



**THE CITY OF NEW YORK  
DEPARTMENT OF FINANCE**

**SUPPLY AND SERVICE CONTRACT**

INVITATION FOR BIDS

Procurement Identification Number (E-PIN): 83622B0003

FOR FURNISHING ALL LABOR AND MATERIAL NECESSARY AND REQUIRED FOR:  
**Debt Collection Services**



Certification Required by Section 312A of the City  
Charter

**Debt Collection**

**Services E-PIN:**

**83622B0003**

The Department of Finance has determined that the contract to be awarded through this solicitation will not directly result in the displacement of any New York City employee.

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Agency Chief Contracting Officer

## INFORMATION FOR BIDDERS

### 1. **Description of Procurement**

Debt Collection Services

### 2. **Time and Place for Receipt of Bids**

The Department shall receive all bids via PASSPort. Please refer to the RFX for details on how to respond to this bid.

- A. Release Date/Time of this Bid (bid opening): Refer to the RFX
- B. Site visit: **There shall be no site visits.**

Bids will be opened and read online via a Microsoft Teams meeting. Please refer to the RFX for date and time of bid opening.

Bids received after the Bid Due Date and Time are late and shall not be accepted by the agency, except as provided under New York City's Procurement Policy Board Rules. The agency will consider requests made to the Authorized Agency Contact Person to extend the Bid Due Date and Time prescribed above. However, unless the agency issues a written addendum to this bid which extends the Bid Due Date and Time for all proposers, the Bid Due Date and Time prescribed above shall remain in effect.

### 3. **Definitions**

The definitions set forth in the Procurement Policy Board Rules, Title 9 of the Rules of the City of New York (9RCNY) §1-07 shall apply to this Invitation For Bids.

### 4. **Invitation for Bids Documents**

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.

- 1. The Advertisement and Proposal for Bids.
- 2. The Bid.
- 3. All Addenda issued by the Authorized Agency Contact Person prior to the Receipt of Bids.
- 4. All Provisions required by Law to be Inserted in this Contract Whether Actually Inserted or Not.
- 5. The Notice of Award.

6. The Notice to Proceed.
7. Scopes of Work: Business and Excise Tax; ECB, Parking and Camera;
8. Appendix A - General Provisions Governing Contracts for Contractors, Professional, Technical, Human and Client Services;
9. Appendix B - Identifying Information Law Rider, Agreement to Adhere to the Secrecy and Confidentiality Provisions of the New York City Administrative Code, New York State Tax Law and the Internal Revenue Code, including Attachments A, B, & C;
10. Appendix C - Attachment SCY;
11. Appendix D - DOF Service Provider Security Agreement;
12. Attachment I - Compliance with HireNYC and Reporting Requirements Rider;
13. Attachment II - Subcontractor Compliance Notice;
14. Attachment III- Insurances

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 by contacting the Authorized Agency Contact Person indicated on the RFX for further information.

5. **Pre-Bid Conference**

A pre-bid conference will be held. Attendance at the conference is voluntary but strongly recommended. Information on date and time of conference can be found in the RFX.

6. **Vendor Questions**

All vendor questions must be submitted by the due date via the Discussion Tab. Please refer to the RFX for more details. All vendor questions must be submitted **by the due date** (Before the Question Deadline) via the Discussion Tab. Please refer to the RFX for more details. Vendors may submit questions to the authorized agency contact person:

Patricia Blaise  
Contract Manager  
[bids@finance.nyc.gov](mailto:bids@finance.nyc.gov)

Vendor resources and materials can be found at the link below under the Finding and Responding to RFX (Solicitation) heading. If you need additional assistance with PASSPort, please contact the MOCS Service Desk at

<https://mocssupport.atlassian.net/servicedesk/customer/portal/8>

Resources Link: <https://www1.nyc.gov/site/mocs/systems/passport-user-materials.page>

7. **Minority or Woman-Owned Business and/or Locally based Enterprise**

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](http://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](http://www.nyc.gov/sbs).

8. **Authorized Agency Contact Person**

Any questions or correspondence relating to this bid solicitation shall be addressed to the Authorized Agency Contact Person. Please refer to the RFX for contact information

Questions should be submitted through the PASSPort Discussion Tab of the RFX within the time frame specified on the RFX.

9. **Examination of Proposed Contract**

a. **Request for Interpretation or Correction** - Prospective bidders must examine the contract documents carefully and before bidding must request the Commissioner 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 Commissioner may decide to include, will be issued in writing by the Commissioner as an addendum to the contract, which will be posted at the place where the contract documents are available for the inspection of prospective bidders. Contract addenda will also be posted on PASSPort. Upon 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 written interpretation or correction so given by the Commissioner shall be binding. Prospective bidders are warned that no other officer, agent or employee of the City is authorized to give information concerning, or to explain or interpret, the contract.

10. **Form of Bid**

Each bid must be submitted upon 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 to 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 Council member 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 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 or to any public authority, except as set forth in the bid.

11. **Bidder's Oath bid**

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 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.

12. **Site Visit**

Where the Invitation for Bids involves performance of services on City facilities, all bidders are 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 of 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.

13. **Bid Submission**

All Bids should be submitted through PASSPort.

14. **Irrevocability of Bid**

The prices set forth in the PASSPort Item Tab cannot be revoked and shall be effective until the award of the contract, unless the bid is withdrawn as provided for in Section 16 and Section 19, below.

15. **Acknowledgment of Amendments**

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

16. **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.

17. **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.

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.

18. **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 responsible bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids, and whose bid price is either the most favorable bid price or, if the Invitation for Bids so states, the most favorable evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids.

(i) **Restrictions.** No negotiations with any bidder shall be allowed to take place except in accordance with the Procurement Policy Board Rules. Nothing in this Section shall be deemed to permit a contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bids if that bid is not also the most favorable bid.

19. **Late Bids**

Any bid received after the time and date set for receipt of bids is late and shall not be considered.

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.

20. **Withdrawal of Bids**

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 Commissioner fails to fix the date for commencement of work by written notice to the bidder, the bidder, at his/her option, may ask

to be relieved of his/her obligation to perform the work called for by written notice to the Commissioner. If such notice is given, the bidder waives all claims in connection with this contract.

21. **Mistakes in Bids**

a. **Mistakes 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 as provided in Section 19, above.

b. **Mistakes Discovered Before Award**

1. In accordance with the Procurement Policy Board Rules, 9 RCNY §3-02(m), 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 Agency Chief 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) **Mistakes Where Intended Correct Bid 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 supplier selection or within three days after the opening of the bid, whichever period is shorter;
- (B) the price bid was based on an 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 or 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.

(iv) 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.

## 22. 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 small, minority or woman-owned business entity bidder;
- (ii) Award to a New York City bidder;
- (iii) Award to a certified New York State small, minority or woman-owned business bidder;
- (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.

## 23. Rejection of Bids

a. Rejection of Individual Bids. The Commissioner may reject a bid if:

- (i) The bidder fails to furnish any of the information required pursuant to Section 26 hereof; or if
- (ii) The bidder is determined to be not responsible pursuant to the Procurement Policy Board Rules; or if
- (iii) The bid is determined to be non-responsive pursuant to the Procurement Policy Board Rules.

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

24. **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 the Procurement Policy Board Rules 9RCNY Sections 2-07, 2-08, and 2-10, respectively.

25. **MacBride Principles Provisions**

This Invitation for Bids is subject to the MacBride Principles set forth in Section 13 of Appendix A and the Iran Divestment Provisions attached to the Affirmations section of the bid in PASSPort.

26. **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.

27. **PASSPort Disclosure**

PASSport Disclosure 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 Passport Disclosure 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) PASSport Disclosure 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 PASSport Disclosure consists of a Vendor Questionnaire and a Principal Questionnaire. The Vendor Questionnaire, the Principal Questionnaire and detailed instructions may be accessed through PASSPort <http://www1.nyc.gov/site/passport/index.page>. The PASSport Disclosure must be completed online by the winning bidder and any subcontractors subsequent to award, and submitted online before any award of contract or subcontract may be made or before approval is given for a proposed subcontractor. 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.

Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the VENDEX/PASSPort 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 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. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to \$1 million) (above \$1 million).

28. **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) 669-3000.

29. **Bid Security**

a. 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 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 the sum of 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 Commissioner'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 Department of the adherence of the bidder to its bid and the execution of the contract, in the form as annexed hereto, if its bid is accepted.

30. **Performance Bond**

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

31. **Payment Bond**

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

32. **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.

33. **Failure to Execute Contract**

In the event of failure of the successful bidder to execute the contract and furnish any required security and insurances, 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 re-let, including the cost of such re-letting and less the amount of such deposit. No pleas 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 based upon such accepted bid.

34. **Power of Attorney**

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

35. **Financial Qualifications**

a. The Department 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 Department 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.

36. **Office of 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 the bidder meets all of the following conditions:

1. the bidder has been identified as the lowest bidder for a supply or service contract or the bidder's proposal for supplies or services has been accepted;
2. the contract value exceeds \$100,000; and
3. the bidder's firm employs 50 or more people.

Please note that suppliers, subcontractors or vendors performing on the contract who meet conditions 2 and 3, also must file an ER. If the bidder is the low bidder, an ER will be sent to the bidder under separate cover.

b. Who Must File A Less Than 50 Employees Certificate

1. If the bidder or any of its facilities performing on the contract has fewer than 50 employees, although the contract value exceeds \$100,000, the bidder need only submit a "Less Than 50 Employees Certificate".
2. If there is a subcontractor, supplier or vendor to the prime contractor and any of its facilities performing on the contract has fewer than 50 employees, although the subcontract value exceeds \$100,000, it need only submit the "Less Than 50 Employees Certificate."

Additional details on these requirements can be found at <https://www1.nyc.gov/site/sbs/businesses/contract-compliance.page>

37. **Procurement Policy Board Rules**

This Invitation For Bids is subject to the Procurement Policy Board Rules, Title 9 of the Rules of the City of New York (9 RCNY). In the event of a conflict between said Rules and a provision of this Invitation For Bids, the Rules shall control.

38. **Information For Bidders-Prompt Payment Rules**

The Prompt Payment provisions set forth in the Procurement Policy Board Rules, 9 RCNY §4-06, will be applicable to payments made under a contract resulting from this solicitation. The

provisions require the payment to contractors of interest on payments made after the required payment date except as set forth in §4-06 c(3), d(3) and (4) of the Rules.

The contractor must submit a proper invoice to receive payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

Invoices are to be submitted with supporting documents electronically to DOF Accounts Payable unit at [AcctsPayable@finance.nyc.gov](mailto:AcctsPayable@finance.nyc.gov).

NOTE: At some point during the term of this Agreement, the DOF may request that Contractor start submitting invoices relating to this Agreement through the City's PASSPort System. Upon receipt of such request from the City, Contractor agrees that it would commence submitting invoices relating to this Agreement through the PASSPort System.

Determinations of interest due will be made in accordance with the provisions of the Procurement Policy Board Rules, 9 RCNY §4-06, and General Municipal Law § 3-a.

# SCOPE OF WORK I

## GENERAL CONDITIONS AND SPECIFICATIONS Debt Collection Services for Business and Excise Tax Debt

### SECTION I

#### Objective

The purpose of this solicitation is to establish multiple awards for the collection of outstanding City judgments/debt assigned to, and/or issued by the New York City Department of Finance (DOF). Vendors able to demonstrate sufficient expertise and experience in providing debt collection services in a legal and ethical manner are invited to bid. All debtor judgments to be collected pursuant to this contract are docketed in New York.

#### Sources of Judgements/Debt

Business and Excise Tax Debt may include, but is not limited to banking corporation tax, general corporation tax, business corporation tax, unincorporated business tax, commercial rent tax, retail beer, wine and liquor license tax, utility tax, commercial motor vehicle tax, real property transfer tax, hotel room occupancy tax, cigarette tax, and other tax types worked by the Department of Finance. Although all judgments are docketed in New York State, debtors may reside in any state. Exhibits are included to give estimates of the pools of debt that may be available for referral.

#### Additional Sources of Judgments/Debts

The DOF may refer other city judgments/debts such as parking violations, Environmental Control Board (ECB) penalties, or Taxi and Limousine Commission (TLC) summonses. While the Department may refer such judgments, they will not constitute more than **five** percent of the total number of judgments referred.

#### Judgement/Debt Placements and Categories

Contract awards will be broken down into two Placements: **Primary Placement** - debt which has not previously been worked on by a Collection agency, and **Secondary Placement** - debt which has been previously worked on by a Collection agency. Each type of debt will be further grouped into one of the following two categories:

**Category I:** Business and Excise Tax Debt (primary placement)

**Category II:** Business and Excise Tax Debt (secondary placement)

#### Award Limitations

The vendor receiving a primary placement award will not be considered for a secondary placement award. In the event that a vendor is the low bidder for both Categories (Primary and Secondary), DOF reserves the right to determine, based on the bidder's demonstrated capability and the best interest of the City, which Placement Category the bidder will be awarded.

In general, debt will be recalled from a vendor and reassigned to the subsequent vendor approximately six months after the assignment anniversary date. However, in a limited number of instances, a vendor may retain the debt beyond six months if significant progress has been made collecting the debt or if a new violation is added to the case within 30 days of case assignment expiration date. In the latter scenario, assignment for placement would be extended for 30 days. A vendor may be permitted to keep a case for

longer than six months if debtor has entered into a payment agreement with the vendor and has kept current with required installments. DOF reserves the right to recall debt from Primary and Secondary Placement with or without cause regardless of how much time has elapsed since the debt was assigned.

The City judgments have all been docketed in the appropriate County Clerk office in the Supreme Court of the State of New York. In the vast majority of cases, DOF has mailed at least one dunning notice to the last known address of the judgment debtor.

#### Consecutive Debt Assignment

After the first debt assignment to the primary placement vendor, all consecutive assignment will be recalled from the primary placement vendor and reassigned to the corresponding secondary placement vendor approximately six months after the debt assignment anniversary date to the primary placement vendor.

After the first debt assignment to the secondary placement vendor, all consecutive debt assignments will be recalled from the secondary placement vendor approximately six months after the debt assignment anniversary date to the secondary placement vendor.

#### **Bidder Qualification Requirements**

*The following are the Vendor Requirements of this solicitation. Responses that fail to meet all of these requirements may be rejected.*

- 1) All bidders that seek to collect personal or household debts from New York City residents must be authorized to do business in the State of New York and have a Debt Collection Agency license issued by the New York City Department of Consumer and Worker Protection, no matter where the bidder is headquartered. Bidders incorporated out of state must obtain a Certificate of Doing Business in Good Standing from their home state's Secretary of State, and this must be filed with an application for Authority to Conduct Business in New York with the New York State Secretary of State. The bidder must also have the appropriate licenses or certifications required of any individual or entity performing the services described in this solicitation in the City and State of New York (i.e., for itself, its partners and any subcontractors). The Bidder **must** provide copies of all required documentation with the bid submission.
- 2) The Bidder must provide documentation demonstrating a minimum of three (3) years of experience in providing debt collection services on accounts comparable to the scope of work described in this solicitation. This documentation includes the contract description, term, dollar amount per year, and name, address, phone number, and contact person of contracting agency or firm
- 3) The Bidder must provide an organizational chart indicating key personnel and their respective responsibilities for this contract. Bidders must include a staffing plan that shows how staff will be allocated to cover the needs of the contract. The selected vendor shall demonstrate that an experienced and professional management staff will be assigned to oversee the services required under this contract and have access to a qualified collection of staff to respond to the fluctuating quantity and types of New York City debt.



- 4) The Bidder must have a secure call center location equipped with the necessary technologies and proper equipment and supplies to handle outgoing and incoming calls consistent with the volume of debt referred under this contract within ten (10) days of contract award. The call center will be subject to minimum service level requirements with regard to call wait time, dropped calls and other measures. Call center hours must be at a minimum from 9 am to 5 pm ET Monday through Friday, with additional hours to reach debtors in the evenings and the capability to communicate with non-English speakers. The call center must also include weekend hours.
- 5) The Bidder must be able to accept referrals in an electronic format as determined by the City via a secure transfer method. The Bidder must have the capacity to automate referrals via a vendor-hosted system that interfaces with the City's existing source systems and meets DOF's requirements for secure data transfer within ten (10) days of contract award.
- 6) The Bidder must demonstrate that they can maintain the data, systems and physical facility security requirements for personal and financial information, and that the hosted data will be secure, prevented from commingling with other customer accounts and managed by capable personnel within ten (10) days of contract award.
- 7) The selected vendor shall be required to provide detailed organization performance metrics for the previous calendar year which should clearly indicate the volume and success rates of your organization.
- 8) Bidder shall have secured all Insurance Requirements as set forth in this Agreement within ten (10) days of contract award.

## **SECTION II**

### **Scope of Services**

#### **A. CITY JUDGMENT INFORMATION, REPORTS AND PROCEDURES**

- 1) DOF will provide details of the City judgments/debts including principal, interest and penalties as of the referral date, and the last known address of the debtor. Interest accrues on City judgements until paid in full.
- 2) The Contractor must commence collection efforts with respect to all cases referred to it within seven (7) business days of receipt of the referral.
- 3) The Contractor shall maintain an electronic file for each referred case. The file shall contain notes of any conversations with the debtor, and copies of documents and/or correspondence. Each file shall be maintained in a manner satisfactory to DOF and shall document every skip-tracing effort made and shall capture all information obtained, such as new address, telephone numbers, assets, etc. All such files shall be the property of DOF and may be inspected from time to time, as deemed necessary.
- 4) The Contractor shall maintain electronic recording of all verbal communication for each case referred. The DOF will request copies of randomly selected recordings. The timeframe for submission of

recordings will be determined by DOF.

