

Workforce Development Corporation (“WDC”)

Request for Proposals

Title: NYC Digital Poverty Measure
RFP PIN: 2025WDC0015

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Proposers are advised that the **Authorized WDC Contact Person** for all matters concerning this Request for Proposals (“RFP”) is:

Name: Chenelle Dennis
Title: Executive Director
Mailing Address: 1 Liberty Plaza, 10th floor, New York, New York 10006
Telephone #: 212-513-6437
E-mail Address: WDCcontracting@sbs.nyc.gov

SECTION I – TIMETABLE

A. Release Date of this RFP: Friday, May 16, 2025

Responses should be submitted electronically by email, in either Adobe PDF to Chenelle Dennis at WDCcontracting@sbs.nyc.gov. Please regularly check the [WDC Contracting Opportunities website](#) for any updates to the RFP.

B. Question due by: Tuesday, May 27, 2025, 12:00pm

All questions should be submitted via email to Chenelle Dennis [at WDCcontracting@sbs.nyc.gov](mailto:WDCcontracting@sbs.nyc.gov). All questions and answers are anticipated to be posted online by end of day **Monday, June 2, 2025**.

C. Proposal Due Date: Monday, June 9, 2025, 5:00pm

Responses must be submitted electronically by email, in either Adobe PDF or Microsoft Word, to Chenelle Dennis at WDCcontracting@sbs.nyc.gov. All responses to this RFP are to be prepared and submitted at the proposer’s expense. The WDC will not pay any costs incurred by proposers in connection with the preparation, submission, and evaluation of the RFP response.

Note: The WDC will consider requests made to the Authorized WDC Contact Person to extend the Proposal Due Date and Time prescribed above. However, unless the WDC issues a written

addendum to this RFP which extends the Proposal Due Date and Time for all proposers, the Proposal Due Date and Time prescribed above shall remain in effect.

D. Anticipated Contract Start Date: Friday, August 1, 2025

Note: *The Contractors must be able to begin immediately upon receipt of a written notice to proceed from WDC.*

SECTION II – SUMMARY OF THE REQUEST FOR PROPOSALS

A. Background

WDC: WDC is an independent not-for-profit organization created by the City of New York (“**City**”) for the purpose of assisting the City in developing and funding workforce initiatives. WDC works closely with the City’s Department of Small Business Services (“**SBS**”) to contribute to the economic vitality of New York City (“**NYC**”) by promoting workforce development and job creation through public and private partnerships.

NYC Opportunity: The Mayor’s Office for Economic Opportunity (“**NYC Opportunity**”) helps the City apply evidence and innovation to reduce poverty and increase equity. Using the tools of data, design, and research, NYC Opportunity partners with agencies to improve the systems of government and make the City’s social service programs more effective, efficient and responsive. NYC Opportunity supports policy development and budget decisions and works to center equity as a core governing principle across government. NYC Opportunity also produces research and analysis of poverty and social conditions, including through our influential annual NYCgov Poverty Measure, which we developed to provide a more accurate picture of poverty in New York City than the federal rate.

B. Context and Purpose of this Project

The City Charter requires that NYC Opportunity release the [NYCgov Poverty Measure](#) every year, detailing the poverty rate and initiatives aimed at reducing poverty in NYC. The NYCgov Poverty measure is a more realistic measure of poverty compared to the official national poverty measure. The report includes poverty rates, near poverty rates, and poverty thresholds for the City’s population using the most recent data available, and an examination of the state of poverty in NYC with a review of relevant policy remedies.

The annual poverty report highlights a large number of City programs in housing, job creation, benefits access, and other areas that are working to combat poverty and increase opportunity. It also includes key findings for the poverty level across the years. NYC Opportunity needs support transforming the poverty report into an interactive website / portal that leverages the foundations of [Equity NYC](#) and the [Workforce Data Portal](#) (“**Digital Poverty Measure**”).

This Interactive Poverty Report will bring the poverty data into a more accessible digital format and make it easier for users of the Workforce Data Portal and Equity NYC to see that data in one place and how they relate.

NYC Opportunity will complete the user experience (visual design, branding, information architecture, site map, etc.) with its internal team. We are looking for a technical partner to do the technical build, testing, and deployment, as further described below.

C. Anticipated Contract Term

It is anticipated that the term of the contract awarded from this RFP will be seven (7) months (“**Term**”) with extension options at the WDC’s sole discretion for up to one (1) year inclusive of the Term and any extensions or renewals. WDC, at any time and for any reason whatsoever in WDC’s sole discretion, may terminate the contract for WDC’s convenience.

D. Anticipated Available Funding

It is anticipated that the total available funding awarded from this RFP will be up to **\$200,000**. The final contract amount is dependent upon the availability and appropriation of funds is subject to change. In addition, the WDC reserves the right to modify the funding allocation in the best interests of the WDC. A contract will be awarded to the responsible proposer whose proposal is determined to be the best value to WDC, taking into consideration the price and such other factors or criteria which are set forth in this RFP.

