalf of any bidder certified, 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 knowledge and belief:
 - A. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such process with any other bidder or with any competitor:

 - B. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to bid opening, directly or indirectly to any other bidder or to any competitor; and

 - C. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition:

 - D. That no councilperson or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.

 - E. Said 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 or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except

The bidder shall indicate on its bid its Tax Identification Number.

3. That the said bidder has inspected the site where the services are to be performed and is satisfied as to all general and local conditions that may affect the cost of performance of the contract.

4. That the bidder has examined all parts of this Proposal for Bid, including but not limited to the Agreement and the terms and conditions thereof; and if the bid is accepted as submitted, the bidder shall execute the Agreement as set forth herein.

5. That the bidder certifies that it is duly licensed to do business in the City and State of New York and holds or agrees to obtain all necessary permits required by law or regulation for the performance of the contract.

6. The bidder, executes this document expressly warranting and representing that should this bid be accepted by the City and the contract awarded to it, the bidder and its subcontractors engaged in the performance of the contract: (1) will comply with the provisions of Section 343-9.0 of the Administrative Code of the City of New York in relation to minimum wages and other stipulations and the rules and regulation of the Procurement Policy Board adopted pursuant thereto as more expressly and in detail set forth in the contract form.

In the event of breach or violation of any of the foregoing, the bidder may be subject to damages, liquidated or otherwise, cancellation of the contract and suspension as a bidder for a period of three (3) years.

7. The bidder, (1) represents that its attention has been specifically drawn to the Equal Employment Provisions of the Contract Agreement, and (2) warrants that it will comply with all the terms and provisions prescribed therein.
8. The bidder executes this document expressly warranting and representing that should this bid be accepted and the contract awarded to the bidder, the bidder and its subcontractors engaged in the performance (1) will comply with the provisions of Section 343-8.0 of the Administrative Code of the City of New York and the nondiscrimination provisions of Sections 220 and 239 of the New York Labor Law as more expressly and in detail set forth in the contract form: and (2) will post notices to be furnished by the City, setting forth the requirements of the aforesaid law in prominent and conspicuous places in each and every plant, factory, building and structure where employees engaged in the performance of the contract can readily view it, and will continue to keep such notices posted until the supplies, materials and equipment, or work, labor and services required by the Contractor have been finally accepted by the City.

ACKNOWLEDGEMENT OF BIDDER - PRINCIPAL IF A CORPORATION

State of _____

ss:

County of _____

On this _____ day of _____ 20_____ before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____

_____ that he/she is the _____ of _____

the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal, that it was so affixed by order of the directors of the directors of said corporation, and that he signed his name thereto by like order.

Notary Public

ACKNOWLEDGEMENT OF BIDDER - PRINCIPAL IF A PARTNERSHIP

State _____

ss:

County _____

On this _____ day of _____ 20_____ before me personally appeared _____ to me known and known to me to be one of the members of the firm of _____

_____ described in and who executed the foregoing instrument and he/she acknowledged to me that the executed the same as and for the act and deed of said firm.

Notary Public

ACKNOWLEDGEMENT OF BIDDER - PRINCIPAL IF AN INDIVIDUAL

State of _____

ss:

County of _____

On this _____ day of _____ 20_____ before me personally appeared _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

Notary Public

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]*

Address _____
City _____ State _____ Zip Code _____

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 _____

By _____
Signature

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.**

7. If you are doing business under a trade name, give state and county in which certificate is filed.

(State) (County)

(If certificate is filed outside New York City, attach a certified copy of the certificate).

8. Number of employees: _____

9. Do you share the working premises with any other firm or firms? Yes No

If Yes, provide the name of the other firm or firms:

(Address) (Years)

10. Do you own or operate a warehouse? Yes No

If Yes, give address and number of years at address:

(Address) (Years)

11. Does this business have any outstanding bids for contracts with the City of New York?
 Yes No

If Yes, please list bids and agencies:

12. Does this business have any current contract awards from the City?
 Yes No

If Yes, please list the awards including the amount of the award.

VENDEX GUIDE FOR BIDDERS VENDEX QUESTIONNAIRES

Forms and Instructions available at: [NYC.gov/vendex](https://nyc.gov/vendex)

Vendor Questionnaire

Principal Questionnaire

Vendor's Guide to VENDEX

Certification of No Change

Submitted VENDEX Memo

Notice to Vendors

AMERICANS WITH DISABILITIES ACT

The following provisions to this agreement

applicable / not applicable

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. 12132 (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. 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. To ensure 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 or activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s) listed. In the event 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 set forth herein readily accessible to and usable by the individuals with disabilities, including but not limited to people with visual, audible, or mobile disabilities. Contractors shall submit the Compliance Plan to the ACCO of the Agency for review within 10 days after execution of this Agreement. Upon approval by the Agency of the Compliance Plan, Contractor 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 Agency and the Contractor.