- 5) The Contactor shall furnish electronic reports, both summary and detailed, that fulfill the needs of DOF. The format and specifications of these various reports will be determined prior to contract award and be subject to approval by DOF. Subjects of such reports include, but are not limited to: status of revenue collected, liquidation rates, disputes, holds, returns, uncollectible (based on uncollectible descriptions provided by DOF), installment plans, mail returned, calls made and received, etc.
- 6) DOF will require cases to be closed out/returned either by predetermined date or as needed due to disputes, settlements, etc. DOF may have cases returned solely at its discretion and the Contractor will verify compliance via e-mail.
- 7) In the event of a dispute of any case made by a debtor, the Contractor shall make note of the dispute, refer documentation of the dispute to DOF, and suspend any collection efforts on the case, pending the instructions of DOF on how to proceed.
- 8) The Contractor may be allowed to offer settlements on cases. The parameters and requirement for settlements offers will be decided by DOF and provided to Contractor through an Addendum to the solicitation or an amendment to the contract.
- 9) The Contractor shall promptly and fully respond to all questions the Department may submit about Contractor's collection procedures. The Department reserves the right to require the Contractor to modify or change its procedures, should the Department conclude any procedure does not reflect the image the Department desires to convey or subjects the Department to liability.
- 10) The Contractor shall promptly report to the Department each instance in which the debtor has died, a petition in bankruptcy has been filed, or where the debtor or debtor's estate has been made the subject of an assignment for the benefit of creditors or of any other similar proceeding in any jurisdiction. Contractor, in cooperation with and subject to the consent, approval and supervision of the Department, may initiate collection efforts and file the proofs of claim in the appropriate litigation, bankruptcy and estate proceedings, etc.
- 11) The Contractor shall suspend or terminate action on any debt referred, upon written notification to do so by the Department, and shall promptly return the file to the Department. In this event, no fee shall be paid the Contractor.
- 12) The Department shall have the right, at its discretion, for any reason that is not unlawful, and at any time in the term of the contract, to direct that particular staff employed by the Contractor or its Subcontractors not be assigned to the Department's work, and Contractor or Subcontractor must thereupon immediately remove and within ten (10) calendar days, replace such staff with an acceptable substitute(s).
- 13) In the event that Contractor receives correspondence, communication or payment relating to a claim which has not been assigned to Contractor, or which has been closed and returned, Contractor shall, at no charge, inform the correspondent to contact the Department and shall notify the Department of the correspondence, communication or payment and forward such, in accordance with the

Department's instruction.

## **B. COLLECTION, SKIPTRACING and ASSET LOCATION EFFORTS**

- 1) Copies of all dunning letters to be used by the Contractor shall be submitted to DOF for approval prior to use.
- 2) Contractor's efforts to effect collection must include the prompt service of at least one dunning letter to each debtor with "address correction requested" noted on the envelope.
- 3) All correspondence to debtors must state in bold print that debtors can register complaints regarding the Contractor's practices and procedures by calling or writing to DOF, with contact details listed.
- 4) Contractor must directly perform dunning/skip tracing collection activities and are prohibited from subcontracting out these tasks. The dunning activities must include, but are not limited to: scrubbing the debt, determining the collectability of the debt, providing leads, determining the viability of the entity, income, and asset searches. Notwithstanding the above, the Contractor may subcontract technology, mailing services or research tasks.
- 5) Contractor will attempt to locate debtor phone numbers on all cases. When numbers are available, at least one attempt to call must be made on each case. Any phone number located by the Contractor must be noted in the file and reported to DOF.
- 6) Any income or assets identified, such as job or bank, must be noted in the file and reported to DOF.
- 7) Skip tracing efforts, such as credit bureau reports, must be noted in the file and reported to DOF.
- 8) Any new addresses identified for judgment debtors must be noted in the file and reported to DOF.

## **C. OPTION TO RETURN CITY JUDGMENTS**

After performing the skip tracing and asset location services in Section II(B), above, the Contractor may return judgements or debts after assignment where the Contractor can substantiate, by providing supporting documentation to the Department, that the debt or judgment is uncollectible due to the inability to locate the debtor or its assets, that the debtor's income and assets are substantially exempt, or that the debtor has insufficient income or assets. Insufficient assets are defined as the amount of non-exempt assets that are less than \$500.00. Returns shall be made each month in a manner acceptable to the Department, and only after obtaining permission from the Department.

## **D. PAYMENT and ACCOUNTING PROCEDURES**

- 1) Contractor shall not, under any circumstances, accept cash for payment of any debt referred. All checks and money orders are to be made payable to DOF. All checks must be delivered or mailed to the Lockbox assigned by DOF. Payments can be made at local Business Centers or on-line at the DOF web site. DOF may add the capability for Contractor to accept credit card payments where the payments will be made directly to DOF via the DOF website Enter website address [www.nyc.gov/finance](http://www.nyc.gov/finance) or [www.nyc.gov/eservices](http://www.nyc.gov/eservices) or Lockbox.

- 2) If a debtor check is mistakenly mailed to the Contractor, they will notify the contract liaison within two (2) business days via e- mail, and forward the check to DOF, with original envelope to identify post mark date.

## **E. CONTRACTOR COMMISSION**

- 1) DOF will capture information on all payments made in any manner at any source and notify the Contractor via weekly transaction reports sent by electronic file. At the end of each month, the Contractor will send DOF a voucher with backup documentation as to how much was collected on cases referred to them and how much commission is due the Contractor. The DOF will review and process all approved claims. Rejected claims will be returned to the Contractor with an explanation for the rejection. Non-commissionable payments will also be detailed on DOF's report to the Contractor. If payment is made by the debtor after a case has been closed out/returned, no commission will be paid. However, if a debtor enters into an installment plan, or the Contractor advises DOF of a distrainable asset that DOF is then able to collect on within 6 months from receipt of the distrainable asset, commission will be paid.
- 2) If a check bounces, or a payment incorrectly applied is later debited, the commission paid will be deducted from a later commission report.
- 3) Commission payment for revenue collected will commence on day four after debt assignment date. Contractor will not be paid commission on revenue collected for the first three days of the debt being assigned but will get commission payment on revenue collected starting on day four. Commission will not be paid on revenue collected by DOF efforts. To be eligible for commission payment, revenue must be collected up to 90 days from the last dunning action performed by the collection agency. Dunning action can include phone call, email, etc. and **MUST** also include the mailing of at least one dunning letter.
- 4) Commission will not be paid on accounts assigned to the collection agency for which the collection was the result of DOF activities. DOF activities include, but is not limited to payments which resulted from DOF vendor restraint, DOF special projects, boot/tow, DOF bank levy and actions taken by the sheriff and marshal
- 5) Commission disputes shall be made by the Contractor in writing to the DOF Contract Liaison.

### **Commission Incentives**

Contractors are entitled to its base commission plus an additional incentive commission under certain circumstances:

#### **Incentive # 1: Exceeding Prior Average Collection Rate**

DOF shall pay an incentive of 50% of the base commission if the collection rate for a monthly assignment of judgment debt after six months exceeds by one percent or more the average collection rate of a prior vendor for all assignments of the particular debt type and assignment sequence (e.g., primary or secondary). The details of which prior vendor's average collection rate will be used for which contract are detailed below.

Judgment debt will be assigned to the vendors in monthly cohorts. The cohorts of judgment debt will be assigned to the vendor for six months before the debt is recalled and assigned to the next vendor in DOF's debt assignment sequence. The Incentive will not be paid for a monthly assignment collection rate that is less than one (1) full percent more than the prior vendor's average collection rate. The prior vendor's average collection rate is indicated in Exhibit-IIA.

DOF shall communicate whether a vendor has exceeded the threshold rate as soon as possible after the completion of the six months assignment timeframe. If for any reason, the vendor's assignment lasts for more than six months, the collection rate for purposes of determining whether an incentive should be paid will be at the six-month mark and collections received after that time shall not count towards receiving the incentive payment.

#### Prior Vendor Comparison for Incentive #1

- Primary vendor collection rate will be compared to the average collection rate of the primary vendor under the prior contract for the same debt type.
- Secondary vendor collection rate will also be compared to the average collection rate of the primary vendor collection under the prior contract rate.

#### **Incentive # 2: Rapid Collection of Debt**

Debt paid in full in the first two (2) months of receiving an assignment will receive incentive of 10% of its based commission.

#### **Incentive #3: Productive Bank Account Referrals**

For accounts returned uncollected after a six-month assignment, the Contractor shall be entitled to its full base commission for every judgment case for which it reports a bank account to DOF and DOF receives a collection within six months of that case being returned to DOF.

The DOF shall not pay for any financial institution information of debtors previously obtained by DOF through either ongoing DOF collection work or from the prior OCA contractor to prevent payment for duplicate information. Payment shall be made solely based on new information obtained from the Contractor that results in the successful collection of the assigned debt. In addition, DOF is not required to pursue collection on all bank account information it receives from a Contractor. For example, the DOF does not typically pursue bank restraints or bank levies for judgment debt with a balance below \$1,000.

## **F. LEGAL and ETHICAL STANDARDS**

1. Contractor shall not report any warrant or judgment information to a Credit Reporting Agency or threaten to do so by letter or conversation.
2. The Contractor shall comply with any and all applicable statutes, laws, code of conduct and regulatory over-site with respect to the collection of debt. This includes the Federal, State and local jurisdiction, with particular emphasis to the Federal Fair Debt Collections Practices Act and the Fair Credit Reporting Act. All the Firm's operations must be performed in accordance with the highest standard of ethics. In addition, Contractors performing collection work within NY State shall comply with following:

NY State General Business Law ss600 and ss601; NY Executive Law ss63 chapter 12; for collection work performed within NY City, Contractors shall also comply with NY City Department of Consumer Affairs Rules, 6RCNY ss5-76 et seq.

If the Contractor receives authorization to use an attorney to collect any debt, then that attorney shall be subject to the NY State Judiciary Law Article 15, ss489; Code of Professional Responsibility, Appendix to NY State Judiciary Law.

3. Contractor will not represent itself or its employees to be employees of DOF.
4. Contractor shall not, even if State law allows it, threaten a debtor with arrest for non-compliance.
5. The correspondence to debtors must state in bold print that debtors can register complaints regarding the Contractor's or Subcontractor's practices and procedures by calling or writing to the Department. A phone number and address of the Department must be listed.
6. Contractor shall not under any circumstances resell the City's debt to any other entity.
7. The Contractor shall comply with New York City Department of Consumer and Worker Protection (NYC DCWP) requirement that requires debt collectors to inform consumers about whether certain language access services are available and to retain records relating to language access services. NYC DCWP - **§ 2-193 Records to be Maintained by Debt Collection Agency**. These records are to be made available to DOF.

## **G. STAFFING AND TRAINING**

The Contractor must demonstrate that an experienced and professional management staff will be assigned to oversee the services required under this contract. The Contractor shall have access to a qualified collection staff to respond to the fluctuating quantity and types of New York City debt. The Contractor is responsible for ensuring that management, call center and collection staffs are trained to have appropriate knowledge of the City's debt.

The collections staff must be trained in relevant laws and best practices regarding government debt collection, as well as the required security for personal and financial information. Respondents are required to provide a detailed staffing and training plan in their response to this bid, including an organizational chart with anticipated staffing levels for each unit.

## **H. OCA TECHNICAL AND FILE REQUIREMENT**

Refer to Appendix A.

## **SECTION III**

### **Special Terms and Conditions**

The Contract to be entered into between the Department and the Contractor shall contain the following provisions:

## **A. Term of Contract**

1. The term of the contract shall be for a period of five (5) years commencing upon the date specified in the Department's written notice to proceed. The City may, at its sole option, renew this Agreement for (1) two-year renewal at the existing contract rates and subject to the Terms and Conditions of this Agreement.
2. At the end of the term of the Agreement, including any renewals, at the direction of the Department, the Contractor shall continue its services, at the existing contract rates upon the same Terms and Conditions as herein set forth for a maximum period of one year.

## **B. Access to Contractor's Files and Facilities**

1. Contractor shall provide unrestricted access to Contractor's and Subcontractor's records and files pertaining to the contract, to federal, state and city auditors and to appropriate Department of Finance staff and/or investigators or their designees. Pursuant to Sec. 93(b), of the N.Y.C. Charter, the City Comptroller may audit the contract.
2. The Department reserves the right to visit Contractor's and any Subcontractor's offices at any time without prior notice to examine its facilities, to request and obtain a demonstration of any procedure, to evaluate actual collection activities, and to examine and audit the ledgers, books, journals and records of the Contractor or Subcontractor concerning the contract.

## **C. Termination of Contract**

1. The contract may be terminated by the Department without prior notice in the event the Contractor or Subcontractor or any of their employees is convicted of a crime which relates to or affects Contractor's or Subcontractor's duties and/or responsibilities under this contract, or adverse action is taken which impacts upon Contractor's or Subcontractor's ability to perform under this contract, or a court order is entered against Contractor or Subcontractor or any of their employees for a violation of any code of ethics or any local, state or federal law, rule, regulation or ordinance. Upon termination of the contract, all City items, information, files, records, documents, related ledgers and journals, etc. related to this contract must be returned to the Department or the City immediately.
2. Any indictment or conviction for giving or receiving a bribe or unlawful gratuity to or from any party by any principal or employee of the Contractor or Subcontractor may result in the termination of the contract without prior notice. It is the responsibility of the Contractor to notify the Department in writing of such event.
3. The Department shall have the right to terminate the contract at any time for any reason determined by the Department, in its sole discretion, to be in the Department's or the City's best interest, by giving Contractor thirty (30) calendar days prior written notice of termination. The Department and the City shall not be liable for damages to the Contractor based upon the Department's termination of the Contract, however, the Department shall pay the Contractor for any fees earned for work satisfactorily performed prior to termination.

4. Upon termination of the contract, the Department may, in its sole discretion, extend the contract for the continuation of maximum efforts to collect on one or more of the City Judgments referred during the term of the contract. If the Department so requires, all terms and conditions of the contract continue in full force and effect with regard to Contractor's continuation of all collection efforts for those City Judgments so designated by the Department.
5. The Department shall not be obligated to pay any fee upon amounts received by Contractor after termination of the contract, except for any fees earned for work satisfactorily performed prior to termination. All files, records and monies collected by Contractor after the termination of the contract or the return of any specific case, shall be promptly forwarded to the Department and in no instance, more than 30 days after contract termination or 60 days after notification from the City or contract termination.
6. Upon termination of the contract, Contractor shall cooperate in the transfer of cases and all files and records to the Department including execution of all forms necessary to effect transfer of legal representation in accordance with the Department's instructions. Contractor shall immediately deliver to the Department or its designees all files, records and related ledgers and journals in proper accounting form, and all documentation and other information concerning the City judgments referred for collection.
7. Contractor acknowledges that any failure or delay on its part to transfer cases and deliver files, records or monies described in paragraphs 5 and 6 above will be deemed to cause irreparable harm to the City, for which the City shall be deemed to have no adequate remedy at law, and Contractor shall agree that the City may, in that event, seek and obtain injunctive relief in any court of competent jurisdiction and Contractor waives any and all defenses to a claim for injunctive relief, as well as to an assessment of liquidated damages in the sum of \$500 per day for each day of such failure or delay.

#### **D. Expiration of Contract**

1. Upon expiration of the contract, all City items, information, files, records, documents, and related ledgers and journals, etc. related to this contract must be returned to the Department or the City within 60 days of contract expiration.
2. Upon expiration of the contract, Contractor shall cooperate in the transfer of cases and all files and records to the Department including execution of all forms necessary to effect transfer of legal representation in accordance with the Department's instructions. Contractor shall deliver to the Department or its designees all information, files, files, records, documents, and related ledgers and journals in proper accounting form, and all documentation and other information concerning the City judgments referred for collection.

#### **E. Most Favored Customer**

Contractor warrants and represents that the price, warranties, benefits and terms set forth in the contract are at least equal to or more favorable to the City than the prices, warranties, benefits and terms now charged or offered by the Contractor, or that maybe charged or offered during the term of the contract for the same or substantially similar services as defined in this contract. If at any time during the term of



the contract, Contractor enters into an agreement on a basis that provides prices, warranties, benefits or terms more favorable than those provided the City, then Contractor shall within thirty (30) calendar days thereafter notify the Department of such fact, and regardless of whether such notice is sent by Contractor or received by the Department, the contract shall be deemed to be automatically amended, effective retroactive to the date of execution of the more favorable agreement, to provide the same prices, warranties, benefits or terms to the City; provided that the City shall have the right and option at any time to decline to accept any such change, in which event such amendment shall be deemed null and void. If Contractor is of the opinion that an apparently more favorable price, warranty, benefit or term charged or offered a customer during the term of the contract is not in fact more favored treatment, Contractor shall promptly notify the Department in writing, setting forth in detail the reasons that it believes the apparently more favorable treatment is not in fact more favored treatment. The Department, after due consideration of such written explanation, may decline to accept such explanation and thereupon the contract shall be automatically amended effective retroactively to the effective date of the more favorable agreement, to provide the same prices, warranties, benefits or terms to the City. The provision of this Section shall survive the termination of the contract.

#### **F. Contractor and Subcontractor's Office and Referring Agencies**

1. Contractor shall maintain an effective procedure for forwarding claims to branch offices, subsidiaries in other cities in sufficient number to provide the required collection coverage. There shall be no increase in rate, fee or charges by reason of such forwarded collection activities. Such other offices shall be deemed subcontractors under this Agreement and shall be subject to the terms and conditions for subcontracting set forth in this Agreement. Any office to which a claim is referred for collection must comply with each and every requirement of the contract with the same effect as though it were signatory thereto. A copy of the contract shall be mailed to each such correspondent office, if any.
2. The Contractor shall defend, indemnify and hold the City, its officers, 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 referral firms, subcontractors and their agents 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. The City may participate in the defense of such matters and reserves the right to approve all settlements of all such claims, actions, complaints, demands and causes of action.

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.

3. The Department requires that all debt collection services under this contract must be directly rendered by the Contractor or subcontractors that have been approved by the City.

## G. Security

The Contractor will be required to sign, and be subject to, the City's Secrecy and Confidentiality provisions, attached to the RFX in PASSPort as Attachment 10, and shall maintain, at all times, the data, systems and premises security requirements required for personal and financial information.