E. Anticipated Payment Structure

It is anticipated that the payment structure of the contract awarded from this RFP will be milestone-based payments tied to outcomes. The WDC reserves the right to select any payment structure that is in the WDC’s best interest. WDC will endeavor to accommodate reasonable requests for payment structures that incorporate work performed and the Contractor’s allocation, dedication, and expenditure of resources. Work performed by the Contractor beyond the scope of this RFP and the resulting contract award will not be compensated without WDC’s prior approval.

F. Minimum Qualification Requirements

The following are the Minimum Qualification Requirements of this RFP. Proposals that fail to meet any of these requirements may be found non-responsive and rejected.

1. 3-5 years of experience developing data-heavy digital platforms with admin-friendly Content Management Systems
2. 3-5 years of experience with the following tools and technologies
 - a. Django CMS (or equivalent CMS tools)
 - b. PostgreSQL database
 - c. React
 - d. Azure pipelines for deployments
 - e. HighCharts and Carto data visualization tools (or equivalent tools)

G. Preferred Qualifications

WDC will prefer that proposers possess the following, non-exclusive list of qualifications and/or skills:

1. Experience working with client’s in-house user experience team to build websites/portals (technical implementation only)
2. Experience working with NYC Government, or similarly sized city government, on technology related projects, especially with NYC’s Cyber Command team and Security Accreditation process.

SECTION III – SCOPE OF SERVICES

A. WDC's Goals and Objectives for this RFP

The WDC's goal for this RFP is to award a contract to an appropriately qualified Contractor to develop NYC Opportunity's Digital Poverty Measure. Additionally, the WDC intends that the resulting contract award will ultimately accomplish the following goals and objectives:

1. Build the Digital Poverty Measure website/portal based on NYC Opportunity-provided designs and requirements
2. Set up and configure infrastructure in City's cloud environment, including:
 - a. Set up database(s)
 - b. Set up Development, Staging, and Production environments
 - c. Configure cloud resources (Amazon Web Services hosting, Azure deployment pipelines)
3. Perform quality assurance and performance testing on the Digital Poverty Measure
4. Complete NYC's Cyber Security Accreditation,
5. Complete handover of final code and technical design documentation; conduct training with NYC team on how to maintain the site, and provide offboarding documentation to WDC

B. WDC's Assumptions Regarding Contractor's Approach

The WDC's assumptions regarding which approach will most likely achieve the goals and objectives set out above are as follows. The Contractor is expected to:

1. Provide project management including organizing kickoff meeting, project plans with clear deliverables, and conduct weekly project meeting with NYC Opportunity team to review progress, see demos and get feedback to move the work forward
2. Produce a technical design and implementation strategy document(s) and get the City's sign off prior to beginning work.
 - a. NYC Opportunity's similar data-heavy website ([Equity NYC](#) and [Workforce Data Portal](#)) are built on Django with React and utilizes HighCharts and Carto. NYC Opportunity is open to proposals leveraging a different suite of tools and technologies, but strongly prefer to use the same for easier maintenance going forward.
3. Use NYC's tools for managing tasks (Azure DevOps)

Note: The WDC's assumption regarding the proposer's approach represent what the WDC believes to be most likely to achieve its goals and objectives. However, proposers are encouraged to propose an approach that they believe will most likely achieve the WDC's goals and objectives. Proposers may also propose more than one approach. However, if an alternative approach affects other areas of the proposal such as experience, organizational capacity, or price, that alternative approach should be submitted as a complete and separate proposal providing all the information in Section IV of this RFP.

C. Contractor Responsibilities

The selected Contractor is expected to be responsible for the following services, activities, and deliverables during the contract term: Technical delivery of the NYCgov Poverty measure site. You can [see a visual concept of the site here](#) for reference. Note, this is a draft visual concept only. The

full user experience (UX) and design are not represented here, but the structure of the final UX will be similar.

1. The site will include four-page templates:
 - a. Interactive dashboard: Incorporates multiple chart types showing data from multiple reporting categories – with real-time calculations. Visualizations should include explanatory text about the data and filters to change the data calculations in real time.
 - i. Chart types: Bar, line, table
 - ii. Filters including: Poverty Indicator, Year(s), Population, and Demographic/Socioeconomic filters
 - iii. Export visualizations as image files
 - iv. Export data as CSV
 - v. Map to display geographic data with district boundaries
 - vi. Dynamic text that responds to filter selections
 - b. Generic page template: To be used for content such as the about page, data stories, and other word-heavy content. Page will include header, footer, and WYSIWYG-entry text body. Site admins will be able to embed a data visualization from High Charts into the page.
 - i. Visualization types may include: pie, bubble, density graph with heatmap (in addition to bar, line, table, and map)
 1. CMS managers should be able to set visualizations and underlying data as exportable/not exportable
 2. Users should be able to export visualizations as image files, and the underlying data as CSV
 - c. Home Page: Refer to visual concept above. Standard website homepage (sections to highlight content/data, embed cards/touts for featured data stories, and featured data visualization to show recent poverty trends)
 - d. Landing page template: To be used to amalgamate data stories (likely as cards) for users to click into. Cards to include an image, title, and call to actions (CTA), and potentially tags for filtering to relevant content
2. Develop Content Management System for loading and managing data for visualizations, entering non-hard-coded content, managing taxonomies, URL structures, search engine optimization, and tagging
 - a. WDC admin should be able to select the data visualization type from CMS for any embedded charts
3. Infrastructure set up, including databases, 3 environments (production, staging, and dev), and deployment pipelines via Azure DevOps
4. Quality (QA) testing
 - a. Conduct QA tests to ensure functionality
 - b. Hand off of testing scripts that WDC can use post-contract
5. Technical documentation, such as CMS admin guide for how to add data to the site, and how to run deployments
6. Host pre-launch training session(s)
7. Ensuring the site meets NYC's security and accessibility standards: the City's Security process includes filling in a survey about the security posture of the technology, answering follow up questions, and addressing vulnerabilities.