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.

SCHEDULE OF WAGE RATES AND SUPPLEMENTS

The following provisions to this agreement

applicable / not applicable

1. The omission of any pertinent wage rates from this list shall not be presumed as an indication that such type of labor will not be required on this project.
2. This schedule sets forth the wage rate and supplements required to be annexed to and to form part of the specifications in contracts for public works pursuant to Subdivision 3 of Section 220, (or pursuant to Section 231 if the work is for Building Services), of the Labor Law of the State of New York. It is noted, however; that only the rates and supplements applicable to those classifications of workmen, laborers and mechanics actually involved in particular contract shall be annexed to the contract as part of the specifications.
3. The attached schedule of wages and supplements are considered the prevailing wage rate and the Contractor engaged in public work is obligated to pay each employee not less than the wages specified in this schedule for his craft, trade or occupation.
4. All rates and supplements above are the basic rates and supplements and do not include overtime, shift differentials (if any), holidays, Saturday or Sunday rates or any other type of premium payments.
5. If contract is not awarded within 90 days of date of establishments of prevailing rates or wages, request must be made for a re-determination of a schedule of wages by the awarding agency.

APPLICABLE PREVAILING WAGE TITLE(S): N/A

ACKNOWLEDGMENT OF ADDENDA

Procurement Identification Number: _____

Project Description: _____

Instructions: The respondent is to complete Part I or Part II of this form, whichever is applicable, and sign and date this form. This form serves as the respondent's acknowledgment of the receipt of the Addenda to this solicitation which may have been issued by the FDNY prior to the Proposal Due Date and Time.

Part I: Check Box if Applicable:

Listed below are the dates of issue for each Addendum received in connection with this solicitation.

Addendum # 1, dated: ____/____/____ Addendum # 2, dated: ____/____/____

Addendum # 3, dated: ____/____/____ Addendum # 4, dated: ____/____/____

Addendum # 5, dated: ____/____/____ Addendum # 6, dated: ____/____/____

Addendum # 7, dated: ____/____/____ Addendum # 8, dated: ____/____/____

Addendum # 9, dated: ____/____/____ Addendum # 10, dated: ____/____/____

Addendum # 11, dated: ____/____/____ Addendum # 12, dated: ____/____/____

Part II: Check Box if Applicable: **NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS COMPETITIVE SEALED BID.**

NOTE: THE BIDDER MUST SIGN AND COMPLETE THIS FORM

Respondent's Company Name: _____

Respondent's Authorized Representative:

Name: _____

Signature: _____

Title: _____

Date: _____

SUBCONTRACTOR APPROVAL FORM

CITY OF NEW YORK SUBCONTRACTOR APPROVAL FORM

For subcontracts to be approved before contract registration
Column on left indicates whom that section is to be completed by

(b) PRIME CONTRACT INFORMATION

A GENEY	Agency: _____	Unit/Div: _____
	PIN: _____	
	Contract Description: _____	

(d) PRIME CONTRACTOR IDENTIFICATION

Name: _____	EIN/SSN: _____
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SUBCONTRACTOR INFORMATION

PRIME CONTRACTOR	Name: _____	PIP Vendor #: _____		
	*Phone: _____	*Fax: _____		
	*Address: _____	*City: _____	*State/Zip: _____	
	*EIN/SSN: _____	*E-Mail: _____		
	Subcontract Description: _____			
	Approx Subcontract Value:\$ _____		Approx Start Date ____/____/____	Approx End Date ____/____/____
	Subcontractor is DSBS-certified as: M/WBE <input type="checkbox"/> EBE <input type="checkbox"/> or LBE <input type="checkbox"/> (check all that apply & note status below)			
	YES <input type="checkbox"/>	Application Pending <input type="checkbox"/>	Intends to Apply <input type="checkbox"/>	NO <input type="checkbox"/>
	Prime Contractor Certification: I hereby affirm that the information supplied is true and correct.			
	Signature _____	Title _____		
Print Name _____	Date _____			
Email _____	Phone _____			