## H. Cyber Security

The Department of Finance requires SOC1/SOC2/SSAE18 certification from vendor if they provide the following services that may impact the financials of DOF users or client entities:

- Data center provider
- Software as a service (SaaS)
- Any managed services especially financial services
- Payroll processors
- Medical Claim Processor
- Loan serving company
- Any vendor that process/collect payments on behalf of DOF

**In addition, all service providers must meet the following DOF security requirements:**

- Service Providers must be able to log, audit, monitor and report Department of Finance's data access history as needed.
- File level data access history must be enabled for all technology service provider will be using whether on premise and or cloud hosting solutions.
- File level data access detection and prevention of data loss in file level must be enabled for all technology service provider will be using whether on premise and or cloud hosting solutions.
- Service Provider shall use industry standards to ensure that it does not introduce any viruses or any other form of malicious code to City systems.
- Service Provider shall conduct background checks for each consultant assigned to the project in order to reduce the risk of human error, theft, or misuse of the City's information assets. When requested, Service Provider will provide documented evidence of background checks for each consultant assigned to the project.
- When requested, Service Provider agrees to provide evidence of an independent IT security review or audit commensurate with the security requirements of the project. This audit must be completed within a time frame specified by the City.
- Should Service Provider learn or suspect that there has been a breach of this policy, it shall immediately notify Department of Finance.
- For all data received from DOF, data should be a used only for the stated and agreed on the purpose.
- All access to Department of Finance (DOF) data must be authorized and based on individual identification and authentication.
- User access control must be enforced to identify who has accessed DOF shared data, uses access must be logged for audit purpose. All log data must be available if needed for a minimum of one (1) year.
- Must ensure that DOF provided information is not processed, maintained, transmitted, or stored in or

by means of data communication channels, electronic devices, computers, or computer networks located in geographic or virtual area not subject to US LAWS.

- The system (hardware and software) used to receive, store and handle DOF data must be kept up to date with necessary patch from known security vulnerability.
- Information received from DOF cannot be disclosed to other organizations or individuals unless specifically authorized by DOF.
- Data should be deleted when it is no longer needed for the stated purpose.
- If vendor suspects IT system or paper-based files of DOF shared data have been subject to accidental or unlawful destruction, loss, or alteration, or unauthorized disclosure or access, must immediately report the situation to Department of Finance CISO office at [ciso@finance.nyc.gov](mailto:ciso@finance.nyc.gov) and to [soc@cyber.nyc.gov](mailto:soc@cyber.nyc.gov).

### **Encryption Strength**

- Approved encryption algorithms must be (of a minimum key length of 256 bits) used for DOF shared data at rest and data in transit.

### **Key Management**

- Private keys must be kept confidential.
- Key lifecycle management must be implemented.
- Keys in storage and transit must be encrypted.
- Keys must be chosen randomly from the entire key space.
- Encryption keys must allow for retrieval for administrative or forensic use.

### **Data at Rest**

- Department of Finance data stored in a database or file system (at rest) must be encrypted in accordance with the Citywide Encryption Standard.
- The use of password protection instead of encryption is not an acceptable alternative to protecting private information.

### **Removable Media**

- Department of Finance's data should not be transitioned to removable media without management approval.
- Removable media including CDs, backup tapes, and USB memory drives that contain Department of Finance's data must be encrypted and stored in a secure location.
- When transferring removable media, the receiver must be identified to ensure the person requesting the data is a valid recipient.

### **Transmission Security**

- Department of Finance data sent across any network connection must be encrypted in accordance with the Citywide Encryption Standard.
- Unencrypted transmission of private or confidential data through web applications or email is not allowed.
- Wireless networks must be encrypted using an approved City of New York standard.

### **Portable Devices**

- Department of Finance data may only be stored on portable devices such as laptops, smart phones and personal digital assistants (PDAs) when encrypted.
- Portable devices should not be used for long-term storage of Department of Finance's data.
- Portable devices must have the capability to be remotely wiped in the event of theft or accidental loss.
- Portable devices must have proper protections in place as outlined in the Citywide Portable Computing Information Security Policy.

## **I. Liquidated Damages**

It is hereby agreed that the following schedule shall be fixed and determined by the parties as the liquidated damages that the Department shall suffer by reason of the Contractor's failure to properly perform the following activities and are in addition to any other rights and remedies which are to be specified in the contract and by law. Such damages shall be paid within ten business days after notification by the Department, or at the Department's discretion may be deducted from any payments due to the Contractor. Liquidated damages shall not exceed 25 percent of fees earned under the contract.

It is understood that such liquidated damages are not intended as a penalty, but an acknowledgment by the parties that actual damages in each case are difficult or impossible to ascertain. Failure to impose liquidated damages for any specific violation shall not be deemed a waiver of any provision of this contract, nor shall it be deemed a waiver of any right to impose specified damages as to other or future violations of any kind, nor of any other remedy at law or in equity.

<b><u>ACTIVITY</u></b>	<b><u>AMOUNT</u></b>
<b>1. Failure to institute collection procedures within seven (7) days of receipt of referral</b>	<b>\$50 per case per day</b>
<b>2. Failure to remit collections within one (1) working day after it is required to do so as per Section II(D)2</b>	<b>[(Daily federal funds rate) x (principal)] + \$100 per day</b>
<b>3. Failure to provide reports required by Section II(A)4</b>	<b>\$250 per day</b>
<b>4. Failure to remove unsatisfactory staff as required by Section II(A)13</b>	<b>\$500 per person per day</b>
<b>5. Failure or delay to transfer cases and deliver records as required by Sections III(C)5,6,7</b>	<b>\$500 per day</b>

## Exhibit IIA

### AVERAGE COLLECTION RATES

	Business Excise Tax	
	Primary Placement	Secondary Placement
Estimated Yearly Referrals for Business Tax (FY'20& FY'21)	\$413,363,815.44	\$263,415,867.72
Estimated Collection Rate Business tax vendors on boarded in 2020	6.47%	1.53%
Estimated 5 year Collection	\$133,723,194	\$20,151,313.88
Estimated Average Referrals for 5 Years	\$2,066,819,077.20	\$1,317,079,338.60

# SCOPE OF WORK II

## GENERAL CONDITIONS AND SPECIFICATIONS

### Debt Collection Services for

### Environmental Control Board (“ECB”) Judgments and Parking and Camera Violations Debt

#### SECTION I.

##### Objective

The purpose of this solicitation is to establish multiple awards for the collection of outstanding City judgments/debt assigned to, and/or issued by, the New York City Department of Finance (DOF). Vendors able to demonstrate sufficient expertise and experience in providing debt collection services in a legal and ethical manner are invited to bid. All debtor judgments to be collected pursuant to this contract are docketed in New York.

##### Sources of Judgments/Debt

Judgements/debts to be collected pursuant to this contract come from one of two sources: a) the Environmental Control Board (“ECB”) or, b) Parking and Camera Violations. Environmental Control Board judgments are the result of summonses that are issued by thirteen different City enforcement agencies responsible for protecting the public’s health, safety, and clean environment. Penalties adjudicated by the ECB are assigned to the DOF for collection after they have been docketed as judgments.

Parking and Camera Violations are the result of parking violations such as expired meters, parking in a no standing zone, or where a vehicle is photographed going through a red light or when a vehicle drives, parks or stands in a bus lane. Debtors may reside in any state, and any debt referred under this contract will be reported by State of vehicle registration.

##### Additional Sources of Judgments/Debts

The DOF may refer other city judgments/debts (e.g., tax warrants or Taxi and Limousine Commission (TLC) summonses). While the Department may refer such judgments, they will not constitute more than five percent of the total number of judgments referred-

##### Judgement/Debt Placements and Categories

Contract awards for Parking Violation and ECB judgements will be broken down into two Placements: **Primary Placement** - debt which has not previously been worked on by a Collection agency, and **Secondary Placement** - debt which has been previously worked on by a Collection agency. Each type of debt will be further grouped into one of the following four categories:

**Category I:** Parking violations and Camera violations (Primary Placement).

**Category II:** Parking violations and Camera Violations (Secondary Placement).

**Category III:** ECB Penalty Violations (Primary Placement).

**Category IV:** ECB Penalty Violations (Secondary Placement).

#### Award Limitations

The vendor receiving a primary placement award will not be considered for a secondary placement award. In the event that a vendor is the low bidder for both Categories (Primary and Secondary), DOF reserves the right to determine, based on the bidder's demonstrated capability and the best interest of the City, which Placement Category the bidder will be awarded.

In general, debt will be recalled from a vendor and reassigned to the subsequent vendor approximately six months after the assignment anniversary date. However, in a limited number of instances, a vendor may retain the debt beyond six months if significant progress has been made collecting the debt or if a new violation is added to the case within 30 days of case assignment expiration date. In the latter scenario, assignment for placement would be extended for 30 days. A vendor may be permitted to keep a case for longer than six months if debtor has entered into a payment agreement with the vendor and has kept current with required installments. DOF reserves the right to recall debt from Primary and Secondary Placement with or without cause regardless of how much time has elapsed since the debt was assigned.

The City judgments have all been docketed in the appropriate County Clerk office in the Supreme Court of the State of New York. In the vast majority of cases, DOF has mailed at least one dunning notice to the last known address of the judgment debtor.

#### Consecutive Debt Assignment

After the first debt assignment to the primary placement vendor, all consecutive assignment will be recalled from the primary placement vendor and reassigned to the corresponding secondary placement vendor approximately six months after the debt assignment anniversary date to the primary placement vendor.

After the first debt assignment to the secondary placement vendor, all consecutive debt assignments will be recalled from the secondary placement vendor approximately six months after the debt assignment anniversary date to the secondary placement vendor.

#### **Bidder Qualification Requirements**

*The following are the Vendor Requirements of this solicitation. Responses that fail to meet all of these requirements may be rejected.*

- 1) All bidders that seek to collect personal or household debts from New York City residents must be authorized to do business in the State of New York and have a Debt Collection Agency license issued by the New York City Department of Consumer and Worker Protection, no matter where the bidder is headquartered. Bidders incorporated



out of state must obtain a Certificate of Doing Business in Good Standing from their home state's Secretary of State, and this must be filed with an application for Authority to Conduct Business in New York with the New York State Secretary of State. The bidder must also have the appropriate licenses or certifications required of any individual or entity performing the services described in this solicitation in the City and State of New York (i.e., for itself, its partners and any subcontractors). The Bidder **must** provide copies of all required documentation with the bid submission.

- 2) The Bidder must provide documentation demonstrating a minimum of three (3) years of experience in providing debt collection services on accounts comparable to the scope of work described in this solicitation. This documentation includes the contract description, term, dollar amount per year, and name, address, phone number, and contact person of contracting agency or firm.
- 3) The Bidder must provide an organizational chart indicating key personnel and their respective responsibilities for this contract. Bidders must include a staffing plan that shows staff will be allocated to cover the needs of the contract. The selected vendor shall demonstrate that an experienced and professional management staff will be assigned to oversee the services required under this contract and have access to a qualified collection of staff to respond to the fluctuating quantity and types of New York City debt.
- 4) The Bidder must have a secure call center location equipped with the necessary technologies and proper equipment and supplies to handle outgoing and incoming calls consistent with the volume of debt referred under this contract within ten (10) days of contract award. The call center will be subject to minimum service level requirements with regard to call wait time, dropped calls and other measures. Call center hours must be at a minimum from 9 am to 5 pm ET Monday through Friday, with additional hours to reach debtors in the evenings and the capability to communicate with non-English speakers. The call center must also include weekend hours.
- 5) The Bidder must be able to accept referrals in an electronic format as determined by the City via a secure transfer method. The Bidder must have the capacity to automate referrals via a vendor-hosted system that interfaces with the City's existing source systems and meets DOF's requirements for secure data transfer within ten (10) days of contract award.
- 6) The Bidder must demonstrate that they can maintain the data, systems and physical facility security requirements for personal and financial information, and that the hosted data will be secure, prevented from commingling with other customer accounts and managed by capable personnel within ten (10) days of contract award.

- 7) The selected vendor shall be required to provide detailed organization performance metrics for the previous calendar year which should clearly indicate the volume and success rates of your organization.
- 8) Bidder shall have secured all Insurance Requirements as set forth in this Agreement within ten (10) days of contract award.

## **SECTION II.**

### **Scope of Services**

#### **A. CITY JUDGMENT/DEBT INFORMATION, REPORTS AND PROCEDURES**

- 1) DOF will provide details of the City judgments/debts including principal, interest and penalties as of the referral date, and the last known address of the debtor. Interest accrues on City judgements until paid in full.
- 2) The Contractor must commence collection efforts with respect to all cases referred to it within seven (7) business days of receipt of the referral.
- 3) The Contractor shall maintain an electronic file for each referred case. The file shall contain notes of any conversations with the debtor, and copies of documents and/or correspondence. Each file shall be maintained in a manner satisfactory to DOF and shall document every skip-tracing effort made and shall capture all information obtained, such as new address, telephone numbers, assets, etc. All such files shall be the property of DOF and may be inspected from time to time, as deemed necessary.
- 4) The Contractor shall maintain electronic recording of all verbal communication for each case referred. The DOF will request copies of randomly selected recordings. The timeframe for submission of recordings will be determine by DOF.
- 5) The Contactor shall furnish electronic reports, both summary and detailed, that fulfill the needs of DOF. The format and specifications of these various reports will be determined prior to contract award and be subject to approval by DOF. Subjects of such reports include, but are not limited to: status of revenue collected, liquidation rates, disputes, holds, returns, uncollectible (based on uncollectible descriptions provided by DOF), installment plans, mail returned, calls made and received, etc.
- 6) DOF will require cases to be closed out/returned either by predetermined date or as needed due to disputes, settlements, etc. DOF may have cases returned solely at its

discretion and the Contractor will verify compliance via e-mail.

- 7) In the event of a dispute of any case made by a debtor, the Contractor shall make note of the dispute, refer documentation of the dispute to DOF, and suspend any collection efforts on the case, pending the instructions of DOF on how to proceed.
- 8) The Contractor may be allowed to offer settlements on cases. The parameters and requirement for settlements offers will be decided by DOF and provided to Contractor through an Addendum to the solicitation or an amendment to the contract.
- 9) The Contractor shall promptly and fully respond to all questions the Department may submit about Contractor's collection procedures. The Department reserves the right to require the Contractor to modify or change its procedures, should the Department conclude any procedure does not reflect the image the Department desires to convey or subjects the Department to liability.
- 10) The Contractor shall promptly report to the Department each instance in which the debtor has died, a petition in bankruptcy has been filed, or where the debtor or debtor's estate has been made the subject of an assignment for the benefit of creditors or of any other similar proceeding in any jurisdiction. Contractor, in cooperation with and subject to the consent, approval and supervision of the Department, may initiate collection efforts and file the proofs of claim in the appropriate litigation, bankruptcy and estate proceedings, etc.
- 11) The Contractor shall suspend or terminate action on any debt referred, upon written notification to do so by the Department, and shall promptly return the file to the Department. In this event, no fee shall be paid the Contractor.
- 12) The Department shall have the right, at its discretion, for any reason that is not unlawful, and at any time in the term of the contract, to direct that particular staff employed by the Contractor or its Subcontractors not be assigned to the Department's work, and Contractor or Subcontractor must thereupon immediately remove and within ten (10) calendar days, replace such staff with an acceptable substitute(s).
- 13) In the event that Contractor receives correspondence, communication or payment relating to a claim which has not been assigned to Contractor, or which has been closed and returned, Contractor shall at no charge inform the correspondent to contact the Department and shall notify the Department of the correspondence, communication or payment and forward such, in accordance with the Department's instruction.

## **B. COLLECTION, SKIPTRACING and ASSET LOCATION EFFORTS**

- 1) Copies of all dunning letters to be used by the Contractor shall be submitted to DOF for approval prior to use.
- 2) Contractor's efforts to effect collection must include the prompt service of at least one dunning letter to each debtor with "address correction requested" noted on the envelope.
- 3) All correspondence to debtors must state in bold print that debtors can register complaints regarding the Contractor's practices and procedures by calling or writing to DOF, with contact details listed.
- 4) Contractor must directly perform dunning/skip tracing collection activities and are prohibited from subcontracting out these tasks. The dunning activities must include, but are not limited, to: scrubbing the debt, determining the collectability of the debt, providing leads, determining the viability of the entity, income and asset searches. Notwithstanding the above, the Contractor may subcontract technology, mailing services or research tasks.
- 5) Contractor will attempt to locate debtor phone numbers on all cases. When numbers are available, at least one attempt to call must be made on each case. Any phone number located by the Contractor must be noted in the file and reported to DOF.
- 6) Any income or assets identified, such as job or bank, must be noted in the file and reported to DOF.
- 7) Skip tracing efforts, such as credit bureau reports, must be noted in the file and reported to DOF.
- 8) Any new addresses identified for judgment debtors must be noted in the file and reported to DOF.

## **C. OPTION TO RETURN CITY JUDGMENTS**

After performing the skip tracing and asset location services in Section II(B), above, the Contractor may return judgements or debts after assignment where the Contractor can substantiate, by providing supporting documentation to the Department, that the debt or judgment is uncollectible due to the inability to locate the debtor or its assets, that the debtor's income and assets are substantially exempt, or that the debtor has insufficient income or assets. Insufficient assets are defined as the amount of non-exempt assets that are less than \$500.00. Returns shall be made each month in a manner acceptable to the Department, and only after obtaining permission from the Department.

## **D. PAYMENT and ACCOUNTING PROCEDURES**

- 1) Contractor shall not, under any circumstances, accept cash for payment of any debt

referred. All checks and money orders are to be made payable to DOF. All checks must be delivered or mailed to the Lockbox assigned by DOF. Payments can be made at local Business Centers or on-line at the DOF web site. DOF may add the capability for Contractor to accept credit card payments where the payments will be made directly to DOF via the DOF website enter Website address [www.nyc.gov/finance](http://www.nyc.gov/finance) or [www.nyc.gov/eservices](http://www.nyc.gov/eservices) or Lockbox.

- 2) If a debtor check is mistakenly mailed to the Contractor, they will notify the contract liaison within two (2) business days via e- mail, and forward the check to DOF, with original envelope to identify post mark date.

#### **E. CONTRACTOR COMMISSION**

- 1) DOF will capture information on all payments made in any manner at any source and notify the Contractor via weekly transaction reports sent by electronic file. At the end of each month, the Contractor will send DOF a voucher with backup documentation as to how much was collected on cases referred to them and how much commission is due the Contractor. The DOF will review and process all approved claims. Rejected claims will be returned to the Contractor with an explanation for the rejection. Non-commissionable payments will also be detailed on DOF's report to the Contractor. If payment is made by the debtor after a case has been closed out/returned, no commission will be paid. However, if a debtor enters into an installment plan, or the Contractor advises DOF of a distrainable asset that DOF is then able to collect on, then commission will be paid.
- 2) If a vehicle is towed or booted, no commission will be paid. If a debtor has the registration suspended, and pays to have it re-instated, no commission will be paid. If payment is made by the debtor after a case has been closed out/returned, no commission will be paid. However, if a debtor enters into an installment plan, or the Contractor advises DOF of a distrainable asset that DOF is then able to collect on, then, commission will be paid.
- 3) If a check bounces, or a payment incorrectly applied is later debited, the commission paid will be deducted from a later commission.
- 4) Commission payment for revenue collected will commence on day four after debt assignment date. Contractor will not be paid commission on revenue collected for the first three days of the debt being assigned but will get commission payment on revenue collected starting on day four. Commission will not be paid on revenue collected by DOF efforts. To be eligible for commission payment, revenue must be collected up to 90 days from the last dunning action performed by the collection

agency. Dunning action can include phone call, email, etc. and **MUST** also include the mailing of at least one dunning letter.