D. Anticipated General Timeline

This is the anticipated general timeline with an expected launch date by the end of mid-January 2026. It is expected that proposers will propose incremental deliverables within this general timeline, particularly during the build phase between August 2025 and November 2025, that shows progress towards a launch-ready site by January 2026.

1. Begin project kickoff no later than August 4, 2025
2. Submit technical proposal/approach by August 22, 2025 for approval by NYC Opportunity
3. Complete initial site build by November 28, 2025 for user acceptance testing
4. Complete and pass NYC's Cyber Security Accreditation process by January 9, 2026
5. Site is launch-ready by Jan 30, 2026

E. Work Product License

Any and all materials created under any contract that is entered into as a result of this RFP (the "Work Product") are the exclusive property of WDC. WDC may use any Work Product prepared by the Contractors in such manner, for such purposes, and as often as WDC may deem advisable, in whole, in part or in modified form, in all formats now known or hereafter to become known, without further employment of or additional compensation to the Contractors. The Contractors shall not use, transmit, display, publish or otherwise license such Work Product without WDC's prior written consent. The Work Product 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 WDC is the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Work Product does not qualify as a "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Work Product to WDC, free and clear of any liens, claims or other encumbrances. The Contractors shall retain no copyright or other intellectual property interest in the Work Product.

***Note:** This section of the solicitation **DOES NOT** include any materials created by the selected Contractor **prior to** entering into the agreement with WDC. Note, however, that the selected Contractor will be **required** to provide WDC an irrevocable, world-wide, royalty-free, non-exclusive, sub-licensable, license to reproduce, translate, publish, use, make derivative works, distribute and dispose of, for governmental purposes, any pre-existing reports, documents, data, photographs, deliverables, and/or other pre-existing materials delivered under any contract that is entered into as a result of this RFP.*

SECTION IV – FORMAT AND CONTENT OF THE PROPOSAL

Instructions: Proposers should provide all information required in the format below. All proposals should be written using Times New Roman font style and a 12-point font size whether submitted electronically or by hard copy. WDC encourages proposers to submit proposals electronically. Proposals submitted in hard copy should be printed on both sides of portrait 8 ½" by 11" paper.

If submitted electronically, the proposal should be submitted in either PDF or Word format and attached to a single email (further delivery details below).

The proposal will be evaluated on the basis of its content, not length. Failure to comply with any of these instructions will not make the proposal non-responsive.

A. Proposal Format

1. **Proposal Cover Sheet** (Attachment A)

The Proposal Cover Sheet (Attachment A) transmits the proposer's Proposal Package to WDC. It should be completed, signed and dated by an authorized representative of the proposer. If the proposal is being submitted by a joint venture, include a Proposal Cover Sheet for each entity that is a party to the joint venture.

2. **Program Proposal** (Attachment B)

The Program Proposal is a clear, concise narrative that addresses in detail how the proposer will provide the work described in Section III – Scope of Services of this RFP and demonstrate that the proposer proposed approach will fulfill the WDC's goals and objectives.

The Program Proposal description submitted by each proposer shall **not exceed four (4) pages** in length. Specifically, proposals should address the following:

- a. **Proposed Approach (30%):** Describe your organization's proposed approach to meet the goals, deliverables and technical considerations described above.
- b. **Timeline:** Include a more specific timeline that outlines how proposer will complete each deliverable in the Scope of Services and as per Section III(D)-Anticipated General Timeline, specifically during the build phase.

3. **Experience and Organizational Capability** (Attachment C)

1. Demonstrate the proposer's organizational, technical, managerial and financial capacity to provide the work described in Section III – Scope of Services. Specifically, address the following:

- a. **Overview:** Short (1-2 paragraph) overview describing why the proposer is qualified to carry out the technical build.
- b. **Experience and Outcomes (40%):** Information about the relevant experience that makes proposer qualified to carry out this technical build, including a portfolio of previous experience developing government public facing data tools and similar projects and outcomes.
- c. **Organizational Capacity (30%):** Demonstrate proposer's organizational, technical, managerial and financial capacity to provide the work described in Section III. Specifically, proposals should address the following:
 - A. Proposed team members, their previous experience, and how the proposer will supplement skills not currently found within internal team.

2. In addition:

- a. Attach a chart showing where, or an explanation of how, the proposed services will fit into the proposer's organization.
- b. Attach a copy of the proposer's latest audit report or certified financial statement, or a statement as to why no report or statement is available.
- c. Attach proof that the business has been in operation for at least 3 years.

