

Request for Expressions of Interest (RFEI)

Payroll Management Solutions

Phase 1 – Exhibits A, B and C

PIN: 127FY2300073

Exhibit A-RFEI COVER LETTER

PIN: 127FY2300073

Proposer:

Company Name:

Address:

Proposer's Contact Person:

Name:

Title:

Telephone #:

Email:

Proposer's Authorized Representative:

Name:

Title:

Signature:

Date:

Exhibit B-Vendor Certification

PIN: 127FY2300073

Minimum Qualifications

Software Publisher / Payroll Solution Qualifications:

- Ability to document a stable, live production deployment by a customer that manages a single North American payroll with a minimum of 50,000 employees (and/or retirees).

Developer / Integrator Qualifications:

- At least 10 years documented experience building, scaling, and implementing highly robust payroll systems; and
- Experience implementing a payroll solution for a customer that manages a single North American payroll with a minimum of 50,000 employees (and/or retirees).

By signing below vendor certifies it meets the minimum qualifications outlined above. In Phase 2, vendors will be asked to submit additional documentation to support their qualifications.

IN WITNESS WHEREOF, the Company has executed this Vendor Certification on the date set forth below.

Signature of the Company's Authorized Representative:		Date:	
Print Name and Title:			

Exhibit C-Non-Disclosure Agreement

Payroll Management Solutions Request for Expression of Interest (PIN: <u>127FY2300073</u>)	
Non-Disclosure Agreement	
Company Name:	
Company Address:	

Introduction. The City of New York, acting through its Financial Information Services Agency and its Office of Payroll Administration (the “City”), and the above-identified Company wish to exchange information in connection with the City’s Request for Expression of Interest for Payroll Management Solutions (the “RFEI”).

The City possesses confidential and/or proprietary information relating to technology, business, and/or other matters (“City Confidential Information,” as more fully defined below). In furtherance of the aforementioned exchange of information, the City wishes to disclose, and the Company wishes to receive, certain City Confidential Information on the terms and conditions stated herein.

In return for being granted access to City Confidential Information as contemplated by this Non-Disclosure Agreement (this “NDA”), the Company agrees as follows:

1. **Purpose of NDA.** The Company is executing this NDA as a pre-condition of receipt of information relevant to the RFEI. The Company expressly acknowledges that nothing in this NDA (a) creates any obligation of the City to disclose any City Confidential Information, (b) creates any obligation of the City to include the Company in any resulting or related procurement or other action, or (c) creates any obligation of either party to enter into any discussions, negotiations, and/or additional agreement(s).
2. **City Confidential Information.** Subject to the exclusions stated in Section 3 below, “City Confidential Information” includes all information and materials, whether tangible or intangible, belonging to the City or in the City’s possession or control, which is of a confidential or proprietary nature (whether or not so designated) including, without limitation:
 - a. information concerning the City’s computer systems and technology (including, but not limited to, information concerning current and future hardware, software, configurations, operations, networks, computing facilities and locations, processes, research, projects, designs, and/or specifications);
 - b. all computer programs (including, but not limited to, code, software output, screen displays, file hierarchies, algorithms, graphics, and user interfaces), any and all data that may be used with such computer programs (whether or not such data reflects actual information), related designs and documentation, technical data, research, formulas, techniques, processes, and technology;
 - c. information concerning current, former, and/or prospective City employees, contractors, and/or vendors;

- d. information that the City receives from third parties if the City is subject to a duty to keep such information confidential;
 - e. all original and copied notes, memoranda, and other records and documentation of the Company and its employees, partners, officers, directors, agents, contractors, and professional advisors, to the extent relating to, derived from, and/or incorporating any City Confidential Information;
 - f. the terms of: this NDA; any discussions or negotiations that may occur between the City and the Company concerning the subject matter of the RFEI; or any ensuing contract(s); and
 - g. any other confidential or proprietary information and/or materials relating to the City's business or operations (including, but not limited to, trade secrets, processes, and/or financial information), and/or that is designated as confidential, proprietary, or the like, and/or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.
3. **Exclusions.** City Confidential Information does not include information that:
- a. was known to the Company prior to its receipt hereunder without any duty of confidentiality to the City;
 - b. at the time of the Company's receipt hereunder was generally available to the public, or which thereafter becomes generally available to the public, through no wrongful act of the Company and/or any entity acting on its behalf;
 - c. the Company lawfully obtains from any third party who is not under a duty of confidentiality to the City with regard to such information; or
 - d. is hereafter developed by or on behalf of the Company without use of, or reference to, any City Confidential Information.