- 5) Commission payment for revenue collected will commence on day four after debt assignment date. Contractor will not be paid commission on revenue collected for the first three days of the debt being assigned but will get commission payment on revenue collected starting on day four. Commission will not be paid on revenue collected by DOF efforts.
- 6) Commission will not be paid on accounts assigned to the collection agency for which the collection was the result of DOF activities. DOF activities include, but is not limited to payments which resulted from DOF vendor restraint, DOF special projects, boot/tow, DOF bank levy and actions taken by the sheriff and marshal.
- 7) Commission disputes shall be made by the Contractor in writing to the DOF Contract Liaison.

### **Commission Incentives**

Contractors are entitled to its base commission plus an additional incentive commission under certain circumstances:

#### **Incentive # 1: Exceeding Prior Average Collection Rate**

DOF shall pay an incentive of 50% of the base commission if the collection rate for a monthly assignment of judgment debt after six months exceeds by one percent or more the average collection rate of a prior vendor for all assignments of the particular debt type and assignment sequence (e.g., primary or secondary,). The details of which prior vendor's average collection rate that will be used for which contract are detailed below.

Judgment debt will be assigned to the vendors in monthly cohorts. The cohorts of judgment debt will be assigned to the vendor for six months before the debt is recalled and assigned to the next vendor in DOF's debt assignment sequence. The Incentive will not be paid for a monthly assignment collection rate that is less than one (1) full percent more than the prior vendor's average collection rate. The prior vendor's average collection rate is indicated in Exhibit-IIB.

DOF shall communicate whether a vendor has exceeded the threshold rate as soon as possible after the completion of the six months assignment timeframe. If for any reason, the vendor's assignment lasts for more than six months, the collection rate for purposes of determining whether an incentive should be paid will be at the six-month mark and collections received after that time shall not count towards receiving the incentive payment.

### Prior Vendor Comparison for Incentive #1

- Primary vendor collection rate will be compared to the average collection rate of the primary vendor under the prior contract for the same debt type.
- Secondary vendor collection rate will also be compared to the average collection rate of the primary vendor collection under the prior contract rate.

### **Incentive # 2: Rapid Collection of Debt**

Debt paid in full in the first two (2) months of receiving an assignment will receive an incentive of 10% of its based commission.

### **Incentive #3: Productive Bank Account Referrals**

For accounts returned uncollected after a six-month assignment, the Contractor shall be entitled to its full base commission for every judgment case for which it reports a bank account to DOF and DOF receives a collection within six months of that case being returned to DOF.

The DOF shall not pay for any financial institution information of debtors previously obtained by DOF through either ongoing DOF collection work or from the prior OCA contractor to prevent payment for duplicate information. Payment shall be made solely based on new information obtained from the Contractor that results in the successful collection of the assigned debt. In addition, the DOF is not required to pursue collection on all bank account information it receives from a Contractor. For example, DOF does not typically pursue bank restraints or bank levies for judgment debt with a balance below \$1,000.

## **B. LEGAL and ETHICAL STANDARDS**

- 1) Contractor shall not report any warrant or judgment information to a Credit Reporting Agency or threaten to do so by letter or conversation.
- 2) The Contractor shall comply with any and all applicable statutes, laws, code of conduct and regulatory over-site with respect to the collection of debt. This includes the Federal, State and local jurisdiction, with particular emphasis to the Federal Fair Debt Collections Practices Act and the Fair Credit Reporting Act. All the Firm's operations must be performed in accordance with the highest standard of ethics. In addition, Contractors performing collection work within NY State shall comply with following:

NY State General Business Law ss600 and ss601; NY Executive Law ss63 chapter 12; for collection work performed within NY City, Contractors shall also comply with NY City Department of Consumer Affairs Rules, 6RCNY ss5-76 et seq.

If the Contractor receives authorization to use an attorney to collect any debt, then that attorney shall be subject to the NY State Judiciary Law Article 15, ss489; Code of Professional Responsibility, Appendix to NY State Judiciary Law.

- 3) Contractor will not represent itself or its employees to be employees of DOF.
- 4) Contractor shall not, even if State law allows it, threaten a debtor with arrest for non-compliance.
- 5) The correspondence to debtors must state in bold print that debtors can register complaints regarding the Contractor's or Subcontractor's practices and procedures by calling or writing to the Department. A phone number and address of the Department must be listed.
- 6) Contractor shall not under any circumstances resell the City's debt to any other entity.
- 7) The Contractor shall comply with New York City Department of Consumer and Worker Protection (NYC DCWP) requirement that requires debt collectors to inform consumers about whether certain language access services are available and to retain records relating to language access services. **NYC DCWP § 2-193 Records to be Maintained by Debt Collection Agency** These records are to be made available to DOF.

#### **C. STAFFING AND TRAINING**

The Contractor must demonstrate that an experienced and professional management staff will be assigned to oversee the services required under this contract. The Contractor shall have access to a qualified collection staff to respond to the fluctuating quantity and types of New York City debt. The Contractor is responsible for ensuring that management, call center and collection staffs are trained to have appropriate knowledge of the City's debt.

The collections staff must be trained in relevant laws and best practices regarding government debt collection, as well as the required security for personal and financial information. Respondents are required to provide a detailed staffing and training plan in their response to this bid, including an organizational chart with anticipated staffing levels for each unit.

#### **D. OCA TECHNICAL AND FILE REQUIREMENT**

Refer to Appendix A.



## **SECTION III.**

### **Special Terms and Conditions**

The Contract to be entered into between the Department and the Contractor shall contain the following provisions:

#### **A. Term of Contract**

1. The term of the contract shall be for a period of five (5) years commencing upon the date specified in the Department's written notice to proceed. The City may, at its sole option, renew this Agreement for (1) two-year renewal at the existing contract rates and subject to the Terms and Conditions of this Agreement.
2. At the end of the term of the Agreement, including any renewals, at the direction of the Department, the Contractor shall continue its services, at the existing contract rates upon the same Terms and Conditions as herein set forth for a maximum period of one year.

#### **B. Access to Contractor's Files and Facilities**

1. Contractor shall provide unrestricted access to Contractor's and Subcontractor's records and files pertaining to the contract, to federal, state and city auditors and to appropriate Department of Finance staff and/or investigators or their designees. Pursuant to Sec. 93(b), of the N.Y.C. Charter, the City Comptroller may audit the contract.
2. The Department reserves the right to visit Contractor's and any Subcontractor's offices at any time without prior notice to examine its facilities, to request and obtain a demonstration of any procedure, to evaluate actual collection activities, and to examine and audit the ledgers, books, journals and records of the Contractor or Subcontractor concerning the contract.

#### **C. Termination of Contract**

1. The contract may be terminated by the Department without prior notice in the event the Contractor or Subcontractor or any of their employees is convicted of a crime which relates to or affects Contractor's or Subcontractor's duties and/or responsibilities under this contract, or adverse action is taken which impacts upon Contractor's or Subcontractor's ability to perform under this contract, or a court order is entered against Contractor or Subcontractor or any of their employees for a violation of any code of ethics or any local, state or federal law, rule, regulation or ordinance. Upon termination

of the contract, all City items, information, files, records, documents, related ledgers and journals, etc. related to this contract must be returned to the Department or the City immediately.

2. Any indictment or conviction for giving or receiving a bribe or unlawful gratuity to or from any party by any principal or employee of the Contractor or Subcontractor may result in the termination of the contract without prior notice. It is the responsibility of the Contractor to notify the Department in writing of such event.

3. The Department shall have the right to terminate the contract at any time for any reason determined by the Department, in its sole discretion, to be in the Department's or the City's best interest, by giving Contractor thirty (30) calendar days prior written notice of termination. The Department and the City shall not be liable for damages to the Contractor based upon the Department's termination of the Contract, however, the Department shall pay the Contractor for any fees earned for work satisfactorily performed prior to termination.

4. Upon termination of the contract, the Department may, in its sole discretion, extend the contract for the continuation of maximum efforts to collect on one or more of the City Judgments referred during the term of the contract. If the Department so requires, all terms and conditions of the contract continue in full force and effect with regard to Contractor's continuation of all collection efforts for those City Judgments so designated by the Department.

5. The Department shall not be obligated to pay any fee upon amounts received by Contractor after termination of the contract, except for any fees earned for work satisfactorily performed prior to termination. All files, records and monies collected by Contractor after the termination of the contract or the return of any specific case, shall be promptly forwarded to the Department and in no instance, more than 30 days after contract termination or 60 days after notification from the City or contract termination.

6. Upon termination of the contract, Contractor shall cooperate in the transfer of cases and all files and records to the Department including execution of all forms necessary to effect transfer of legal representation in accordance with the Department's instructions. Contractor shall immediately deliver to the Department or its designees all files, records and related ledgers and journals in proper accounting form, and all documentation and other information concerning the City judgments referred for collection.

7. Contractor acknowledges that any failure or delay on its part to transfer cases and deliver files, records or monies described in paragraphs 5 and 6 above will be deemed to

cause irreparable harm to the City, for which the City shall be deemed to have no adequate remedy at law, and Contractor shall agree that the City may, in that event, seek and obtain injunctive relief in any court of competent jurisdiction and Contractor waives any and all defenses to a claim for injunctive relief, as well as to an assessment of liquidated damages in the sum of \$500 per day for each day of such failure or delay.

#### **D. Expiration of Contract**

1. Upon expiration of the contract, all City items, information, files, records, documents, and related ledgers and journals etc. related to this contract must be returned to the Department or the City within 60 days of contract expiration.
2. Upon expiration of the contract, Contractor shall cooperate in the transfer of cases and all files and records to the Department including execution of all forms necessary to effect transfer of legal representation in accordance with the Department's instructions. Contractor shall deliver to the Department or its designees all information, files, records, documents, and related ledgers and journals in proper accounting form, and all documentation and other information concerning the City judgments referred for collection.

#### **E. Most Favored Customer**

Contractor warrants and represents that the price, warranties, benefits and terms set forth in the contract are at least equal to or more favorable to the City than the prices, warranties, benefits and terms now charged or offered by the Contractor, or that may be charged or offered during the term of the contract for the same or substantially similar services as defined in this contract. If at any time during the term of the contract, Contractor enters into an agreement on a basis that provides prices, warranties, benefits or terms more favorable than those provided the City, then Contractor shall within thirty (30) calendar days thereafter notify the Department of such fact, and regardless of whether such notice is sent by Contractor or received by the Department, the contract shall be deemed to be automatically amended, effective retroactive to the date of execution of the more favorable agreement, to provide the same prices, warranties, benefits or terms to the City; provided that the City shall have the right and option at any time to decline to accept any such change, in which event such amendment shall be deemed null and void. If Contractor is of the opinion that an apparently more favorable price, warranty, benefit or term charged or offered a customer during the term of the contract is not in fact more favored treatment, Contractor shall promptly notify the Department in writing, setting forth in detail the reasons that it believes the apparently more favorable treatment is not in fact more favored treatment. The Department, after due consideration of such written explanation, may decline to accept such explanation

and thereupon the contract shall be automatically amended effective retroactively to the effective date of the more favorable agreement, to provide the same prices, warranties, benefits or terms to the City. The provision of this Section shall survive the termination of the contract.

#### **F. Contractor and Subcontractor's Office and Referring Agencies**

1. Contractor shall maintain an effective procedure for forwarding claims to branch offices, subsidiaries in other cities in sufficient number to provide the required collection coverage. There shall be no increase in rate, fee, or charges by reason of such forwarded collection activities. Such other offices shall be deemed subcontractors under this Agreement and shall be subject to the terms and conditions for subcontracting set forth in this Agreement. Any office to which a claim is referred for collection must comply with each and every requirement of the contract with the same effect as though it were signatory thereto. A copy of the contract shall be mailed to each such correspondent office, if any.

2. The Contractor shall defend, indemnify and hold the City, its officers, 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 referral firms, subcontractors and their agents 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. The City may participate in the defense of such matters and reserves the right to approve all settlements of all such claims, actions, complaints, demands and causes of action.

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.

3. The Department requires that all debt collection services under this contract must be directly rendered by the Contractor or subcontractors that have been approved by the City.

## G. Security

The Contractor will be required to sign, and be subject to, the City's Secrecy and Confidentiality provisions, attached to the RFX in PASSPort as Attachment 10, and shall maintain, at all times, the data, systems and premises security requirements required for personal and financial information.

## H. Cyber Security

The Department of Finance requires SOC1/SOC2/SSAE18 certification from vendor if they provide the following services that may impact the financials of DOF users or client entities.

- Data center provider
- Software as a service (SaaS)
- Any managed services especially financial services
- Payroll processors
- Medical Claim Processor
- Loan serving company
- Any vendor that process/collect payments on behalf of DOF

### **In addition, all service providers must meet the following DOF security requirements**

- Service Providers must be able to log, audit, monitor and report Department of Finance's data access history as needed.
- File level data access history must be enabled for all technology service provider will be using whether on premise and or cloud hosting solutions.
- File level data access detection and prevention of data loss in file level must be enabled for all technology service provider will be using whether on premise and or cloud hosting solutions.
- Service Provider shall use industry standards to ensure that it does not introduce any viruses or any other form of malicious code to City systems.
- Service Provider shall conduct background checks for each consultant assigned to the project in order to reduce the risk of human error, theft, or misuse of the City's information assets. When requested, Service Provider will provide documented evidence of background checks for each consultant assigned to the project.
- When requested, Service Provider agrees to provide evidence of an independent IT security review or audit commensurate with the security requirements of the project. This audit must be completed within a time frame specified by the City.

- Should Service Provider learn or suspect that there has been a breach of this policy, it shall immediately notify Department of Finance.
- For all data received from DOF, data should be a used only for the stated and agreed on the purpose.
- All access to Department of Finance (DOF) data must be authorized and based on individual identification and authentication.
- User access control must be enforced to identify who has accessed DOF shared data, uses access must be logged for audit purpose. All log data must be available if needed for a minimum of one (1) year.
- Must ensure that DOF provided information is not processed, maintained, transmitted, or stored in or by means of data communication channels, electronic devices, computers, or computer networks located in geographic or virtual area not subject to US LAWS.
- The system (hardware and software) used to receive, store and handle DOF data must be kept up to date with necessary patch from known security vulnerability.
- Information received from DOF cannot be disclosed to other organizations or individuals unless specifically authorized by DOF.
- Data should be deleted when it is no longer needed for the stated purpose.
- If vendor suspects IT system or paper-based files of DOF shared data have been subject to accidental or unlawful destruction, loss, or alteration, or unauthorized disclosure or access, must immediately report the situation to Department of Finance CISO office at [ciso@finance.nyc.gov](mailto:ciso@finance.nyc.gov) and to [soc@cyber.nyc.gov](mailto:soc@cyber.nyc.gov).

### **Encryption Strength**

- Approved encryption algorithms must be (of a minimum key length of 256 bits) used for DOF shared data at rest and data in transit.

### **Key Management**

- Private keys must be kept confidential.
- Key lifecycle management must be implemented.
- Keys in storage and transit must be encrypted.
- Keys must be chosen randomly from the entire key space.
- Encryption keys must allow for retrieval for administrative or forensic use.

### **Data Rest**

- Depart of Finance data stored in a database or file system (at rest) must be encrypted in accordance with the Citywide Encryption Standard.
- The use of password protection instead of encryption is not an acceptable alternative to protecting private information.

### **Removable Media**

- Department of Finance's data should not be transitioned to removable media without management approval.
- Removable media including CDs, backup tapes, and USB memory drives that contain Department of Finance's data must be encrypted and stored in a secure location.
- When transferring removable media, the receiver must be identified to ensure the person requesting the data is a valid recipient.

### **Transmission Security**

- Department of Finance data sent across any network connection must be encrypted in accordance with the Citywide Encryption Standard.
- Unencrypted transmission of private or confidential data through web applications.
- or email is not allowed.
- Wireless networks must be encrypted using an approved City of New York standard.

### **Portable Devices**

- Department of Finance data may only be stored on portable devices such as laptops, smart phones and personal digital assistants (PDAs) when encrypted.
- Portable devices should not be used for long-term storage of Department of Finance's data.
- Portable devices must have the capability to be remotely wiped in the event of theft or accidental loss.
- Portable devices must have proper protections in place as outlined in the Citywide Portable Computing Information Security Policy.

## **I. Liquidated Damages**

It is hereby agreed that the following schedule shall be fixed and determined by the parties as the liquidated damages that the Department shall suffer by reason of the Contractor's failure to properly perform the following activities and are in addition to any other rights and remedies which are to be specified in the contract and by law. Such damages shall be paid within ten business days after notification by the Department, or at the Department's discretion may be deducted from any payments due to the Contractor. Liquidated damages shall not exceed 25 percent of fees earned under the contract.

It is understood that such liquidated damages are not intended as a penalty, but an acknowledgment by the parties that actual damages in each case are difficult or impossible to ascertain. Failure to impose liquidated damages for any specific violation shall not be deemed a waiver of any provision of this contract, nor shall it be deemed a waiver of any right to impose specified damages as to other or future violations of any kind, nor of any other remedy at law or in equity.