Note: Proposers should complete the annexed Attachment C to respond to the areas identified above relating to "Experience" and "Organizational Capability." Proposers should attach

additional sheets, as applicable, to submit their responses to the WDC if there is insufficient space or if a particular area does not appear on Attachment C.

4. Price Proposal (Attachment D)

For the purposes of comparison, Proposers are required to complete and submit the Price Proposal Attachment (Attachment D). However, proposers are also encouraged to propose innovative payment structures. WDC reserves the right to select any payment structure that is in WDC's best interest. While not allocated an evaluation percentage, price will remain a factor in the overall evaluation in determining best value.

Note: *The Contractor(s) must be able to begin immediately upon receipt of a written notice to proceed from WDC.*

5. Proposal Package Contents ("Checklist")

The Proposal Package should contain the following materials. Proposers should utilize this section as a "Checklist" to assure completeness prior to submitting their proposal to WDC.

1. ELECTRONIC SUBMISSIONS ONLY:

- a. One PDF or Word document labeled "NYC Poverty Measure Proposal [*Proposer Organization Name*]"
 - A. **Proposal Cover Sheet (Attachment A)**
 - B. **Program Proposal (Attachment B)**
 - C. **Experience and Organizational Capacity (Attachment C)**
 1. Chart showing where, or an explanation of how, the proposed services will fit into the proposer's organization.
 2. Copy of the proposer's latest audit report or certified financial statement, or a statement as to why no report or statement is available.
 3. Proof that the business has been in operation for at least 3 years.
 - D. **Acknowledgment of Addenda Form (Attachment E)**
- b. A separate PDF or Word Document labeled "NYC Poverty Measure Price Proposal [*Proposer Organization Name*]"
 - A. **Price Proposal Form (Attachment D)**
- c. One email with previous files attached, which includes:
 - i. A subject line with the following format: Title of RFP, RFP Pin #
 - ii. A message in the body of the email noting the Proposer's name and address, the Title, and PIN of this RFP and the name and telephone number of the Proposer's Contact Person.
 - iii. WDCcontracting@sbs.nyc.gov in the recipient ("To") field, in the "cc" field, NYC Poverty Measure Proposal: [*insert organization name*] in the subject line.

SECTION V – PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

- A. Evaluation Procedures.** All proposals accepted by WDC will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by WDC to be non-responsive will be rejected. WDC's Evaluation Committee will evaluate and rate all remaining proposals based on the Evaluation Criteria prescribed below. WDC reserves the right to conduct site visits and/or interviews and/or to request that proposers make presentations and/or demonstrations, as WDC deems applicable and appropriate. Although discussions may be conducted with proposers submitting acceptable proposals, WDC reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer's initial proposal should contain its best programmatic and price terms.
- B. Evaluation Criteria.** Selection will be made to the proposer with the highest overall score. The criteria for evaluation and weight assigned are set forth below. All proposals accepted by WDC will be reviewed, evaluated and rated based on the Evaluation Criteria prescribed below. WDC reserves the right to conduct site visits and/or interviews and/or to request that proposers make presentations and/or demonstrations, as WDC deems applicable and appropriate. Although discussions may be conducted with proposers submitting acceptable proposals, WDC reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer's initial proposal should contain its best programmatic and price terms.
- a. Demonstrated quantity and quality of successful relevant experience: 40%
 - b. Demonstrated level of organizational capability: 30%
 - c. Quality of proposed approach: 30%
- C. Basis for Contract Award.** A contract will be awarded to the responsible proposer(s) whose proposal is determined to provide the best value to WDC, taking into consideration the price and such other factors or criteria which are set forth in this RFP. Contract award shall be subject to the timely completion of contract negotiations between WDC and the selected proposer(s). WDC shall rank proposers by technical merit, and the price proposal of ONLY the highest technically ranked firms will be opened and reviewed by WDC to determine whether such price proposal(s) is responsive. WDC may request best and final offers (BAFOs) and will then consider price by negotiating a fair and reasonable price with the highest technically ranked proposer(s). In the event that such a fee is not successfully negotiated, WDC may conclude such negotiations, and enter into negotiations with the next highest technically ranked proposer, as necessary.
- D. Confidential, Proprietary Information or Trade Secrets.** Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by WDC. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by WDC.
- E. RFP Postponement/Cancellation.** WDC reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.
- F. Proposer Costs.** Proposers will not be reimbursed for any costs incurred to prepare proposals.
- G. Applicable Laws.** This Request for Proposals and the resulting contract award, if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York

City Charter and Administrative Code, the Rules of the City of New York. In addition, contract award is subject to applicable provisions of federal, state and local laws and executive orders, including those requiring affirmative action and equal employment opportunity.

- H. General Contract Provisions.** Contracts shall be subject to WDC’s general contract provisions, in substantially the form that they appear in the attached “Appendix A—Standard Terms and Conditions (Public Funds)” or, if WDC utilizes other than the formal Appendix A, in substantially the form that they appear in WDC’s general contract provisions.
- I. Prices Irrevocable.** Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to WDC prior to contract award. This shall not limit the discretion of WDC to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

SECTION VI – ATTACHMENTS

Attachment A – Proposal Cover Sheet

Attachment B – Program Proposal

Attachment C – Experience and Organizational Capability Form

Attachment D – Price Proposal Form

Attachment E – Acknowledgment of Addenda

Attachment F – Cloud Agreement*

The Cloud Agreement will be required if the final negotiated contract with the winning proposer includes any provider hosted services as further described in Attachment F.