AGENCY PRELIMINARY REVIEW

PLEASE SEE PAGE 2 FOR INSTRUCTIONS

AGENCY	Agency Preliminary Review Completed By: _____		Date: _____
	1. VENDEX <input type="checkbox"/>	2. Employment <input type="checkbox"/>	3. References <input type="checkbox"/>
	4. PLA <input type="checkbox"/>	5. Apprenticeship <input type="checkbox"/>	6. Licenses <input type="checkbox"/>

PRIME CONTRACTOR RESPONSE

PRIME CONTRACTOR	For each of the boxes checked in the agency preliminary response above, I have informed the Subcontractor of all relevant requirements and provided all requested documentation.	<input type="checkbox"/>

*Not required if subcontractor is in PIP

CITY OF NEW YORK SUBCONTRACTOR APPROVAL FORM

For subcontracts to be approved after contract registration
 Column on left indicates whom that section is to be completed by

(f) PRIME CONTRACT INFORMATION

AGENCY	Agency:		Unit/Div:			
	Contract ID:		Prime Vendor:			
	Prime Contract Description:					
	Subcontractor Name:					
	Subcontract ID (from PIP):					
	Agency Preliminary Review Completed By: _____ Date _____					
	1. VENDEX	<input type="checkbox"/>	2. Employment	<input type="checkbox"/>	3. References	<input type="checkbox"/>
	4. PLA	<input type="checkbox"/>	5. Apprenticeship	<input type="checkbox"/>	6. Licenses	<input type="checkbox"/>

PRIME CONTRACTOR RESPONSE

PRIME CONTRACTOR	For each of the boxes checked in the agency preliminary response above, I have informed the Subcontractor of all relevant requirements and provided all requested documentation. <input type="checkbox"/>
-------------------------	---

CITY OF NEW YORK SUBCONTRACTOR APPROVAL FORM

Prime Vendor Preliminary Review Follow-up Instructions

After completing the Preliminary Review, the agency will mark, on Page 1, the box for any item requiring follow-up and return the form to the Prime Vendor. The Prime Vendor should follow the instructions below for each of the boxes checked in the Agency Preliminary Review on Page 1, and return the form to the agency with any required documentation.

1. VENDEX

If Box 1 (VENDEX) is checked, the agency has granted preliminary approval, and determined that the subcontractor is required to file VENDEX Questionnaires with the Mayor's Office of Contract Services. A VENDEX Vendor Questionnaire and Principal Questionnaire must be filed where the subcontract dollar amount is \geq \$100,000 or where the aggregate business with the City is \geq \$100,000 during the preceding twelve months. The VENDEX Questionnaires and Guide can be downloaded from <http://www.nyc.gov/html/selltonyc/html/tocvendex.html>.

2. Employment

If Box 2 (Employment) is checked, the subcontractor must complete a Division of Labor Services (DLS) Construction Employment Report. A subcontractor selected to perform work on a construction project funded or assisted by the City of New York must complete a DLS Construction Employment Report if the subcontract dollar amount $>$ \$750,000. For construction projects funded in whole or in part by the federal government, a DLS Construction Employment Report must be completed if the proposed subcontract value $>$ \$10,000. For non-construction goods/services subcontracts $>$ \$100,000, employment reports are required for any subcontractor with $>$ 50 employees, and a certificate is required for those with fewer employees.

3. References

If Box 3 (References) is checked, you as the prime contractor must provide references with respect to the subcontractor's ability to perform, consisting of a list of three completed comparable projects. References shall include a full description/location of each project, scope of work, value of project, and the names and phone numbers of owners, architect or engineer who supervised the work. Please attach your documentation to your response.

4. PLA

If Box 4 (PLA) is checked, you as the prime contractor must obtain signed Letter of Assent from the subcontractor which demonstrates that the subcontractor agrees to the terms of the PLA. Please attach the subcontractor's signed Letter of Assent to your response.

5. Apprenticeship

If Box 5 (Apprenticeship) is checked, you as the prime contractor must provide the agency with proof that the subcontractor maintains an apprenticeship agreement appropriate for the scope of work to be performed, that the apprenticeship agreement has been registered with and approved by the New York State Commission of Labor, and that the program has three years of current, successful experience in providing career opportunities.

6. Licenses

If Box 6 (Licenses) is checked, you as the prime contractor must document that the subcontractor has all required licenses. Please attach your documentation to your response.

**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: _____, New York
_____, 20__

SIGNATURE

PRINTED NAME

TITLE

Sworn to before me this
____ day of _____, 20__

Notary Public

Dated:

WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
 - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
 - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.
- (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

(e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

NOTICE TO ALL PROSPECTIVE CONTRACTORS

PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

JUNE 2013

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). Section 6-129 establishes the program for participation in City procurement (“M/WBE Program”) by minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services (“DSBS”) promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the “M/WBE Utilization Plan”), and are detailed below.