<u>ACTIVITY</u>	<u>AMOUNT</u>
1. Failure to institute collection procedures within seven (7) days of receipt of referral	\$10 per case per day
2. Failure to remit collections within one (1) working day after it is required to do so as per Section II(D)2	[(Daily federal funds rate) x (principal)] + \$100 per day
3. Failure to provide reports required by Section II(A)4	\$250 per day
4. Failure to remove unsatisfactory staff as required by Section II(A)13	\$500 per person per day
5. Delay to transfer cases and deliver records as required by Sections III(C) 5, 6, 7	Failure or \$500 per day



## Exhibit IIB

### AVERAGE COLLECTION RATES

	<b>Primary Placement</b>	
	Parking Judgment	ECB Judgment
Estimated Yearly Referrals for Parking and ECB (based on FY17 - FY'21 yearly Average Placement)	\$112,568,498	\$147,815,767
Estimated Collection Rate (Parking & ECB % based on FY'19,pre-pandemic rate)	31.00%	7.29%
Estimated 5 year Collection	\$174,481,171	\$53,878,847
Estimated Average Referrals for 5 Years	\$562,842,488	\$739,078,836

	<b>Secondary Placement</b>	
	Parking Judgment	ECB Judgment
Estimated Yearly Referrals for Parking and ECB (based on FY17 - FY'21 yearly Average Placement)	\$85,643,715	\$222,434,081
Estimated Collection Rate (Parking & ECB % based on FY'19,pre-pandemic rate)	5.14%	3.35%
Estimated 5 year Collection	\$22,010,435	\$37,257,709
Estimated Average Referrals for 5 Years	\$428,218,576	\$1,112,170,405

**APPENDIX A**

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS,  
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## 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” means 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” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” means the City of New York.

D. “City Chief Procurement Officer” or “CCPO” means 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” means the head of the Department or his or her duly authorized representative. The term “duly authorize

F. d representative” shall include any person or persons acting within the limits of his or her authority.

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

H. “Contractor” means the entity entering into this Agreement with the City.

I. “Days” means calendar days unless otherwise specifically noted to mean business days.

J. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.

K. “Law” or “Laws” means 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.

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

M. “PPB Rules” means 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.*

N. “SBS” means the New York City Department of Small Business Services.

O. “State” means the State of New York.

## **ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES**

### **Section 2.01 Procurement of Agreement**

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty 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 2.01(B) 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 Section 2.02(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.

### **Section 2.03 Certification Relating to 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 that 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 2.03.

### **Section 2.04 Disclosures Relating to Vendor Responsibility**

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor's Office of Contract Services. The Contractor acknowledges that the Department's reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

## **Section 2.05 Disclosure Relating to Bankruptcy and Reorganization**

If 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 days of filing.

## **Section 2.06 Authority to Execute Agreement**

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

## **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 disclosure that is required by PPB Rule § 2-08(e) must be submitted within 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 Department 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 3.01 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. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. *Approval when subcontract is \$20,000 or less.* The Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$20,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal ([www.nyc.gov/pip](http://www.nyc.gov/pip)).

2. *Approval when subcontract is greater than \$20,000.*

a. The Contractor shall not enter into any subcontract for an amount greater than \$20,000.00 without the prior approval by the Department of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than \$20,000.00, 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, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal ([www.nyc.gov/pip](http://www.nyc.gov/pip)) and provide the following information: maximum subcontract value, description of

subcontractor work, start and end date of the subcontract, and the subcontractor's industry.

c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed \$25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. 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;

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<sup>1</sup> Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at [pip@fisa.nyc.gov](mailto:pip@fisa.nyc.gov).

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 4.05(D) 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.

C. 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.

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

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 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.

F. 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.

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement 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.

## **ARTICLE 4 - LABOR PROVISIONS**

### **Section 4.01 Independent Contractor Status**

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

### **Section 4.02 Employees and Subcontractors**

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with 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 the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any

other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

#### **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 Days' written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

#### **Section 4.04 Minimum Wage; Living Wage**

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. 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 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 ("Section 6-109"), in accordance with Section 6-109, the Contractor agrees as follows:

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

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any

employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

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

4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

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

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109 and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

#### **Section 4.05 Non-Discrimination in Employment**

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial

status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

B. N.Y. Labor Law § 220-e. 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 N.Y. 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 \$50.00 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 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

C. 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 Admin. Code § 6-108, that:

1. 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.

It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) 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. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement. 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 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

1. 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:

a. 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;

b. 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;

c. 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;

d. 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;

e. 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 SBS, Division of Labor Services (“DLS”); and

f. 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.

2. 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:

a. Disapproval of the Contractor; and/or

b. Suspension or termination of the Agreement; and/or

c. Declaring the Contractor in default; and/or

d. In lieu of any of the foregoing sanctions, imposition of an employment program.

3. 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.

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 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 Section 4.05(D)(4).

5. 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 Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) 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.

## **Section 4.06 Paid Sick Leave Law**

### *A. Introduction and General Provisions.*

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>2</sup> Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

2. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City’s Department of Consumer

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<sup>2</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

Affairs (“DCA”). DCA’s rules promulgated under the PSSL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

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

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSSL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSSL and Rules.

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

*B. Pursuant to the PSSL and the Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSSL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the

employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

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

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency; or

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

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

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

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

C. *Exemptions and Exceptions.* Notwithstanding the above, the PSLL does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;

3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;

4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;

5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;

6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

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

E. *Notice of Rights.*

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

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

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

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt,

limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLM may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

#### **Section 4.07 Whistleblower Protection Expansion Act**

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively:

1. 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 Agreement 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.

2. 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 this Section 4.07, 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.

3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:

a. 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 Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 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 Agreement.



4. For the purposes of this Section 4.07, “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.

5. This Section 4.07 is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of \$100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

## **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 that 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, documents, other evidence 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 books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. 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, documents, or other evidence 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, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence 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, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence 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. If observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession’s services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

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 5.03.

### **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 5.04.

#### **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 items or material (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 evidence" 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 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 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. 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 obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

B. The Contractor shall provide notice to the Department within three 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 24 hours prior to any statement to the press or at least five 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 5.08 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 and Ownership of Work Product**



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 maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

## **Section 7.02 Workers' Compensation, Disability Benefits, and Employers' Liability Insurance**

A. The Contractor shall maintain workers' compensation insurance, employers' liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement

B. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor's workers' compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers' Compensation Insurance*;
2. Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
3. Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
4. Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;
5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;
6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
7. Form CE-200 – *Affidavit of Exemption*;
8. Other forms approved by the New York State Workers' Compensation Board; or
9. Other proof of insurance in a form acceptable to the City.

## **Section 7.03 Other Insurance**

A. *Commercial General Liability Insurance*. The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations

under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and “occurrence” based rather than “claims-made.” Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance 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 CA 00 01. If vehicles are used for transporting hazardous materials, the commercial 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.

C. *Professional Liability Insurance.*

1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall 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.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

3. 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 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.

D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such

insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

#### **Section 7.04 General Requirements for Insurance Coverage and Policies**

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

B. 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.

C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

### **Section 7.05 Proof of Insurance**

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. 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 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

### **Section 7.06 Miscellaneous**

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, 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 be covered under such policy if this Agreement requires that the City be an additional insured (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, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: 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, together with its officials and employees, and any other entity listed as an additional insured on Schedule A 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 together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A 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 7 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. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights

against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (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 maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be 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 injury, damage, or loss 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 negligence, 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**

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act,



and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

#### **Section 8.04 Infringement Indemnification**

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees 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 Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

#### **Section 8.06 Actions By or Against Third Parties**

A. If 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 that the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

### **Section 8.07 Withholding of Payments**

A. If 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. If 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 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 set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 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 8.07 are not 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 officials 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. The Contractor deviates from the requirements of this Agreement without a duly approved and executed change order document or written contract modification or amendment at its own risk.

### **Section 9.02 Changes Through Fault of Contractor**

If 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, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES**

### **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. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, 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 10.02(A) 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 Section 10.02(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 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 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 10.02, 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 10.02 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 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 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 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 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 10.03.

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 10.03. 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 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 10.03, 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 10.04, 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 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed 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 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within 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 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, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; 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 10.06, 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 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.



### **Section 10.07 Liquidated Damages**

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

## **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. With some exceptions, 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 11.02 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 Department may waive the requirements of this Section 11.02 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 11.02 is applicable to contracts valued at \$25,000.00 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**

Subject to Section 12.03, 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 12.02, 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 12.02.

### **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 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 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 12.03 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 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 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 12.03 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 12.03, 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 12.03 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 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 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 12.03 as the Contractor initiating the dispute.

3. Agency Head Determination. Within 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 12.03. 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 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 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 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 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 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 12.03 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 12.03, 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 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 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 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 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 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 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

#### **Section 12.04 Claims and Actions**

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, 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 months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

#### **Section 12.05 No Claim Against Officials, Agents, or Employees**

No claim shall be made by the Contractor against any official, 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. If there is 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 Unlawful Discrimination in the Provision of Services**

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual

orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123.* In accordance with 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 Admin. 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 \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status.* In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

### **Section 13.06 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). If 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 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 13.07 Voter Registration**

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through 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 13.07. 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; SBS; 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 Hygiene; 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 13.07, 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 13.07 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 13.07 are material conditions of this Agreement.

F. The provisions of this Section 13.07 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 13.08 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 13.09 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 13.10 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 13.11 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 13.12 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 13.12 applies as provided in Paragraph B of this Section 13.12, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.12. 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 13.12 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000.00 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 13.12 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 13.12 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 13.13 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 13.13. 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 14.01 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 modify 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 and email addresses specified in Schedule A (and if not specified in Schedule A, as 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 email and, unless receipt of the e-mail is acknowledged by the recipient by email, 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 14.04 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.

## SCHEDULE A

Article 7 -- Insurance		
Types of Insurance (per Article 7 in its entirety, including listed paragraph)		Minimum Limits and Special Conditions
<input checked="" type="checkbox"/> Workers' Compensation	§7.02	Statutory amounts.
<input checked="" type="checkbox"/> Disability Benefits Insurance	§7.02	
<input checked="" type="checkbox"/> Employers' Liability	§7.02	
<input checked="" type="checkbox"/> Commercial General Liability	§7.03(A)	<p><u>\$1,000,000.00</u> per occurrence</p> <p><u>\$1,000,000.00</u> personal &amp; advertising injury (unless waived in writing by the Department)</p> <p><u>\$2,000,000.00</u> aggregate</p> <p>\$0 products/completed operations</p> <p>Additional Insureds:</p> <p>1. City of New York, including its officials and employees, and</p> <p>2. _____</p> <p>3. _____</p>
<input type="checkbox"/> Commercial Auto Liability	§7.03(B)	<p><u>\$1,000,000.00</u> per accident combined single limit</p> <p>If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90</p>
<input type="checkbox"/> Professional Liability/Errors & Omissions	§7.03(C)	<u>\$1,000,000.00</u> per claim
<input type="checkbox"/> Crime Insurance	§7.03(D)	\$_____ Employee Theft/Dishonesty

	<p>\$ _____ Computer Fraud</p> <p>\$ _____ Funds Transfer Fraud</p> <p>\$ _____ Client Coverage</p> <p>\$ _____ Forgery or Alteration</p> <p>\$ _____ Inside the Premises (theft of money and securities)</p> <p>\$ _____ Inside the Premises (robbery or safe burglary of other property)</p> <p>\$ _____ Outside the Premises</p> <p>\$ _____ Money Orders and Counterfeit Money</p> <p>City of New York is a loss payee as its interests may appear</p>
<p><input checked="" type="checkbox"/> Cyber Liability Insurance §7.03(E)</p>	<p>\$1,000,000.00 per claim</p>
<p><input type="checkbox"/> [OTHER]</p>	<p><i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i></p>
<p><input type="checkbox"/> [OTHER]</p>	<p><i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i></p>
<p><b>Section 10.07 – Liquidated Damages</b></p>	
<ul style="list-style-type: none"> <li>• Violation of Section 3.02(H), reporting subcontractors in the City’s Payee Information Portal</li> <li>•</li> </ul>	<p><b>\$100 per day</b></p> <p>\$ _____</p>
<p><b>Section 14.04 – Notice</b></p>	

Department's Mailing Address and Email Address for Notices	
Contractor's Mailing Address and Email Address for Notices	

## **CERTIFICATES OF INSURANCE**

### **Instructions to New York City Agencies, Departments, and Offices**

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

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

-- OR --

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

**CITY OF NEW YORK**  
**CERTIFICATION BY INSURANCE BROKER OR AGENT**

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

\_\_\_\_\_  
[Name of broker or agent (typewritten)]

\_\_\_\_\_  
[Address of broker or agent (typewritten)]

\_\_\_\_\_  
[Email address of broker or agent (typewritten)]

\_\_\_\_\_  
[Phone number/Fax number of broker or agent (typewritten)]

\_\_\_\_\_  
[Signature of authorized official, broker, or agent]

\_\_\_\_\_  
[Name and title of authorized official, broker, or agent (typewritten)]

State of.....)

) ss.:

County of .....

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_



WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER



**REPORT**  
***CORRUPTION, FRAUD, UNETHICAL CONDUCT***  
**RELATING TO A NYC-FUNDED**  
**CONTRACTOR PROJECT**  
**CALL THE NYC DEPARTMENT OF INVESTIGATION**  
**212-825-5959**

DOI CAN ALSO BE REACHED BY  
MAILOR IN PERSON AT:  
New York City Department of  
Investigation (DOI)  
80 Maiden Lane, 17th floor  
New York, New York 10038  
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:  
[www.nyc.gov/doi](http://www.nyc.gov/doi)

All communications are confidential



Or scan the QR Code above  
to make a complaint

**THE LAW PROTECTS EMPLOYEES OF  
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.

## **Appendix B – Identifying Information Rider**

### **Identifying Information Rider**

(To supplement the City Standard Human Services Contract, the Discretionary Fund Contract for human services contracts less than \$100,000, other human services contracts and other contracts designated by the Chief Privacy Officer)

#### **Section 1.01 Background.**

Local Laws 245 and 247 of 2017 (codified at New York City Charter (“Charter”) Section 8 subdivision (h) and the Administrative Code of the City of New York (“Admin. Code”) Sections 23-1201 to -1205) are effective June 15, 2018. Such laws apply to human services contracts and other contracts designated by the Chief Privacy Officer that involve the collection, retention, or disclosure of “Identifying Information” in connection with services provided under a City contract. Accordingly, in connection with the services provided under this Agreement, Contractor may collect, retain, and disclose Identifying Information only in accordance with the requirements of this Identifying Information Rider, the policies and protocols adopted pursuant to Admin. Code Sections 23-1201 to -1205, the other provisions of this Agreement and as otherwise required by law.

#### **Section 1.02 Definitions.**

- A. “Agency” means the City agency or office through which the City has entered into this Agreement.
- B. “Agency Privacy Officer” means the person designated to exercise functions under Admin. Code Sections 23-1201 to -1205 by the Agency through which the City is a party to this Agreement.
- C. “Chief Privacy Officer” means the person designated by the Mayor pursuant to Charter Section 8 subdivision (h) as the City’s Chief Privacy Officer or such person’s designee.
- D. “Exigent Circumstances” means circumstances where collection or disclosure is urgently necessary, such that procedures that would otherwise be required cannot be followed.
- E. “Identifying Information” means any information provided by the City to Contractor or obtained by Contractor in connection with this Agreement that may be used on its own or with other information to identify or locate an individual. Identifying Information includes, but is not limited to: name, sexual orientation, gender identity, race, marital or partnership status, status as a victim of domestic violence or sexual assault, status as a crime victim or witness, citizenship or immigration status, eligibility for or receipt of public assistance or city services, all information obtained from an individual’s income tax records, an individual’s Social Security number, information obtained from any surveillance system operated by, for the benefit of, or at the direction of the New York City Police Department, motor vehicle information or license plate number, biometrics such as fingerprints and photographs, languages spoken, religion, nationality, country of origin, place of birth, date of birth, arrest record or criminal conviction, employment status, employer information, current and previous home and work addresses, contact information such as phone number and email address, information concerning social media accounts, date and/or time of release from the custody of the Administration for Children’s Services, the Department of Correction, or the New York City Police Department, any scheduled court appearances, any scheduled appointments with the City, the Contractor or its subcontractor that provides human services or other services designated by the Chief Privacy Officer, and any other category of information designated by the Chief Privacy Officer.

### **Section 1.03 Collection.**

Absent Exigent Circumstances, Contractor shall not collect Identifying Information unless such collection (a) has been approved by the Agency Privacy Officer or the Chief Privacy Officer and the collection of such Identifying Information is in furtherance of Contractor's obligations under this Agreement; (b) is required by law or treaty; (c) is required by the New York City Police Department in connection with a criminal investigation; or (d) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.

### **Section 1.04 Disclosure.**

- A. Absent Exigent Circumstances, Contractor shall not disclose Identifying Information unless such disclosure (a) has been authorized in writing by the individual to whom such information pertains or, if such individual is a minor or is otherwise not legally competent, by such individual's parent, legal guardian, or other person with legal authority to consent on behalf of the individual; (b) has been approved by the Agency Privacy Officer or the Chief Privacy Officer and the disclosure of such Identifying Information is in furtherance of Contractor's obligations under this Agreement; (c) is required by law or treaty; (d) is required by the New York City Police Department in connection with a criminal investigation; or (e) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.
- B. If Contractor discloses an individual's Identifying Information in violation of this Rider, Contractor shall notify the Agency Privacy Officer. In addition, if such disclosure requires notification to the affected individual(s) pursuant to the policies and protocols promulgated by the Chief Privacy Officer under subdivision 6 of Section 23-1203, in the discretion of the Agency Privacy Officer Contractor shall either (i) make reasonable efforts to notify such individual(s) in writing of the Identifying Information disclosed and to whom it was disclosed as soon as practicable or (ii) cooperate with the Agency's efforts to notify such individual(s) in writing. 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, administrative or judicial order, or the Chief Privacy Officer to address the disclosure, 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 disclosure by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Agency shall provide 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, Contractor shall pay directly for the costs, detailed above, if any.
- C. Section 1.04(B) shall not require any notification that would violate any law or interfere with an investigation or otherwise compromise public safety pursuant to subdivision e of Section 23-1204.

### **Section 1.05 Exigent Circumstances.**

In the event Contractor collects or discloses Identifying Information due to Exigent Circumstances, with no other basis for collection or disclosure under subdivisions b or c of Section 23-1202, Contractor shall send to the Agency Privacy Officer information about such collection or request and disclosure, along with an explanation of why such Exigent Circumstances existed, as soon as practicable after such collection or disclosure. This section shall not require any such notification for collection or disclosure of Identifying Information that: (a) is required by the New York City Police Department in connection with an open criminal investigation; (b) is required by a City agency in connection with an open investigation concerning the welfare of a minor or other individual who is not legally competent; or (c) occurs in the normal course of performing Contractor's obligations under this Agreement and is in furtherance of law enforcement or public health or safety powers of the Agency under Exigent Circumstances.