Appendix A – Standard Terms and Conditions

ATTACHMENT A

PROPOSAL COVER SHEET

RFP TITLE: NYC POVERTY MEASURE

PIN: 2025WDC0015

Proposer:

Name: _____

Address:

Tax Identification #: _____

Years in Operation: _____

Proposer's Contact Person:

Name: _____

Title: _____

Telephone #: _____

Email Address: _____

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

ATTACHMENT B

PROGRAM PROPOSAL (PROPOSED APPROACH)

The Program Proposal is a clear, concise narrative. Refer to Section IV (Program Proposal) for guidance about what should be included in this section.

Describe in detail how the proposer will provide the work described in Section III of this RFP and demonstrate that the proposer's proposed approach will fulfill the WDC's goals and objectives.

The "Proposed Approach" description submitted by each proposer should **not exceed four (4) pages.**

ATTACHMENT C

EXPERIENCE AND ORGANIZATIONAL CAPABILITY PROPOSER RESPONSE FORM

Overview: Short (1-2 paragraph) overview describing why the proposer is qualified to carry out the technical build.

Experience and outcomes: Information about the relevant experience that makes proposer qualified to carry out this technical build, including a portfolio of previous experience developing government public facing data tools and similar projects and outcomes.

Organizational Capacity: Demonstrate proposer's organizational, technical, managerial and financial capacity to provide the work described in Section III. Specifically, proposals should address the following:

1. Proposed team members, their previous experience, and how the proposer will supplement skills not currently found within internal team.
2. Attach a chart showing where, or an explanation of how, the proposed services will fit into the proper's organization.
3. Attach a copy of the proposer's latest audit report or certified financial statement, or a statement as to why no report or statement is available.
4. Attach proof that the business has been in operation for at least 3 years.

ATTACHMENT D

PRICE PROPOSAL FORM

Total Price: \$ _____

Total Price in Words: _____

Deliverable	Cost (\$)
Total Contract Amount:\$ _____	

Printed Name of Proposer

Signature of Proposer

Please Note: In case of discrepancies between the price in words and the price in figures, the price in words will be considered the price. Proposers can provide either an annual or multi-year budget proposal but will need to clearly identify the time period(s) that is included in the budget. WDC will prefer to see an annual budget. The WDC will accept proposals that include indirect or overhead costs. The maximum allowable for indirect or overhead costs is 10% of the program budget.

ATTACHMENT E

ACKNOWLEDGMENT OF ADDENDA

Directions: Complete Part I or Part II, whichever is applicable, and sign your name in Part III. All proposers must complete and include this page as part of their proposal package.

Part I. Acknowledgment of Receipt of Addenda

Listed below are the dates of issue for each Addendum received in connection with this RFP:

Addendum #1, Dated _____, 2025

Addendum #2, Dated _____, 2025

Addendum #3, Dated _____, 2025

Addendum #4, Dated _____, 2025

Addendum #5, Dated _____, 2025

Part II. Acknowledgment of No Receipt of Addenda

_____ No Addendum was received in connection with this RFP

Part III. Proposer's Name and Authorized Representative

Proposer's Name: _____

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

Attachment F

CLOUD AGREEMENT

TERMS AND CONDITIONS FOR CLOUD SERVICES

This Cloud Services Agreement (“**Agreement**”) is by and between _____, as the Cloud Service provider (“**Provider**”), and the City (defined below) as licensee, and are applicable to any procurement of hosted services from Provider, including, but not limited to, Software as a Service (SaaS), Platform as a Service (PaaS), Infrastructure as a Service (IaaS) and software sold, licensed, transferred or otherwise provided to the City by Provider or through a third-party reseller (“**Reseller**”). As used in this Agreement, “**Party**” refers to the City or Provider (i.e., does not include a Reseller, if any) individually, and “**Parties**” means the City and Provider, collectively.

The Parties hereby agree as follows:

I. DEFINITIONS

- 1.1. “**City**” means the City of New York, including all of its counties, boroughs, offices, positions, administrations, departments, divisions, bureaus, boards, commissions, corporations, institutions, or agencies and their respective personnel.
- 1.2. “**City Data**” means (1) Data characterizing the City or its behavior; (2) Data 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.
- 1.3. “**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.
- 1.4. “**Cloud Service/s**” means the software-, platform-, infrastructure- or other “as a service” solution for which access is provided by Provider to the City under this Agreement, including any client software provided to the City by Provider for use with the Cloud Service. Any software to be installed on the City’s hardware for the purpose of facilitating the City’s use of the Cloud Services shall be deemed to be a part of the Cloud Services.
- 1.5. “**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.
- 1.6. “**Department**” means the City entity that has entered into this Agreement.
- 1.7. “**DoITT**” means the City Department of Information Technology and Telecommunications.
- 1.8. “**Intellectual Property Rights**” or “**Intellectual Property**” means all proprietary information, patents, patent applications, trademarks, trade names, service marks, certification marks, collective marks, designs, processes, inventions, licenses, copyrights, and trade secrets of either Party, including, but not limited to, such rights relating to the origin, design, manufacture, programming, operations, function, configuration, or service of the licensed product.