The Company shall bear the burden of showing that any of the foregoing exclusions apply. A disclosure of City Confidential Information that is specific in nature shall not be subject to any of the foregoing exclusions merely because it is encompassed by more general information that is subject thereto. Nothing in this NDA affects any confidentiality or other obligation(s) of the Company to the City arising outside this NDA.

4. **Limitations on Use.** the Company shall handle, use, and treat all City Confidential Information in a manner consistent with the following, which obligations shall continue in force unless and until, and only to the extent that, they are expressly superseded or cancelled by a duly executed written agreement between the Company and the City:
- a. It shall use best efforts to hold all City Confidential Information in strict confidence, which efforts in no event shall be less than the same degree of care that it uses to protect its own information of like importance.
 - b. It shall use (or knowingly permit the use of) City Confidential Information only for the purpose of (i) evaluating and, if applicable, establishing a business relationship or other commercial arrangement between the Company and the City concerning the subject matter stated above, and (ii) if and when such a business relationship or other commercial arrangement is formed by a written agreement, furthering the purpose and intent expressly stated in such written agreement, subject to any applicable provisions thereof.

- c. It shall restrict disclosure of City Confidential Information to those of its employees, partners, officers, directors, agents, contractors, and professional advisors that (i) have a commercially bona fide need to know such City Confidential Information in furtherance of the limited purposes described in the Introduction to this NDA; (ii) are legally bound by non-disclosure obligations with regard to City Confidential Information that are at least as stringent as those of the Company herein (including, without limitation, the obligation to return or destroy City Confidential Information upon termination of their applicable relationship with the Company), which obligations are not subject to termination except as may be provided herein; and (iii) have executed an acknowledgement of such obligations in a form acceptable to the City, which acknowledgment the Company shall deliver to the City upon the City's request.
 - d. Except as permitted in Section 4.c, it shall not disclose City Confidential Information to any third party (including, but not limited to, (i) any parent, subsidiary or any other affiliate of the Company, or (ii) any employee, officer, agent, contractor, or professional advisor of the Company) without the City's express prior written approval in each case.
 - e. It shall reproduce (or knowingly permit the reproduction of) City Confidential Information only to the extent necessary for furthering the purposes of this NDA, and only in a manner that preserves any and all confidentiality and proprietary notices in full. Any reproduced City Confidential Information shall likewise be City Confidential Information hereunder;
 - f. It shall use best efforts to prevent the integration of City Confidential Information with its internal or third-party records (including, without limitation, back-ups) except to extent that such integration is commercially reasonably necessary to further the purposes of this NDA.
 - g. It shall not make any attempt (whether itself or through third parties) to reverse engineer, disassemble, decompile, or otherwise analyze the operation of any software, equipment, component, or other item(s) of City Confidential Information.
 - h. It shall not at any time store, process, transmit, or maintain any City Confidential Information in electronic form unless such City Confidential Information is securely encrypted using a commercially reasonable encryption standard controlled by the Company.
 - i. It shall not at any time store, process, transmit, or maintain any City Confidential Information in electronic form in any portable storage medium, except where use of such a storage medium is part of the Company's established and secure backup and recovery processes.
 - j. It shall not (i) disclose City Confidential Information to any entity outside the United States, or (ii) store or transmit any City Confidential Information outside the United States. The momentary transmission and/or storage of City Confidential Information as may be inherent in electronic transmission between locations within the United States shall not be deemed a violation of this provision.
- 5. Required Disclosure.**
- a. Notwithstanding Section 4 above, the Company may disclose City Confidential Information that it is lawfully required to disclose to a governmental agency, or pursuant to a judicial or governmental order, provided that such disclosure takes place only (i) to the extent required in, and only for the purposes of, such order or requirement as determined by the Company in good faith, and (ii) after the Company has made commercially reasonable efforts to withhold disclosure (to the extent permitted under such order or requirement) in order to first promptly notify the City in writing of full details of the order, and reasonably cooperates (at the City's