### **Section 1.06 Retention.**

Contractor shall retain Identifying Information as required by law or as otherwise necessary in furtherance of this Agreement, or as otherwise approved by the Agency Privacy Officer.

### **Section 1.07 Reporting.**

Contractor shall provide the Agency with reports as requested by the Agency Privacy Officer or Chief Privacy Officer regarding the collection, retention, and disclosure of Identifying Information by Contractor. Each such report shall include information concerning Identifying Information collected, retained, and disclosed, including: (a) the types of Identifying Information collected, retained, or disclosed; (b) the types of collections and disclosures classified as “routine” and any collections or disclosures approved by the Agency Privacy Officer or Chief Privacy Officer; and (c) any other related information that may be reasonably required by the Agency Privacy Officer or Chief Privacy Officer.

### **Section 1.08 Coordination with Agency Privacy Officer.**

The Agency may assign powers and duties of the Agency Privacy Officer to Contractor for purposes of this Agreement. In such event, Contractor shall exercise those powers and duties in accordance with applicable law in relation to the Agreement, and shall comply with reasonable directions of the Agency Privacy Officer and Chief Privacy Officer concerning coordination and reporting.

### **Section 1.09 Conflicts with Provisions Governing Records, Audits, Reports and Investigations.**

To the extent allowed by law, the provisions of this Rider shall control if there is a conflict between any of the provisions of this Rider and, as applicable, either (i) Article 5 of Appendix A (General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services); (ii) if the value of this Agreement is \$100,000 or less and the Agreement is funded by City Council Discretionary Funds, Article 7(E) and Rider 1, Article 1 of the Agreement; or (iii) if neither (i) nor (ii) apply, the Investigations Clause, and other provisions concerning records retention, inspections, audits, and reports designated elsewhere in the Agreement. The provisions of this Rider do not replace or supersede any other obligations or requirements of this Agreement.

### **Section 1.10 Subcontracts.**

- A. Contractor shall include this Rider in all subcontracts to provide human services or other services designated in the policies and protocols of the Chief Privacy Officer.
- B. Contractor agrees that it is fully responsible to the Agency for the compliance with this Rider by its subcontractors that provide human services or other services designated by the City Chief Privacy Officer.

### **Section 1.11 Disclosures of Identifying Information to Third Parties.**

Contractor shall comply with the Chief Privacy Officer’s policies and protocols concerning requirements for a written agreement governing the disclosure of Identifying Information to a third party.

## **CITY OF NEW YORK – DEPARTMENT OF FINANCE**

Agreement to Adhere to the Secrecy and Confidentiality Provisions of the New York City Administrative Code, New York State Tax Law and the Internal Revenue Code.

### City Tax Information

The Administrative Code of the City of New York (“Administrative Code”) imposes secrecy restrictions on:

- All officers, employees and agents of the Department of Finance (“DOF”).
- Any person engaged or retained by DOF on an independent contract basis.
- Any depository, its officers, and its employees, to which a return may be delivered.
- Any person who is permitted to inspect any report or return.
- Any person who in any manner may acquire knowledge of the contents of any report or return including:
  - Contractors and workmen hired by DOF to work on its equipment, buildings or premises or to process returns or other papers.
  - Visitors to DOF buildings or premises.

Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for anyone to divulge or make known in any manner the contents or any particulars set forth or disclosed in any report or return required under the Administrative Code.

Any unlawful disclosure of information by any of the above-mentioned persons is a criminal offense. City officers and employees making unlawful disclosures may be dismissed from office and barred from holding public office for a period of five years.

Social Security and Federal Employer Identification Numbers supplied by taxpayers pursuant to Administrative Code §11-102.1 and contained in information returns including but not limited to Owners Identification Forms are subject to tax secrecy and personal privacy laws and may not be disclosed.

Income and Expense Statements filed by property owners pursuant to Administrative Code §11-208.1 may not be disclosed to persons not authorized by §11-208.1(f) to receive such information. Information found on many applications for property tax benefits is subject to secrecy and personal privacy laws and may not be disclosed.

### Federal and State Tax Information

Section 6103 of the Internal Revenue Code contains secrecy provisions which apply to federal tax reports and returns. The New York State Tax Law contains secrecy provisions which apply to New York State tax returns and reports. Criminal and civil penalties are imposed on any person who makes an unauthorized disclosure of any information contained in a federal or state tax return or report.

### Computer Files

Computer files and their contents are covered by the same standards and secrecy provisions of the Administrative Code, New York State Tax Law, and the Internal Revenue Code that apply to physical documents.

### Audit Selection

Unauthorized disclosure of confidential audit selection methods developed by DOF is strictly prohibited.

**INCORPORATION OF DOCUMENTS**

This Agreement also contains the following Attachments:

1. Attachment A - Agreement to Adhere to the Secrecy Provisions of the New York City Administrative Code, the New York State Tax Law and the Internal Revenue Code, and New York City Department of Finance Confidentiality Provisions.
2. Attachment B – IRS Publication 1075 – Exhibit 7 – Safeguarding Contract Language (For General Service and Tech Services),
3. Attachment C – IRS Publication 1075 – Exhibit 4 – Sanctions of Unauthorized Disclosure, Exhibit 5 – Civil Damage for Unauthorized Disclosure.

I certify that I have read and understand all of the secrecy and confidentiality provisions provided in this document and in Attachment A, B, C and agree to adhere to the secrecy and confidentiality requirements contained in this document and in the Attachment A, B, C even after my relationship with Department of Finance is terminated.

**Signature** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Name** \_\_\_\_\_

**(Please Print)**

**Employer Name** \_\_\_\_\_

**ATTACHMENT - A**  
**CITY OF NEW YORK – DEPARTMENT OF FINANCE**

Agreement to Adhere to the Secrecy Provisions of the New York City Administrative Code, New York State Tax Law and the Internal Revenue Code

City Tax Information

The Administrative Code of the City of New York (“Administrative Code”) imposes secrecy restrictions on:

- All officers, employees and agents of the Department of Finance (“DOF”).
- Any person engaged or retained by DOF on an independent contract basis.
- Any depository, its officers, and its employees, to which a return may be delivered.
- Any person who is permitted to inspect any report or return.
- Any person who in any manner may acquire knowledge of the contents of any report or return including:
  - Contractors and workmen hired by DOF to work on its equipment, buildings or premises or to process returns or other papers.
  - Visitors to DOF buildings or premises.

Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for anyone to divulge or make known in any manner the contents or any particulars set forth or disclosed in any report or return required under the Administrative Code.

Any unlawful disclosure of information by any of the above-mentioned persons is a criminal offense. City officers and employees making unlawful disclosures may be dismissed from office and barred from holding public office for a period of five years.

Social Security and Federal Employer Identification Numbers supplied by taxpayers pursuant to Administrative Code §11-102.1 and contained in information returns including but not limited to Owners Identification Forms are subject to tax secrecy and personal privacy laws and may not be disclosed.

Income and Expense Statements filed by property owners pursuant to Administrative Code §11-208.1 may not be disclosed to persons not authorized by §11-208.1(f) to receive such information. Information found on many applications for property tax benefits is subject to secrecy and personal privacy laws and may not be disclosed.

Federal and State Tax Information

Section 6103 of the Internal Revenue Code contains secrecy provisions which apply to federal tax reports and returns. The New York State Tax Law contains secrecy provisions which apply to New York State tax returns and reports. Criminal and civil penalties are imposed on any person who makes an unauthorized disclosure of any information contained in a federal or state tax return or report.

Computer Files

Computer files and their contents are covered by the same standards and secrecy provisions of the Administrative Code, New York State Tax Law, and the Internal Revenue Code that apply to physical documents.

Vehicle Owners’ Private Information

Under the federal Drivers' Privacy Protection Law, 18 U.S.C. §§ 2721-2725, personal information about individuals, received from departments of motor vehicles, may only be accessed for agency purposes and disclosed for purposes authorized under the law. Such information, located in STARS or any other format, must not be released except as approved or directed after consultation with the Legal Division.

Audit Selection

Unauthorized disclosure of confidential audit selection methods developed by DOF is strictly prohibited.



**A. Definitions**

- (1) City tax information shall mean any tax report or return or any other official filing with the Department.
- (2) Confidential Information shall mean “Confidential administration information,” “Confidential tax administration information,” “Federal tax information,” “City tax information and “State tax information”.
- (3) Confidential administration information shall mean information relating to the past, present or future research, development or business affairs of the Department and any proprietary products, materials, systems, procedures or methodologies.
- (4) Confidential tax administration information shall mean any information in the possession of the Department not covered in the preceding paragraphs to the extent such information is known only to employees of the Department and is not of a type made available to others including but not limited to: audit selection tolerances, communications from taxpayers, information on how audits are done, tax compliance, enforcement and audit procedures, settlement criteria or guidelines, internal deliberations of the officers and employees of the Department, and systems documentation for the electronic data processing security operations of the Department including codes, logs and other details relating to the security of those operations.
- (5) State tax information shall mean any tax report or return or any other official filing with the New York State Department of Taxation and Finance (State) furnished to the Department by the State.
- (6) Federal tax information shall mean any tax return and/or return information furnished to the Department by the Internal Revenue Service.

**B. Adherence to Secrecy Provisions and Security Procedures**

- (1) Contractor acknowledges that in the course of this Agreement it will have access to and/or be in possession of Confidential Information of the Department, City tax information, State tax information, Federal tax information, confidential administration information, and confidential tax administration information. Access to all such information shall be restricted to those personnel with a need to know, who are engaged in a permitted use and who have been advised of the terms of this Article. All work will be done under the supervision of the Contractor or the contractor’s employees. Any confidential information, made available in any format, shall be used only for the purpose of carrying out the provisions of this Agreement.
- (2) Tax Secrecy
  - a. Notice of Secrecy Provisions of the Administrative Code of the City of New York (Administrative Code) and the State Tax Law. Contractor, its employees and all subcontractors and their employees shall be notified in writing of the secrecy provisions of the Administrative Code and the State Tax Law, including, but not limited to, Tax Law Sections 697(e) and 1825, which prohibit independent contractors from disclosing tax information in any manner, and understand that the existence and the contents of all tax reports and tax returns, or other information covered by such secrecy provisions may not be divulged or made known in any manner to any unauthorized person. Contractor hereby states that it is aware that violation of these secrecy provisions is punishable by a fine not exceeding \$10,000 or imprisonment not exceeding one year, or both.

- b. Notice of Secrecy Provisions of Internal Revenue Code (26 USC Section 6103). Contractor, its employees and all subcontractors and their employees shall be notified in writing of the secrecy provisions under the Internal Revenue Code. All employees shall also be notified in writing that such unauthorized divulgence of federal tax information by Contractor and its employees or subcontractors and their employees is punishable as a felony with a fine in an amount not exceeding \$5,000 or imprisonment of not more than five years, or both together, plus the cost of prosecution. In addition, unauthorized disclosures may result in an award of civil damages in an amount not less than \$1,000.00 with respect to each instance of unauthorized disclosure.

Paragraphs (a) and (b) of this subdivision are intended to give notice to Contractor and its personnel and shall not be deemed to affect or expand the meaning, application or scope of the secrecy provisions therein referred to.

- c. When this project is over, and from time to time before its completion, as the Department may determine, the officers and employees of Contractor who view or otherwise have access to the Confidential Information defined herein shall turn over to the Department all written or computerized records of it in any form whatsoever, including computer tapes and/or disks. All spoilage and/or intermediate hard copy printouts that may result during the processing of confidential information will be given to the Department. When this is not possible, the Contractor will be responsible for the destruction of the spoilage and/or intermediate hard copy printouts and must provide the Department with a statement containing the date of destruction, a description of material destroyed, and the method used.
- d. Employees of Contractor may not re-release or re-disclose confidential administration information, federal tax information, City tax information, State tax information, and confidential tax administration information to other employees of Contractor or Subcontractor(s) not personally and directly engaged in rendering service on this project. Contractor, its employees or Subcontractor(s) and its employees will make no other disclosure except with the prior written approval of the Department.
- e. Contractor will be liable for each of its employees assigned to perform maintenance services hereunder who violate the terms of this a Secrecy Agreement., acknowledging his/her understanding of the secrecy provisions of the Administrative Code of New York City, the State Tax Law, and the Internal Revenue Code and the penalties for improper disclosure. The agreements are to be forwarded to the Department with photocopies maintained at the premises of Contractor/Subcontractor prior to commencement of this Agreement. Secrecy agreements are to be updated as employees are assigned to Contractor for a period of three years following the expiration of this Agreement.
- f. Contractor shall be liable for the wrongful disclosure of any information attributable to it or its officers, employees, its subcontractors and its subcontractor's employees. Contractor shall fully cooperate with the Department in defense of any claims brought against the Department by reason of such wrongful disclosure.

### (3) Survival

This section shall survive termination of this Agreement for any reason.

## C. Security Procedures

In order to ensure that all confidential administration information, confidential tax administration information, federal, State or City tax information ("Confidential Information") received by Contractor

from the Department is secured and that maximum control over the data is maintained, the following security procedures must be maintained at all times during which Contractor is in possession of such information.

- (1) When not in use all Confidential Information must be stored in a separate, restricted area enclosed by slab-to-slab walls within the Contractor processing center, with control and access limited to the minimum number of persons necessary to perform the tasks assigned. A list containing the names and titles of persons with keys to the storage area(s), must be provided to the Department.
- (2) Contractor agrees that only authorized personnel will be permitted to access confidential administration information, confidential tax administration information, federal, State and City tax information. A list of such personnel shall be provided to the Department and to the IRS. All Federal, State and City tax information must be accounted for upon receipt and properly stored before, during and after processing. All related or derivative output must be given the same level of protection that is required for the source material. An audit trail of accesses to the information must be maintained and, at a minimum, record log - in attempts, password changes, file creations, changes and/or deletions. Audit trails must be reviewed regularly by authorized supervisory or security personnel who are not regular program users.
- (3) While such Confidential Information is resident in computer memory, access to such Confidential Information must be limited to only authorized persons and used only for authorized applications.
- (4) Authorized access codes/passwords are required to be employed (and safeguarded) to ensure that access is limited to authorized persons. Access codes/passwords must, at a minimum, be constructed, protected and administered in accordance with federal standards. The current standard is Federal Information Processing Standards Publication (FIPS PUB) 112, "Password Usage." The system may use any method which uniquely identifies users and requires proof of identify before accessing the system. Identification/authentication must be an auditable function. All computer systems processing, storing, or transmitting confidential information must meet or exceed "C2" computer access protection controls.
- (5) Whenever maintenance is to be performed on the computer system, all City and tax data files must be removed to the storage area. If that is not possible, an authorized employee must monitor the activities of the maintenance personnel in order to prevent the unauthorized disclosure of federal, State, or City tax information, confidential administration information or confidential tax administration information.
- (6) Contractor must maintain sign in/sign out registers at each entrance to the file and storage areas. Each person entering the restricted file area who is not assigned to the area should sign in ink in the register, his/her name, signature, assigned work area, date and time of entry, and purpose of entry. The person controlling the entrance point should verify the name and signature by checking a valid form of personal identification and enter the time of departure from the area.
- (7) Contractor shall not make or permit the making of copies of any written or computerized record of Confidential Information, including computer tapes and/or disks, for any purpose unless authorized by the Department of Finance, the State and the IRS.
- (8) Upon completion of this project, Contractor agrees to return to the Department, the State and to the IRS all computer tapes, or at the Department's or at the IRS's option, destroy all such tapes. Within ten (10) days of completion of the work required hereunder, Contractor shall deliver to the Department and to the IRS a written statement certifying that all such tapes have been returned or destroyed, identifying each such returned or destroyed tape by tape reel number. Contractor must further certify that all confidential information processed during the performance of this Agreement will be completely purged from all data storage components of its computer facility, and that no

output will be retained by Contractor at the time the work is completed. Contractor must also certify that any confidential information in any storage component will be safeguarded to prevent unauthorized disclosures if immediate purging of all data storage components is not possible.

- (9) No work involving information furnished under this Agreement may be subcontracted without the specific prior written approval of the Department of Finance.
- (10) In addition to any rights of termination the Department may have under the law or this Agreement, the Department shall terminate this Agreement if the Contractor fails to provide the safeguards described above.

The Department reserves the right to inspect Contractor's premises from time to time to verify Contractor's compliance with the foregoing security requirements. On the basis of such inspection(s), specific measures may be required in specific cases where Contractor is found to be noncompliant with contractual safeguards.

**(D) Employee Awareness**

The Contractor, all Contractor employees, subcontractors and all subcontractor employees must be notified in writing of the foregoing tax secrecy provisions and security procedures.

Said individuals must be notified in writing that there are civil and criminal penalties for unauthorized disclosures that apply even if an unauthorized disclosure is made after their employment with Contractor terminates.

The Contractor, all Contractor employees, subcontractors and all subcontractor employees must subscribe in writing to Section 74 of the Public Officers Law and to the Privacy Act of 1974, 5 U.S.C. 552a, which prohibits an officer or employee of a State agency from disclosing confidential information acquired during the course of carrying out official duties.

**ATTACHMENT B**  
**Exhibit 7 - Contract Language for General Services and Technology Services**

**A. CONTRACT LANGUAGE FOR GENERAL SERVICES**

**I. PERFORMANCE**

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be performed under the supervision of the contractor or the contractor's responsible employees.
- (2) The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (6) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (7) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.
- (8) (Include any additional safeguards that may be appropriate.)

**II. CRIMINAL/CIVIL SANCTIONS**

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee also result in an award of civil damages against the officer or employee in an amount not less than \$1 ,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in

any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1 ,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1 ,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR

- (3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1 ), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4 Sanctions for Unauthorized Disclosure and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **III. INSPECTION**

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

### **B. CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES**

#### **I. PERFORMANCE**

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the contractor or the contractor's employees.

- (2) The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (8) No work involving Federal Tax Information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (9) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office (10). The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.
- (10) (Include any additional safeguards that may be appropriate.)

## **II. CRIMINAL/CIVIL SANCTIONS**

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1 ,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any

format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need-to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1 ,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1 ,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

- (3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4 Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **III. INSPECTION**

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.