- 1.9. **“Non-Public City Data”** means all City Data that is considered Restricted or Sensitive Information as those categories are defined by the City’s Policies and Standards. All Personal Identifying Information (as defined in Section 10-501 of the New York City Administrative Code or successor), Identifying Information (as defined in Section 23-1201 or successor), information protected from unauthorized use or disclosure by local, state or federal law and regulation, the City’s confidential information (including information disclosed or made available by the City in the course of receiving maintenance, subscription and support and other services) and security information is Non-Public City Data.
- 1.10. **“NIST”** means the National Institute of Standards and Technology.
- 1.11. **“NYC3”** means New York City Cyber Command, which is part of the City of New York.
- 1.12. **“Open Source Software”** or **“OSS”** means an open source or other license that requires, as a condition of use, modification, or distribution, that any resulting software must be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.
- 1.13. **“Policies and Standards”** means the Citywide Information Security Policies and Standards, Cyber Command Policies and Standards, or any other policies and procedures by NYC3 and DoITT, as the policies may be amended, available at <https://www1.nyc.gov/site/doitt/business/it-security-requirements-vendors-contractors.page>.
- 1.14. **“PPB Rules”** means the New York City Procurement Policy Board Rules.
- 1.15. **“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.
- 1.16. **“Provider Systems”** means the facilities, systems, networks and IT environments that are used to Process any City Data, deliver any Cloud Services or to otherwise meet any of Provider’s obligations under this Agreement.
- 1.17. **“Security Incident”** means an event that compromises or is suspected to compromise the security, confidentiality, availability or integrity of City Data, City Technology Assets or Provider Systems, including by compromising the physical, technical, administrative or organizational safeguards implemented by Provider to protect the security, confidentiality, availability or integrity of City Data, City Technology Assets or Provider 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), network intrusions, ransomware infections, a breach of access credentials and DoS attacks.
- 1.18. **“System”** means a discrete set of information resources organized for the creation, collection, processing, maintenance, use, sharing, dissemination, or disposition of information. It encompasses, individually or collectively, all Network addressable items in an information technology environment and non-networked items with central processing units. Systems should be construed broadly to include, without limitation, servers, laptops, mainframes, portable computing devices, cloud infrastructure, Internet of Things devices, network appliances, industrial control system devices and supervisory control and data acquisition devices.

II. LICENSE AND USE

- 2.1. License Grant. Subject to the terms and conditions of this Agreement, Provider grants the City a worldwide, limited, non-exclusive right and license during the term of this Agreement to: (a) use the Cloud Services; (b) implement, configure and access the Cloud Services, including all actions and licenses necessary to fully effectuate the purposes of this Agreement and the City's internal business and IT purposes; and (c) access and use Provider's documentation.
- 2.2. Authorized User. The authorized user of the Cloud Service is the City, including its employees, authorized agents, consultants, auditors, other independent providers and any external users contemplated by the Parties. This paragraph does not modify the quantity of users permitted to use the Cloud Service.

III. DATA MANAGEMENT AND SECURITY

- 3.1. Safeguards to Protect City Data. Provider shall implement and maintain appropriate physical, technical, administrative, and organizational safeguards in accordance with industry best practices and applicable law to protect the security, confidentiality, availability, and integrity of City Data, including, but not limited to, the safeguards described in this Agreement.
- 3.2. Backup and Recovery of City Data. As a part of the Cloud Services provided under this Agreement, Provider is responsible for creating, maintaining, and testing backup copies of City Data. Provider is responsible for an orderly and timely recovery of the Cloud Services and City Data in the event that the Cloud Services are interrupted. Except when shorter time(s) are otherwise provided in a separate agreement, the recovery time objective ("RTO") for Cloud Services is six (6) hours and the recovery point objective ("RPO") for City Data is two (2) hours. For the purpose of calculating the RTO, recovery time is equal to the elapsed period of time between the commencement of an interruption and the time at which the Cloud Service is fully restored and available for use by the City. RPO means the period of time during which changes made to data shall not be included in a replication or other backup copy. Provider shall replicate data to a disaster recovery site that meets the requirements in this Agreement. Provider shall maintain no less than thirty (30) days of backups. Any backups of City Data shall not be considered in calculating storage used by the Department.
- 3.3. Disaster Recovery Sites. Provider shall have a minimum of one (1) disaster recovery site at a distance of at least five hundred (500) miles from the primary site. City Data must be replicated from the primary data center to the disaster recovery site in a time and manner sufficient to meet the RPO, and the Cloud Service must be configured to fail over from the primary data center to the disaster recovery site within the RTO. The disaster recovery site must be capable of supporting the Cloud Service at full load. The Department and City shall not incur any costs in relation to additional recovery site(s).
- 3.4. Disaster Recovery Plans. Provider shall implement, maintain, and test disaster recovery plans to minimize downtime resulting from all hazards, including system failure. Provider represents that these disaster recovery plans are documented, tested no less frequently than once every twelve (12) months, and updated as required. The City has a right to review Provider's disaster recovery plans, and Provider must, upon the City's request, provide the Department with a copy of such plans.
- 3.5. Data Availability, Storage, and Retention. Provider shall comply with the following:
 - 3.5.1. Provider shall ensure that all City Data is available to the Department at all times (24/7/365) during the term of the Cloud Services and for a period of ninety (90) days after the term ends,

including during any suspension of Cloud Services.