The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

PART A

PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, (“**Participation Goals**”), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered ("Master Services Agreement") and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will

Require Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed non-responsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an M/WBE Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)).

PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work. In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of MBE and WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to,; the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE** Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE** Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE** Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of **the Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the Participation Goals in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its M/WBE Utilization Plan.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at contracts@fdny.nyc.gov or via facsimile at **(718) 999-0177**. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE** Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE** Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of **M/WBE** Utilization Plan. (a) A Contractor may request a modification of its **M/WBE** Utilization Plan after award of this Contract.

PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission. The Agency may grant a request for Modification of a Contractor's M/WBE Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
- (ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
- (iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;
- (iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the M/WBE Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;
- (v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;
- (vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;
- (vii) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;
- (viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an M/WBE Utilization Plan and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its **M/WBE** Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B

MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of a **M/WBE** Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See §6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the **M/WBE** Utilization Plan.

2. Pursuant to DSBS rules, construction contracts that include a requirement for a **M/WBE** Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.

3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.

4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the **M/WBE** Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the **M/WBE** Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required **Participation Goals**.

ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any **M/WBE** Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to, any **M/WBE** Utilization Plan, Agency may determine that one of the following actions should be taken:

- (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) making a finding that the Contractor is in default of the Contract;
- (d) terminating the Contract;
- (e) declaring the Contractor to be in breach of Contract;
- (f) withholding payment or reimbursement;
- (g) determining not to renew the Contract;
- (h) assessing actual and consequential damages;
- (i) assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- (j) exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- (k) taking any other appropriate remedy.

4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty.

Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6-129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

6. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE and/or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.

Tax ID #: _____

APT E-
PIN #: _____

SCHEDULE B – M/WBE Utilization Plan

Part I: M/WBE Participation Goals

Part I to be completed by contracting agency

Contract Overview

APT E- Pin # _____ FMS Project ID#: _____

Project Title/ Agency
PIN # _____

Bid/Proposal
Response Date _____

Contracting Agency _____

Agency Address _____ City _____ State NY Zip Code _____

Contact Person _____ Title _____

Telephone # _____ Email _____

Project Description *(attach additional pages if necessary)*

M/WBE Participation Goals for Services

Enter the percentage amount for each group or for an unspecified goal. Please note that there are no goals for Asian Americans in Professional Services.

Prime Contract Industry: _____

Group	Percentage
Unspecified	_____ %
or	
Black American	_____ %
Hispanic American	_____ %
Asian American	_____ %
Women	_____ %
Total Participation Goals	_____ % Line 1

SCHEDULE B - Part II: M/WBE Participation Plan

Part II to be completed by the bidder/proposer.

Please note: For Non-M/WBE Prime Contractors who will NOT subcontract any services and will self-perform the entire contract, you must obtain a FULL waiver by completing the Waiver Application on pages 5 and 6 and timely submitting it to the contracting agency pursuant to the Notice to Prospective Contractors. Once a FULL WAIVER is granted, it must be included with your bid or proposal and you do not have to complete or submit this form with your bid or proposal.

Section I: Prime Contractor Contact Information	
Tax ID # _____	FMS Vendor ID # _____
Business Name _____	Contact Person _____
Address _____	
Telephone # _____	Email _____

Section II: M/WBE Utilization Goal Calculation: Check the applicable box and complete subsection.
--

PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS				
<input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals. Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	Total Bid/Proposal Value		Agency Total Participation Goals (Line 1, Page 1)	Calculated M/WBE Participation Amount
	\$	X	=	\$ Line 2

PRIME CONTRACTOR OBTAINED PARTIAL WAIVER APPROVAL: ADOPTING MODIFIED M/WBE PARTICIPATION GOALS				
<input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Modified M/WBE Participation Goals. Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	Total Bid/Proposal Value		Adjusted Participation Goal (From Partial Waiver)	Calculated M/WBE Participation Amount
	\$	X	=	\$ Line 3

Section III: M/WBE Utilization Plan: How Proposer/Bidder Will Fulfill M/WBE Participation Goals. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation. Check applicable box. The Proposer or Bidder will fulfill the M/WBE Participation Goals:

As an M/WBE Prime Contractor that will self-perform and/or subcontract to other M/WBE firms a portion of the contract the value of which is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals. Please check all that apply to Prime Contractor:
 MBE WBE

As a Qualified Joint Venture with an M/WBE partner, in which the value of the M/WBE partner's participation and/or the value of any work subcontracted to other M/WBE firms is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.