**ATTACHMENT - C**  
**IRS Publication 1075 Exhibit 4 - Sanctions for Unauthorized Disclosures;**  
**and IRS Publication 1075 Exhibit 5 – Civil Damages for Unauthorized Disclosure**

**7213. Unauthorized disclosure of information**

**(a) Returns and return information**

**(1) Federal employees and other persons**

It shall be unlawful for any officer or employee of the United States, or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

**(2) State and other employees**

It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i) or (7)(A)(ii), (k)(10), (l)(6), (7), (8), (9), (10), (12), (15), (16), (19), (20), or (21) or (m)(2), (4), (5), (6), or (7) of section 6103 or under section 6104(c). Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

**(3) Other persons**

It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

**(4) Solicitation**

It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

**(5) Shareholders**

It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

**§7213A. Unauthorized inspection of returns or return information**

**(a) Prohibitions**

**(1) Federal employees and other persons**

It shall be unlawful for—

(A) any officer or employee of the United States, or

(B) any person described in subsection (l)(18) or (n) of section 6103 or an officer or employee of any such person, willfully to inspect, except as authorized in this title, any return or return information.

**(2) State and other employees**

It shall be unlawful for any person (not described in paragraph (1)) willfully to inspect, except as authorized in this title, any return or return information acquired by such person or another person under a provision of section 6103 referred to in section 7213(a)(2) or under section 6104(c).

**(b) Penalty**

**(1) In general**

Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding \$1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

**(2) Federal officers or employees**

An officer or employee of the United States who is convicted of any violation of subsection (a) shall, in addition to any other punishment, be dismissed from office or discharged from employment.

**(c) Definitions**

For purposes of this section, the terms "inspect", "return", and "return information" have the respective meanings given such terms by section 6103(b).

**7431. Civil damages for unauthorized inspection or disclosure of returns and return information**

**(a) In general**

**(1) Inspection or disclosure by employee of United States**

If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

**(2) Inspection or disclosure by a person who is not an employee of United States**

If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103 or in violation of section 6104(c), such taxpayer may bring a civil action for damages against such person in a district court of the United States.

**(b) Exceptions**

No liability shall arise under this section with respect to any inspection or disclosure—

(1) which results from a good faith, but erroneous, interpretation of section 6103, or

(2) which is requested by the taxpayer.

**(c) Damages**

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(1) the greater of—

(A) \$1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of—

(i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus

(ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus

(2) the costs of the action, plus

(3) in the case of a plaintiff which is described in section 7430(c)(4)(A)(ii), reasonable attorney's fees, except that if the defendant is the United States, reasonable attorney's fees may be awarded only if the plaintiff is the prevailing party (as determined under section 7430(c)(4)).

**(d) Period for bringing action**

Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

**(e) Notification of unlawful inspection and disclosure**

If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of—

(1) paragraph (1) or (2) of section 7213(a),

(2) section 7213A(a), or

(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,

the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

**(f) Definitions**

For purposes of this section, the terms "inspect", "inspection", "return", and "return information" have the respective meanings given such terms by section 6103(b).

**(g) Extension to information obtained under section 3406**

For purposes of this section—

(1) any information obtained under section 3406 (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

(2) any inspection or use of such information other than for purposes of meeting any requirement under section 3406 or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103 shall be treated as a violation of section 6103.

For purposes of subsection (b), the reference to section 6103 shall be treated as including a reference to section 3406.

**(h) Special rule for information obtained under section 6103(k)(9)**

For purposes of this section, any reference to section 6103 shall be treated as including a reference to section 6311(e).

## IRS Contractor 45-Day Notifications

Federal agencies, state tax agencies, and state child support enforcement agencies in the possession of FTI may use contractors, sometimes in limited circumstances.

State tax authorities are authorized by statute to disclose information to contractors for the purpose of, and to the extent necessary in, administering state tax laws, pursuant to Treasury Regulation 301.6103(n)-1.

Agencies that receive FTI under authority of IRC 6103(1)(7) (human services agencies) may not disclose FTI to contractors for any purpose. Contractors consist of, but are not limited to, cloud computing providers, consolidated data centers, off-site storage facilities, shred companies, information technology support, or tax modeling or revenue forecasting providers.

Agencies must notify the IRS prior to executing any agreement to disclose FTI to a contractor, or at least 45 days prior to the disclosure of FTI, to ensure that appropriate contractual language is included and that contractors are held to safeguarding requirements. Further, any contractors authorized access to or possession of FTI must notify and secure the approval of the IRS prior to making any redisclosures to subcontractors. For additional information, see Section 7.4.3 Contractor or Subcontractor Access.

To provide agency notification of intent to enter into an agreement to make disclosures of FTI to a contractor, submit a letter in electronic format, on agency letterhead over the head of agency's signature, to [SafequardReports@irs.gov](mailto:SafequardReports@irs.gov).

Ensure that the letter contains the following specific information:

- Name, address, phone number, and email address of agency point of contact;
- Name and address of contractor;
- Contract number and date awarded;
- Contract period covered (e.g., 2014–2017);
- Type of service covered by the contract;
- Number of contracted workers;
- Name and description of agency program that contractor will support;
- Detailed description of FTI to be disclosed to contractor;
- Description of work to be performed by contractor, including phased timing, how FTI will be accessed, and how tasks may change throughout the different phases;
- Procedures for agency oversight on contractor access, storage, and destruction of FTI, disclosure awareness training, and incident reporting;
- Location where work will be performed (contractor site or agency location) and how data will be secured if it is moved from the secure agency location;
- Statement whether subcontractor(s) will have access to FTI;
- Name(s) and address(es) of all subcontractor(s), if applicable;
- Description of FTI to be disclosed to subcontractor(s);
- Description of work to be performed by subcontractor(s);
- Publication 1075 (September 2016) pages 139-140;
- Contractor 45-Day Notification Procedures Exhibit 6, pages 139-140;
- Location(s) where work will be performed by subcontractor(s) and how data will be secured if it is moved from a secure agency location;
- Certification that contractor personnel accessing FTI and contractor information systems containing FTI are all located within the United States or territories, given that FTI is not allowed offshore.

After receipt of an agency's request, the IRS will analyze the information provided to ensure that contractor access is authorized and consistent with all requirements. The IRS will send the agency an email acknowledgement of receipt of agency notification. A written response, along with a reminder of the requirements associated with the contract, is issued once the notification review process is complete. Agency disclosure personnel may wish to discuss local procedures with their procurement colleagues to ensure that they are part of the contract review process and that the appropriate contract language is included from the beginning of the contract.

If the 45-day notification pertains to the use of a contractor to conduct tax modeling, estimate revenue, or employ FTI for other statistical purposes, the agency must also submit a separate statement detailing the methodology and data to be used by the contractor. The Office of Safeguards will forward the methodology and data statement to the IRS Statistics of Income office for approval of the methodology (see Section 7 4 3). Templates can be located on the Office of Safeguards website.

If the 45-day notification is not possible, please contact the Safeguards mailbox at [Safeguard Reports@irs.gov](mailto:SafeguardReports@irs.gov) for assistance.

## ATTACHMENT SCY Security Requirements

### 1. DEFINITIONS

- (a) **“Agreement”** means the Agreement between the Contractor and the City, annexed hereto.
- (b) **“Authorized Person”** has the meaning given below in Section 16(a).
- (c) **“Authorized Subcontractor”** has the meaning given below in Section 16(a).
- (d) **“City”** means the City of New York and/or a county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, including Cyber Command, the expenses of which are paid in whole or in part from the City of New York’s treasury, or an entity created under New York law specifically for the benefit of the City or to serve persons present in the City of New York and that has 1 or more members or directors of which are appointed by the mayor or City Council (e.g., the New York City Board of Elections).
- (e) **“City Data”** means (1) Data characterizing the City or its behavior; (2) Data owned, created, generated, stored or maintained by, at the direction of, or for the benefit of the City; and (3) any copies or derivatives of such Data.
- (f) **“Data”** means any information representation(s) of information, knowledge, facts, ideas, concepts or similar including any texts, instructions, documents, databases, diagrams, graphics, drawings, images, sounds, or biometrics that are accessed, communicated, created, generated, stored (in temporary or permanent form), filed, produced or reproduced, processed, referenced, or transmitted, in any form or media.
- (g) **“City Technology Assets”** means all City Facilities, City Systems, City telecommunications, electronic data created, processed, accessed, transferred, stored, or disposed of by City Systems, and such systems’ peripheral equipment, networks, or magnetic data, and any electronic data created, processed, accessed, transferred, stored, or disposed of by such systems, or data owned by the City.
- (h) **“City Systems”** means any system owned, maintained or operated by or on behalf of the City that connects to a City network, enables operational functions of the City, or creates, processes, accesses, transfers, stores, or disposes of City Data.
- (i) **“Commissioner”** or **“Agency Head”** means the head of a City entity.
- (j) **“Contractor”** means a person or entity engaged by the City of New York to perform tasks pursuant to the Agreement.
- (k) **“Cyber Command”** means the Office of Cyber Command, created by New York City

Charter § 20-j, established within the New York City Office of Technology and Innovation (“**OTI**”), that is empowered to ensure compliance with Policies and Standards, lead citywide cyber defense, investigation and incident response, serve as the primary liaison between public (federal, state and tribal) and private partners/stakeholders for cyber intelligence sharing, investigation and response coordination, coordinate deployment of citywide technical and administrative controls related to information technology, information security and information privacy and review citywide cyber related procurements, in collaboration with procuring agencies.

(l) “**DoITT**” means the Department of Information Technology and Telecommunications, designated as the New York City Office of Technology and Innovation (“**OTI**”) pursuant to Mayoral Executive Order No. 3 of 2022.

(m) “**Facility(ies)**” means a physical structure, such as a data center or other building.

(n) “**Person**” means an officer, agent or employee of the Contractor or a subcontractor of the Contractor.

(o) “**Policies and Standards**” means the Citywide Information Security Policies and Standards, Cyber Command Policies and Standards, or any policies and procedures by OTI, available at <https://www1.nyc.gov/content/oti/pages/vendor-resources/cybersecurity-requirements-for-vendors-contractors>, as they may be amended or placed on a successor site by the City.

(p) “**Process**” means to perform any act, omission or operation on or with respect to data, such as collecting, recording, organizing, storing, adapting, altering, retrieving, accessing, deleting, blocking, erasing, destroying, combining, reviewing, using, transmitting, disseminating or otherwise making data available.

(q) “**Project**” means any type of work to be performed pursuant to the Agreement.

(r) “**Contractor Systems**” means the Facilities, systems, networks and IT environments that are used to Process any City Data, deliver any Services or to otherwise meet any of Contractor’s obligations under the Agreement.

(s) “**Security Incident**” means an event that compromises or is suspected to compromise the security, confidentiality, integrity, or availability (“**SCIA**”) of City Data, City Technology Assets or Contractor Systems, including by compromising the physical, technical, administrative or organizational safeguards implemented by Contractor to protect the SCIA of City Data, City Technology Assets or Contractor Systems. Examples of a Security Incident include, but are not limited to, the unauthorized acquisition or use of unencrypted City Data (or encrypted City Data and the decryption key), intrusions, virus or malware, ransomware infections, social engineering, missing/stolen hardware, a breach of access credentials, DDOS and DoS attacks

(t) “**Security Investigation**” means a criminal history and background investigation in

accordance with the requirements set forth herein. The City reserves the right to modify the scope of requisite investigations upon provision of reasonable notice to the Contractor.

(u) “User Responsibility Policy” or “URP” means the User Responsibilities Policy available at <https://www1.nyc.gov/assets/oti/downloads/pdf/vendor-resources/user-responsibilities.pdf>, as it may be amended or placed on a successor site by the City.

(v) “Services” means the professional services the contractor is providing the City.

## 2. CITYWIDE INFORMATION SECURITY POLICY

The Contractor shall comply with the Policies and Standards, and terms of the Agreement. In addition, the Contractor shall ensure that all Authorized Subcontractors and Authorized Persons who may have access to any City Data or City Technology Assets in the course of carrying out their responsibilities or job functions comply with the Policies and Standards.

## 3. USER RESPONSIBILITY POLICY

The Contractor will be provided with online access to, or a copy of, the User Responsibility Policy. The Contractor shall require each Authorized Person (as defined below in Section 16(a)) who may have access to any City Technology Assets to sign a written acknowledgement and agreement to comply with its terms prior to his or her assignment to perform any Services. The Contractor shall provide a signed copy of the URP acknowledgement for each Authorized Person to the City project manager, or a person designated by the City, within fifteen days (15) days after the Authorized Person is assigned to perform Services.

## 4. SECURITY INVESTIGATION

(a) The City may, prior to or during the course of the Agreement, request that the Contractor require a Person, or Persons, associated with the Services to undergo a Security Investigation before being granted access, or continued access, to Facilities, City Data, City Technology Assets or Contractor Systems. The City may require the Contractor and associated Persons to undergo federal, state and local background checks, where authorized by applicable law, that conform to industry standards, including criminal history and/or background investigation. Persons assigned to the Project by or through the Contractor shall be required to submit Identifying Information to the City, and may, to the extent authorized by applicable law, be required to submit fingerprints. The Contractor and associated Persons agree to be subject to a background screening and checks, which may include the following:

- ( ) Employment Verification;
- (i) Education Verification;
- (ii) Reference Verification;
- (iii) Criminal Record Check;
- (iv) Civil Court Records Check;
- (v) Professional License Check;



- (vi) Credit History Check;
- (vii) International Background Check; and
- (viii) Terrorist Watch List Check.

(b) If Security Investigations are requested or required by the City prior to the commencement of work by the Person, the Contractor is required to submit the results of the Security Investigation for each Person that it proposes to assign to perform services sufficiently in advance to ensure that all security clearance procedures are complete without delaying the Contractor's work performance. The City shall not be liable for payments or damages of any kind if the Contractor's work is delayed or the Contractor is required to assign different individuals on account of the City's reasonable delay or refusal to grant an individual a security clearance under the Agreement.

(c) The Contractor shall assume, without any reimbursement by the City, all costs incurred in connection with the investigations.

(d) Where an emergency or other circumstance occurs which renders immediate compliance impractical, the City may, in its sole judgment, defer a Person's compliance and grant temporary access, pending the results of the Security Investigation. Such deferment shall not be construed as a waiver of the City's right subsequently to require that a Security Investigation be performed.

(e) The City reserves the right, in its sole discretion, to refuse access to City Data or City Technology Assets: (i) to any individual who refuses to comply with the security or non-disclosure procedures required by Cyber Command or (ii) where the Cyber Command determines that the individual may present a risk to its security interests.

## **5. COMPLIANCE WITH OTHER SECURITY POLICIES AND PROCEDURES**

In addition to the Policies and Standards and the User Responsibility Policy, the Contractor shall comply with, and ensure that all Authorized Subcontractors and Authorized Persons comply with, all applicable Facility, data processing and other security policies and procedures of the Cyber Command in effect for the duration of the Agreement, including, but not limited to, processing, handling and storage of Restricted and Sensitive Information, Internet usage, office equipment usage and timekeeping procedures. This may include being required to sign in and out and enter time worked into a timekeeping system provided by the City.

## **6. NOTIFICATION OF TERMINATION, REASSIGNMENT OR CESSATION OF ACCESS**

The Contractor shall promptly notify Cyber Command and the City liaison assigned to the Services, in writing, when any Person previously engaged by the Contractor to gain access to any Facilities, City Data, City Technology Assets or Contractor Systems is no longer authorized by the Contractor to do so, and the Contractor shall make reasonable efforts to prevent any such Person from accessing any Facilities, City Data or City Technology Assets from the point in time that such individual's authorization ceases.

## **7. NON-DISCLOSURE AGREEMENT**

If reasonably requested by the City, the Contractor shall require its Authorized Subcontractors and Authorized Persons who either work in direct support of the Services or who may reasonably be anticipated to unintentionally receive City Data to execute a Non-Disclosure Agreement in a form acceptable to the City.

**8. CONTRACTOR-PROVIDED EQUIPMENT**

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

**9. NO INTRODUCTION OF VIRUSES**

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

**10. COOPERATION WITH ACCREDITATION**

The Contractor shall cooperate with and facilitate the successful completion of any security accreditation tasks and processes relevant to the services and/or deliverables it provides. The Contractor shall complete said security accreditation tasks and processes within thirty (30) business days unless granted an extension by Cyber Command.

**11. VENDOR SECURITY QUESTIONNAIRE**

The Contractor shall complete and respond to all security questionnaires from the City within thirty (30) business days.

**12. CONTRACTOR'S POLICIES**

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

**13. CITY AUDIT(S)**

The City reserves the right to audit the IT infrastructure and information security controls and processes of the Contractor and to perform relevant tests to ensure that it is compliant with the Policies and Standards at any time. The Contractor will permit the City to perform an IT audit, including an audit of physical security of any of the Contractor's premises applicable to the services provided pursuant to the Agreement and will cooperate and furnish all requested materials in a timely manner. Cyber Command reserves the right to monitor the security posture of the Contractor throughout the course of the Agreement.

**14. SOFTWARE SECURITY ASSURANCE (SSA) APPROVAL**

The Contractor agrees to submit all devices, applications, systems, software and infrastructure used to support City Systems, pursuant to the Agreement, to security testing in compliance with the City's Software Security Assurance process. The Contractor understands and acknowledges that failure to meet the SSA process requirements can result in termination of the Agreement.

**15. REQUIREMENTS FOR SYSTEMS PROVIDING CRITICAL FUNCTIONS**

(a) If Contractor maintains systems that provide critical City capabilities and/or functions, Contractor shall provide the City with reports verifying that all patches and configurations are up to date, as well as forecast all required changes for the next twelve (12) months.

(b) The Contractor shall ensure that all necessary capabilities and equipment potentially required to service critical technology in the event of an incident is locally available.

**16. USE AND PROTECTION OF CITY DATA**

(a) The Contractor shall hold City Data in the strictest confidence, and shall not disclose any City Data to any person or entity other than a subcontractor that has been approved by the City in writing (each, an “**Authorized Subcontractor**”) or an employee of the Contractor or an Authorized Subcontractor who needs to know the City Data in order to perform the Contractor’s obligations under the Agreement (each, an “**Authorized Person**”).

(b) The Contractor shall ensure that each Authorized Subcontractor is subject to an enforceable written obligation to comply with the terms and conditions in this Attachment SCY. Within ten (10) days of the City’s request, the Contractor shall provide the City with a copy of its contract with any Authorized Subcontractor.