- 3.5.2. All City Data uploaded by the City and stored by Provider shall be available to the City to copy back to the City's storage without alteration or loss and at no additional charge.
- 3.5.3. Provider may not use, access, or perform any analytical analyses of any kind on data derived from the City's usage of the Cloud Service, whether anonymized or aggregated or both, except as agreed to in writing by the City in its discretion, or as required for Provider to provide the Cloud Service.
- 3.5.4. City Data shall not be altered, moved, or deleted without the Department's consent;
- 3.5.5. If legal mandates for data retention apply specifically to City Data, Provider shall comply with all such mandates communicated to Provider in writing; and
- 3.5.6. Provider agrees that City Data shall remain in the United States.
- 3.6. Forensic and Investigative Response. Provider must document and maintain appropriate chain of custody throughout the duration of this Agreement for the purposes of potential forensic or legal investigation. Provider shall not remove metadata, except as directed by Department.
- 3.7. Access to City Data. Provider shall implement identity and access control policies and procedures in accordance with applicable law and industry best practices, and as approved by the City. Upon the request of the City, Provider shall support federated identity and access management.
- 3.8. Occurrences Affecting City Data. Provider shall implement, maintain, test and update an incident response plan in accordance with applicable law and industry best practices. Provider represents that (a) prior to the execution of this Agreement, Provider has provided the City with a copy of its current written incident response plan, and (b) on an annual basis thereafter, Provider shall provide the City with its current written incident response plan. Except as required by applicable law without the possibility of contractual waiver, Provider shall not inform any third party of any Security Incident in the absence of the Department and NYC3's prior written authorization to make the disclosure. The Department and NYC3 shall determine whether notice is required to be provided to individuals, regulatory and law enforcement agencies or any other third party and whether any remediation may be offered to individuals affected by the Security Incident.
- 3.9. Security Incident. In the event of any Security Incident, Provider shall:
 - 3.9.1. notify the NYC Cyber Command Citywide Security Operations Center ("NYC3 Citywide SOC") by telephone at (718) 403-6761 and Department's CISO within 24 hours.
 - 3.9.2. notify the NYC3 Citywide SOC within 48 hours by a written notice directed to the Chief Information Security Officer for the City of New York at SOC@cyber.nyc.gov and CISO@cyber.nyc.gov. and the Department's CISO, 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 Provider, which shall be timely supplemented to the level of detail reasonably requested by the City, inclusive of relevant investigation or forensic reports.
 - 3.9.3. 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.

- 3.9.4. not delete any impacted virtual/cloud instances or re-image any impacted Systems without prior consultation and agreement with NYC3.
- 3.9.5. 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.
- 3.9.6. in the case of Protected Health Information or Electronic PHI ("PHI/e-PHI"), as defined in 45 CFR §160.103, or in the case of Personal Identifying Information, as defined in Section 10-501(a) or its successor of the Administrative Code of the City of New York ("PII"), at the City's request and pursuant to the City's express instructions as to form, content, scope, recipients, and timing, notify the affected individuals as soon as practicable but no later than required to comply with applicable law.
- 3.9.7. in the case of PHI/e-PHI or PII, provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law, or, in the absence of any legally required period for monitoring services, for no less than twelve (12) months following the date of notification to such individuals.
- 3.9.8. In the case of PCI, retain a PCI Security Standards Council qualified PCI Forensic Investigator to perform an investigation and analysis of the Security Incident, and provide the City with access to any and all information pertaining to any investigation and analysis.
- 3.9.9. permit the City, in its sole discretion, to immediately suspend or terminate Provider's right to create, process, access, transfer, store, or dispose of City Data or operate City Technology Assets.
- 3.9.10. not inform any third party that the Security Incident involves City Technology Assets or City Data without first obtaining the City's prior written consent, except to the extent required by law or by third parties engaged by the Provider to remediate the Security Incident.
- 3.9.11. collaborate with the City in determining whether to provide notice that the Security Incident involves City Technology Assets or City Data 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.
- 3.9.12. 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.
- 3.9.13. bear the responsibility and all related costs for any Security Incident to the extent that the City is not at fault or caused by a vulnerability in the Provider'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.
- 3.10. Termination for Security Incident. In the event of a Security Incident that is caused by Provider's failure to comply with this Agreement, the Department may terminate the Cloud Services on no less than fifteen (15) days' prior written notice. The consequences under Section 15.4 shall apply.

- 3.11. Notice in Event of Provider Receipt of Warrant, Subpoena, or other Governmental Request. If Provider 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, Provider shall, as soon as reasonably practical and not in violation of law, deliver a copy of such warrant, subpoena, order, or request to the Department.
- 3.12. Data Commingling. Provider shall not commingle City Data with non-City Data that is uploaded by Provider, its customers or other third parties and stored by Provider. Provider shall provide the City with details of how it performs data segregation.