As a non M/WBE Prime Contractor that will enter into subcontracts with M/WBE firms the value of which is at least the amount located on Lines 2 or 3 above, as applicable.

Section IV: General Contract Information

What is the expected percentage of the total contract dollar value that you expect to award in subcontracts for services, regardless of M/WBE status? % _____

Enter brief description of the type(s) and dollar value of subcontracts for all/any services you plan on subcontracting if awarded this contract. For each item, indicate whether the work is designated for participation by MBEs and/or WBEs and the time frame in which such work is scheduled to begin and end. Use additional sheets if necessary.

✓ Scopes of Subcontract Work

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____

Section V: Vendor Certification and Required Affirmations

I hereby:

- 1) acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;*
- 2) affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;*
- 3) agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;*
- 4) agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such goals are modified by the Agency; and*
- 5) agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or If a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.*

Signature _____

Date _____

Print Name _____

Title _____

SCHEDULE B – PART III – REQUEST FOR WAIVER OF M/WBE PARTICIPATION REQUIREMENT

Contract Overview		
Tax ID # _____	FMS Vendor ID # _____	
Business Name _____		
Contact Name _____	Telephone # _____	Email _____
Type of Procurement	<input type="checkbox"/> Competitive Sealed Bids	<input type="checkbox"/> Other
APT E-PIN # (for this procurement): _____		Bid/Response Due Date _____
		Contracting Agency: _____

M/WBE Participation Goals as described in bid/solicitation documents

_____ %
Agency M/WBE Participation Goal

Proposed M/WBE Participation Goal as anticipated by vendor seeking waiver

_____ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for services and/or credited to an M/WBE Prime Contractor or Qualified Joint Venture.

Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)

- Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- Vendor subcontracts *some* of this type of work but at a *lower* % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. (Attach subcontracting plan outlining services that the vendor will self-perform and subcontract to other vendors or consultants.)
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal above. Explain under separate cover.

References

List 3 most recent contracts performed for NYC agencies (if any). Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____
CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____
CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

List 3 most recent contracts performed for other entities. Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

(Complete ONLY if vendor has performed fewer than 3 New York City contracts.)

TYPE OF Contract	_____	ENTITY	_____	DATE COMPLETED	_____
Manager at entity that hired vendor (Name/Phone No./Email)					
Total Contract Amount	\$ _____	Total Amount Subcontracted	\$ _____		
Type of Work Subcontracted	_____		_____		_____

TYPE OF Contract	_____	AGENCY/ENTITY	_____	DATE COMPLETED	_____
Manager at agency/entity that hired vendor (Name/Phone No./Email)					
Total Contract Amount	\$ _____	Total Amount Subcontracted	\$ _____		
Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____

TYPE OF Contract	_____	AGENCY/ENTITY	_____	DATE COMPLETED	_____
Manager at entity that hired vendor (Name/Phone No./Email)					
Total Contract Amount	\$ _____	Total Amount Subcontracted	\$ _____		
Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____

VENDOR CERTIFICATION: I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith.

Signature: _____	Date: _____
Print Name: _____	Title: _____

Shaded area below is for agency completion only

AGENCY CHIEF CONTRACTING OFFICER APPROVAL	
Signature: _____	Date: _____
CITY CHIEF PROCUREMENT OFFICER APPROVAL	
Signature: _____	Date: _____

Waiver Determination

Full Waiver Approved:

Waiver Denied:

Partial Waiver Approved:

Revised Participation Goal: _____%

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

GENERAL INSTRUCTIONS

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to: NYC Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 - Attention: EFT, or Fax to: EFT at 212-361-7063.

SECTION I - VENDOR INFORMATION

1. Enter the vendor's social security number or taxpayer ID number, the 9-digit number reported on the W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's E-mail address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person.)

SECTION II - FINANCIAL INSTITUTION INFORMATION

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Provide bank's name
4. Provide the complete address of your bank.
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account. Account must be designated as either checking or savings. (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

SECTION III - VENDOR SIGNATURE

Sign and date where indicated.

PIN NO. 057150000837
ePIN No. 05715B0002

**THE CITY OF NEW YORK
FIRE DEPARTMENT**

**CONTRACT AND SPECIFICATIONS
For Furnishing and Delivering as Required:**

**Licensing, Maintenance and Support of Novell Products for
the New York City Fire Department.**