(c) The Contractor shall be liable for the full or partial breach of any of the terms of this Attachment SCY by: **(A)** any of its subcontractors, whether or not an Authorized Subcontractor, or **(B)** any Person, whether or not an Authorized Person.

(d) The Contractor shall protect the privacy and security of City Data in accordance with the Agreement, industry best practices and all applicable laws, regulations and standards, including the Policies and Standards. Contractor shall implement, maintain and use appropriate administrative, technical and physical controls to ensure the SCIA of City Data, including, without limitation, to prevent the unauthorized, unlawful, or accidental use, destruction, alteration, disclosure, access, modification, or loss of City Data.

(e) Contractor shall not use City Data for any purpose other than to provide the Services to the City.

(f) If Contractor is served with a Warrant, Subpoena, or any other order or request from a court or government body or any other person for any City Data, Contractor shall, as soon as reasonably practical and not in violation of any law, deliver a copy of such warrant, subpoena, order, or request to the Department.

**17. INDEPENDENT REVIEW(S)/AUDIT(S)**

(a) The Contractor shall engage a third-party internationally recognized auditor, at

Contractor's own cost, to perform periodic audits, scans, and tests as follows:

- ( ) At least once per year and after any Security Incident that occurs during the Term:
  - (1) a SSAE 18/SSAE 16/SOC-1, Type II audit and a SOC-2, Type II audit of Contractor's controls and practices relevant to security, availability, Processing integrity, confidentiality and privacy of City Data;
  - (2) an audit pursuant to Contractor's information security program and practices;
  - (3) a network-level vulnerability assessment of all Contractor Systems used to deliver Services under the Agreement or to Process City Data; and
  - (4) a formal penetration test of all Contractor Systems used to deliver services under the Agreement or to Process Contract Data.
- (ii) The Contractor shall provide Cyber Command with a copy of all unredacted reports generated for each audit, scan, and test within 10 days after its completion. Each report must: **(A)** indicate whether any material vulnerabilities, weaknesses, gaps, deficiencies, or breaches were discovered; and **(B)** if so, describe the nature of each vulnerability, weakness, gap, deficiency, or breach. The Contractor shall, at its own cost and expense, promptly remediate each vulnerability, weakness, gap, deficiency, or breach that is identified in a report.

**THE CONTRACTOR SHALL PROVIDE CYBER COMMAND WITH COPIES OF REPORTS FROM ANY CYBERSECURITY AUDIT PERFORMED, WITHIN TWELVE (12) MONTHS OF EXECUTION OF THE AGREEMENT, BY THE CONTRACTOR OR BY A THIRD-PARTY AUDITOR AND ANY CYBERSECURITY AUDIT PERFORMED AFTER EXECUTION OF THE AGREEMENT WITHIN TEN (10) DAYS AFTER THE AUDIT'S COMPLETION.**

#### **18. NONCOMPLIANCE SELF REPORTING REQUIREMENT**

The Contractor shall notify Cyber Command if at any time it is not in full compliance with any of the requirements of this agreement especially if Contractor makes any changes to the infrastructure of information systems that would affect City Data or result in noncompliance with any federal or state law, Policies and Standards, or terms of this agreement. Notification of each change shall be made to Cyber Command no later than thirty (30) business days after the change has occurred. For noncompliance, the Contractor shall submit to Cyber Command a document that includes the following:

- (i) Date of discovery;
- (ii) How the noncompliance was identified;
- (iii) Nature of the noncompliance;
- (iv) Scope of noncompliance; and
- (v) Corrective actions with associated timelines.

#### **19. VULNERABILITY REPORTING AND NOTIFICATION REQUIREMENT**

The Contractor shall inform Cyber Command of any identified vulnerabilities in information systems no later than ten (10) businesses days after receiving notification. The Contractor shall provide a report to Cyber Command that includes a detailed description of the identified vulnerabilities and a remedial plan with associated timelines informing the City and Cyber Command of all actions the Contractor has taken

or plans to take to rectify the vulnerabilities.

## **20. SUGGESTIONS**

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

## **21. LIAISON**

At the beginning of the term of the Agreement, the Contractor shall identify and provide contact information for the Person who has been assigned overall responsibility for information security within its organization.

## **22. NO CITY DATA OUTSIDE UNITED STATES**

The Contractor may not process, access, transfer, store, or export City Data outside the United States except with the express written permission of the Commissioner or Agency Head of the City entity, or their designee, to which the City Data belongs, and then only for the City Data specified in that permission.

## **23. INTEGRITY OF PUBLIC CITY DATA**

The Contractor must use industry best practices to ensure that the value and state of all public City Data is maintained and that the public City Data is protected from unauthorized modification.

## **24. REMOTE ACCESS METHODS**

The Contractor must obtain written permission from the City for each method of remote access it wishes to use to access City Technology Assets.

## **25. WHAT TO DO IN CASE OF A SECURITY INCIDENT**

(a) Contractor shall implement, maintain, test and update a Security Incident response plan. In the event of an actual or suspected Security Incident, Contractor shall:

- ( ) notify the NYC Cyber Command Citywide Security Operations Center (“**Cyber Command Citywide SOC**”) by telephone at (718) 403-6761 within 24 hours.
- (i) notify the Cyber Command Citywide SOC within 48 hours by written notice to [SOC@cyber.nyc.gov](mailto:SOC@cyber.nyc.gov), summarizing, in reasonable detail, the nature and scope of the Security Incident (including a description of all impacted City Data and City Technology Assets) and the corrective action already taken or planned by Contractor, which shall be timely supplemented to the level of detail reasonably requested by the City, inclusive of relevant investigation or forensic reports.
- (ii) promptly, at its own cost and expense, take all reasonable and necessary actions to confirm, contain and end the Security Incident, mitigate its impact to the City, and prevent recurrence.
- (iii) not delete any impacted virtual/cloud instances or re-image any impacted

systems without prior consultation and agreement with Cyber Command.

- (iv) cooperate with the City in the investigation of the Security Incident, including promptly responding to the City's reasonable inquiries and providing prompt access to all evidentiary artifacts associated with or relevant to the Security Incident, such as relevant records, logs, files, data reporting, and other materials.
- (v) permit the City, in its sole discretion, to immediately suspend or terminate Contractor's right to create, process, access, transfer, store, or dispose of City Data or operate City Technology Assets.
- (vi) not inform any third party that the Security Incident involves City Technology Assets or Data without first obtaining the City's prior written consent, except to the extent required by law or by third parties engaged by the Contractor to remediate the Security Incident.
- (vii) collaborate with the City in determining whether to provide notice of the Security Incident to any person, governmental entity, the media, or other party, and the content of any such notice. The City will make the final determination as to whether notice will be provided and to whom, the content of the notice, and which Party will be the signatory to the notice.
- (viii) promptly notify the City and the Chief Information Security Officer for the City of New York of any investigations of its data use, privacy or cybersecurity practices, or a Security Incident by a governmental, regulatory or self-regulatory body.
- (ix) bear the responsibility and all related costs for any Security Incident to the extent that the City is not at fault and caused by a vulnerability in the Contractor's product(s) or system(s), including the cost of any associated remedial actions or mitigation steps, consumer notification and related responses, credit monitoring, notification, regulatory investigations, fines, penalties, enforcement actions and settlements.

## **26. NOTIFICATION TO CYBER COMMAND**

With the exception of the notification requirements applicable to a Security Incident as reflected in Section 25 of this Attachment, Contractor shall submit all notices, including any reporting documents, audit materials and other security documentation, to Cyber Command by email at [compliance@cyber.nyc.gov](mailto:compliance@cyber.nyc.gov).

## **27. MATERIAL BREACH**

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

## **28. SECURITY INCIDENT RESPONSE CONTACTS**

Contractor shall provide to the City contact information for the Contractor's Chief Information Security Officer (CISO) or Senior Information Security Representative.

**29. SECURITY INCIDENT RESPONSE CONTACT: [NAME, TITLE, TELEPHONE NUMBER, EMAIL]**  
Contractor agrees to promptly notify the City's CISO of any changes to this information

**30. HEADINGS**

Headings are inserted only as a matter of convenience and for reference and in no way define, limit, augment or describe the scope or intent of this Attachment.

**[END OF ATTACHMENT SCY]**

# APPENDIX D

## Department of Finance Service Provider Security Agreement

The Department of Finance (DOF) requires SOC1/SOC2/SSAE18 certification from vendors if they provide services that may impact the financials of DOF user or client entities:

- Data center provider
- Software as a service (SaaS)
- Any managed services, especially financial services
- Payroll processors
- Medical Claim Processor
- Loan serving company
- Any vendor that process/collect payments on behalf of DOF

All service providers must meet the following DOF security requirements:

- Service Providers must be able to log, audit, monitor and report Department of Finance's data access history as needed.
- File level data access history must be enabled for all technology service provider will be using whether on premise and or cloud hosting solutions.
- File level data access detection and prevention of data loss in file level must be enabled for all technology service provider will be using whether on premise and or cloud hosting solutions.
- Service Provider shall use industry standards to ensure that it does not introduce any viruses or any other form of malicious code to City systems.
- Service Provider shall conduct background checks for each consultant assigned to the project in order to reduce the risk of human error, theft, or misuse of the City's information assets. When requested, Service Provider will provide documented evidence of background checks for each consultant assigned to the project.
- When requested, Service Provider agrees to provide evidence of an independent IT security review or audit commensurate with the security requirements of the project. This audit must be completed within a time frame specified by the City.
- Should Service Provider learn or suspect that there has been a breach of this policy, it shall immediately notify Department of Finance.
- For all data received from DOF, data should be a used only for the stated and agreed on the purpose.
- All access to Department of Finance (DOF) data must be authorized and based on individual identification and authentication.
- User access control must be enforced to identify who has accessed DOF shared data, uses access must be logged for audit purpose. All log data must be available if needed for minimum 1 year.
- Must ensure that DOF provided information is not processed, maintained, transmitted, or stored in or by means of data communication channels, electronic devices, computers, or computer networks located in geographic or virtual area not subject to US LAWS.
- The system (hardware and software) used to receive, store and handle DOF data must be kept up to date with necessary patch from known security vulnerability
- Information received from DOF cannot be disclosed to other organizations or individuals unless specifically authorized by DOF
- Data should be deleted when it is no longer needed for the stated purpose



- If vendor suspects IT system or paper-based files of DOF shared data have been subject to accidental or unlawful destruction, loss, or alteration, or unauthorized disclosure or access, must immediately report the situation to Department of Finance CISO office at [ciso@finance.nyc.gov](mailto:ciso@finance.nyc.gov) and to [soc@cyber.nyc.gov](mailto:soc@cyber.nyc.gov)

### **Encryption Strength**

- Approved encryption algorithms must be (of a minimum key length of 256 bits) used for DOF shared data at rest and data in transit.

### **Key Management**

- Private keys must be kept confidential.
- Key lifecycle management must be implemented.
- Keys in storage and transit must be encrypted.
- Keys must be chosen randomly from the entire key space.
- Encryption keys must allow for retrieval for administrative or forensic use.

### **Data At Rest**

- Department of Finance data stored in a database or file system (at rest) must be encrypted in accordance with the Citywide Encryption Standard.
- The use of password protection instead of encryption is not an acceptable alternative to protecting private information.

### **Removable Media**

- Department of Finance's data should not be transitioned to removable media without management approval.
- Removable media including CDs, backup tapes, and USB memory drives that contain Department of Finance's data must be encrypted and stored in a secure location.
- When transferring removable media, the receiver must be identified to ensure the person requesting the data is a valid recipient.

### **Transmission Security**

- Department of Finance data sent across any network connection must be encrypted in accordance with the Citywide Encryption Standard.
- Unencrypted transmission of private or confidential data through web applications or email is not allowed.
- Wireless networks must be encrypted using an approved City of New York standard.

### **Portable Devices**

- Department of Finance data may only be stored on portable devices such as laptops, smart phones, and personal digital assistants (PDAs) when encrypted.
- Portable devices should not be used for long-term storage of Department of Finance's data.
- Portable devices must have the capability to be remotely wiped in the event of theft or accidental loss.
- Portable devices must have proper protections in place as outlined in the Citywide Portable Computing Information Security Policy.

**CERTIFICATION**

I hereby certify that I have read and understand DOF's Service Provider Security Agreement, and that I hereby agree to abide by the provisions therein.

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DIVISION/ORGANIZATION

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

## **ATTACHMENT I**

### **Compliance with HireNYC and Reporting Requirements**

The Hiring and Employment Rider shall apply to contracts valued at \$1 million or more for all goods, services and construction except human services contracts that are subject to the Public Assistance Hiring Commitment Rider. The Rider describes the HireNYC process and obligations, including reporting requirements throughout the life of the contract. The HireNYC process requires contractors to enroll with the HireNYC system within thirty days after the registration of the contract subject to this solicitation, to provide information regarding all entry to mid-level job opportunities arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities. The Rider also includes reporting requirements unrelated to HireNYC.

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

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

### ***Federal Hiring Requirements***

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

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

## **HIRING AND EMPLOYMENT RIDER: HIRENYC AND REPORTING REQUIREMENTS**

### **Introduction**

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

### **HireNYC Requirements**

#### **A. Enrollment**

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

#### **B. Job Posting Requirements**

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

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if

any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

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

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

### C. Breach and Liquidated Damages

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

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

### Audit Compliance

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

### ***Other Reporting Requirements***

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

### ***Construction Requirements***

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

**ATTACHMENT II**  
**SUBCONTRACTOR COMPLIANCE NOTICE**

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](http://www.nyc.gov/pip). In order to use the new system, 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](mailto:pip@fisa.nyc.gov).

In order to obtain subcontractor approval under section 3.02 of Appendix A or Article 17 of the Standard Construction 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.







**Workers' Compensation Board**

## CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

<p><b>1a. Legal Name &amp; Address of Insured (use street address only)</b></p> <div style="background-color: #e0e0ff; height: 40px; margin-bottom: 5px;"></div> <p><i>Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)</i></p> <div style="background-color: #e0e0ff; height: 40px;"></div>	<p><b>1b. Business Telephone Number of Insured</b></p> <div style="background-color: #e0e0ff; height: 20px; margin-bottom: 5px;"></div> <p><b>1c. NYS Unemployment Insurance Employer Registration Number of Insured</b></p> <div style="background-color: #e0e0ff; height: 20px; margin-bottom: 5px;"></div> <p><b>1d. Federal Employer Identification Number of Insured or Social Security Number</b></p> <div style="background-color: #e0e0ff; height: 20px;"></div>
<p><b>2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)</b></p> <div style="background-color: #e0e0ff; height: 100px;"></div>	<p><b>3a. Name of Insurance Carrier</b></p> <div style="background-color: #e0e0ff; height: 20px; margin-bottom: 5px;"></div> <p><b>3b. Policy Number of Entity Listed in Box "1a"</b></p> <div style="background-color: #e0e0ff; height: 20px; margin-bottom: 5px;"></div> <p><b>3c. Policy effective period</b></p> <p style="text-align: center;">_____ to _____</p> <p><b>3d. The Proprietor, Partners or Executive Officers are</b></p> <p><input type="checkbox"/> Included. (Only check box if all partners/officers included)</p> <p><input type="checkbox"/> all excluded or certain partners/officers excluded.</p>

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. (To use this form, New York (NY) must be listed under **Item 3A on the INFORMATION PAGE of the workers' compensation insurance policy**). The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) **Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Workers' Compensation contract of insurance only while the underlying policy is in effect.

**Please Note:** Upon cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

**Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.**

Approved by: \_\_\_\_\_  
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: \_\_\_\_\_  
(Signature) (Date)

Title: \_\_\_\_\_

Telephone Number of authorized representative or licensed agent of insurance carrier: \_\_\_\_\_

**Please Note:** Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are **NOT** authorized to issue it.

## Workers' Compensation Law

### Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier **IS** produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.
2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.



# CERTIFICATE OF INSURANCE COVERAGE UNDER THE NYS DISABILITY BENEFITS LAW

**PART 1. To be completed by Disability Benefits Carrier or Licensed Insurance Agent of that Carrier**

<p>1a. Legal Name &amp; Address of Insured (use street address only)</p>           <p>Work Location of Insured <i>(Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)</i></p>	<p>1b Business Telephone Number of Insured</p>           <p>1c NYS Unemployment Insurance Employer Registration Number of Insured</p>           <p>1d Federal Employer Identification Number of Insured or Social Security Number</p>
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<p>2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)</p> <p>NYC Department of Finance 1 Centre Street, Room 1040 New York, NY 10007</p>	<p>3a Name of Insurance Carrier</p>           <p>3b Policy Number of Entity Listed in Box "1a"</p>           <p>3c Policy effective period:</p>
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4. Policy covers:

A.  All of the employer's employees eligible under the New York Disability Benefits Law

B.  Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability Benefits insurance coverage as described above.

Date Signed \_\_\_\_\_ By \_\_\_\_\_

(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number \_\_\_\_\_ Title: Manager

**IMPORTANT:** If Box "4a" is checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.  
If Box "4b" is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the Disability Benefits Law. mailed for completion to the Workers' Compensation Board, DB Plans Acceptance Unit, 328 State Street, Schenectady, NY 1

**PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box "4b" of Part 1 has been checked)**

**State of New York  
Workers' Compensation Board**

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability Benefits Law with respect to all of his/her employees.

Date Signed \_\_\_\_\_ By \_\_\_\_\_

(Signature of NYS Workers' Compensation Board Employee)

Telephone Number \_\_\_\_\_ Title \_\_\_\_\_

**Please Note:** Only insurance carriers licensed to write NYS disability benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1. **Insurance brokers are NOT authorized to issue this form.**

## Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in box "3" on this form is certifying that it is insuring the business referenced in box "1a" for disability benefits under the New York State Disability Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in box "2".

Will the carrier notify the certificate holder within 10 days of a policy being cancelled for non-payment of premium or within 30 days if cancelled for any other reason or if the insured is otherwise eliminated from the coverage indicated on this certificate prior to the end of the policy effective period?    YES     NO

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability Benefits contract of insurance only while the underlying policy is in effect.

**Please Note: Upon the cancellation of the disability benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability Benefits Law.**

### DISABILITY BENEFITS LAW

#### §220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits for all employees has been secured as provided by this article.