- expense) in any efforts by the City to seek a protective order or other protection for such City Confidential Information.
- b. Any City Confidential Information disclosed under this Section 5 shall nonetheless remain City Confidential Information and subject to this NDA except to the extent that, by operation of the applicable law or order, it becomes part of the public record.
6. **Ownership.** All City Confidential Information shall be and remain the property of the City. Nothing in this NDA shall be construed as granting the Company any license or right in or to any City Confidential Information or under any City intellectual property right.
7. **Return of City Confidential Information.** Promptly following the City's written request at any time, the Company shall make commercially reasonable efforts to (a) return to the City all City Confidential Information in the Company's possession or under its control that is capable of being returned; and (b) permanently and irretrievably delete, erase, or otherwise destroy all City Confidential Information in the Company's possession or under its control contained in electronic or other form that, by its nature, is not capable of being returned including, without limitation, City Confidential Information contained in computer memory, or in magnetic or optical storage.
8. **No Warranties; Independent Contractors.** While the City will make reasonable efforts to ensure that City Confidential Information disclosed hereunder is accurate at the time of disclosure, the Company acknowledges that any and all City Confidential Information is provided "as is" without warranty of any kind, whether expressed, implied or statutory. Without limiting the generality of the foregoing, the City makes no warranty or representation that any City Confidential Information: is or will remain complete and/or accurate; does not, or will not in the future, infringe any right(s) of any third party/ies; or is or will remain suitable for any particular purpose. The City shall not be responsible or liable for any decisions made and/or actions taken (or not taken) by the Company in reliance upon any City Confidential Information. The parties are independent contractors, and nothing in this NDA creates any other relationship (whether in the nature of a partnership, joint venture, or otherwise) between them.
9. **Publicity.** The Company shall not, without the City's express prior written consent in each case: (a) issue a press release or make any other public statement that references the existence or subject matter of this NDA or any related discussions or activities; or (b) use the City's names or trademarks for publicity or advertising purposes.
10. **Equitable Relief; Costs.** The Company acknowledges that any breach or anticipatory breach of this NDA will cause the City irreparable harm for which there may be no adequate remedy at law, and that the City shall therefore be entitled to injunctive or other equitable relief in addition to any other remedy available to it at law or otherwise. The City shall be entitled to recover its attorney's fees and other costs reasonably incurred in any action to enforce its rights under this NDA.
11. **Waiver.** The City's waiver of any provision of this NDA, or any delay or failure by the City in the enforcement of any right hereunder, shall create neither a continuing waiver nor any expectation of non-enforcement of that or any other provision or right.
12. **No Assignment.** The Company may not assign this NDA or any rights hereunder, or delegate any duties hereunder, without the City's express prior written consent granted at its sole discretion, and any attempt to do so shall be void and of no effect. All of the terms and provisions contained herein shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs, successors and permitted assigns.

13. **Entire Understanding.** This NDA constitutes the entire understanding between the parties with respect to the subject matter hereof and may be modified only in a writing signed by the parties. If any provision of this NDA is held to be wholly or partially invalid, illegal, or unenforceable, this NDA shall be construed to the greatest extent possible as if the invalid, illegal or unenforceable matter had never been contained herein consistent with the intent of this NDA.
14. **Governing Law; Jurisdiction.** This NDA shall be construed and interpreted in accordance with the laws of the state of New York, without regard to its conflict of laws principles. Any action at law or in equity arising under this NDA shall be filed in a state or federal court located in the State, City, and County of New York, and the parties hereby irrevocably consent and submit to the exclusive personal jurisdiction and venue of such courts in connection with any such action.
15. **Authority to Bind.** The Company represents and warrants that the person executing this NDA on its behalf has all necessary authority to bind it to this NDA.
16. **Section Headings.** The Section headings in this NDA are for convenience only, and shall have no bearing on the construction or operation of this NDA.

IN WITNESS WHEREOF, the Company has executed this Non-Disclosure Agreement on the date set forth below.

Signature of the Company's Authorized Representative:		Date:	
Print Name and Title:			

ACKNOWLEDGEMENT

State of _____)
) ss.:
 County of _____)

On this ____ day of _____, 2023, personally before me came _____, personally known to me or who proved to me his/her identity on the basis of satisfactory evidence and, being by me duly sworn, did depose and say that: s/he is the _____ of _____, the entity identified as the Company in the foregoing Non-Disclosure Agreement; that s/he is duly authorized to execute said Non-Disclosure Agreement on behalf of said Company; and that s/he has so executed the foregoing Non-Disclosure Agreement for the purposes stated therein.

 NOTARY PUBLIC OR COMMISSIONER OF DEEDS