IV. DATA PRIVACY AND INFORMATION SECURITY PROGRAM

- 4.1. Provider Privacy and Security Program. Without limiting Provider's obligation of confidentiality, as further described in this Agreement, Provider shall be responsible for establishing and maintaining a data privacy and information security program ("**Privacy and Security Program**") that includes reasonable and appropriate physical, technical, administrative, and organizational safeguards, to: (a) ensure the security, confidentiality, availability, and integrity of City Data; (b) protect against any anticipated threats or hazards to the security, confidentiality, availability, or integrity of City Data; (c) protect against unauthorized or illegal or accidental disclosure, access to, destruction, alteration, modification, loss, acquisition or use of City Data; (d) ensure the proper disposal of City Data, if requested by the City or required by applicable law; and (e) ensure that all employees, agents, third party providers, and subcontractors of Provider comply with all of the foregoing. Provider shall submit its Privacy and Security Program to the City, and in no case shall the safeguards of such Privacy and Security Program be less stringent than the safeguards used by the City, or such other safeguards as shall be approved by Citywide Chief Information Security Officer in writing.
- 4.2. Security Controls. Provider's privacy and security controls must include, but not be limited to, physical, administrative, software, and network security measures, employee screening, employee training and supervision, and appropriate agreements with employees and subcontractors.
- 4.3. Requirements for Systems Providing Critical Functions. Provider 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. Provider shall ensure that all necessary capabilities and equipment potentially required to service critical technology in the event of an incident is locally available.
- 4.4. Treatment of City Data. Provider understands and acknowledges that the City may not be in compliance with nor subject to the General Data Protection Regulation (EU) 2016/279 and its implementing regulations.
- 4.5. Privacy and Security Audit
- 4.5.1. Privacy and Security Audit by Provider. No less than annually, Provider shall conduct a comprehensive audit of its Privacy and Security Program and provide such audit findings to the City.
- 4.5.2. Independent Audit. In addition to the audit required by Section 4.5.1 above, Provider shall engage a third-party internationally recognized auditor (the "**Auditor**"), at Provider'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 and at the request of the Department:
- 4.5.2.1. a SSAE 18/SSAE 16/SOC-1, Type II audit and a SOC-2, Type II audit of Provider's controls and practices relevant to security, availability, integrity, confidentiality and

privacy of City Data;

- 4.5.2.2. a network-level vulnerability assessment of all Provider systems used to deliver Cloud Services; and
 - 4.5.2.3. risk assessment, which may include but is not limited to a formal penetration test of all systems used to deliver Cloud Services; and
 - 4.5.2.4. ISO 27001 audit (most current version) and Provider's controls and practices relevant to security, availability, integrity, confidentiality and privacy of City Data.
- 4.5.3. Privacy and Security Audit by City. Without limiting any other audit rights of the City, the City shall have the right to review and audit Provider's Privacy and Security Program and/or IT infrastructure and information security controls and processes prior to the commencement of this Agreement and from time to time during the term of this Agreement. As part of the City's right to audit, the City may perform or have a third-party perform relevant tests (e.g., application vulnerability scan or penetration test) to ensure Provider remains compliant with required security policies and standards. City will provide Provider with reasonable prior notice of its request to audit and both parties will negotiate in good faith the timing and other details regarding said audit. Provider shall permit the City to perform such audit, including an audit of the physical security of any of Provider's premises applicable to the Cloud Services provided to the City and shall fully cooperate and furnish all requested materials in a timely manner. The review and audit may be conducted remotely or onsite by the City or a City provider and at the City's expense. The City shall conduct on-site audits in a manner so as not to unreasonably interfere with Provider's business operations. In lieu of an on-site audit, upon request by the City, Provider shall complete, within forty-five (45) calendar days of receipt, an audit questionnaire provided by the City regarding Provider's Privacy and Security Program. Any completed audit report(s) created pursuant to this paragraph will be shared by the City or City's third-party vendor directly with City and Provider. Provider shall not be entitled to compensation from the City for the time it spends cooperating with any of the audits, scans, or tests provided for in this [Section 4.5.3](#), or in completing any audit questionnaire(s).
- 4.5.4. Usage Audit. In the event of a usage audit by Provider, Provider may conduct such audit by itself at its own cost, or engage the services of an Auditor at Provider's own cost. Provider or Auditor shall be bound by confidentiality terms no less stringent than those set forth in this Agreement. In conducting an audit pursuant to this Section 4.5.4, Provider or Auditor may request the Department for an analysis of the software the Department is running and Provider or Auditor may make copies of any such software logs to the extent necessary to verify the Department's compliance with this Agreement. Provider or Auditor shall not run any software on the Department's systems, nor shall Provider or Auditor conduct the audit at any of the City's premises. Provider or Auditor shall provide sixty (60) calendar days' notice prior to an audit. Any audit shall be performed during the Department's normal business hours and in a manner that minimizes disruption to its business.
- 4.5.5. Findings. Provider shall provide the City with a copy of all reports generated for each audit, scan, and test within ten (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. Provider shall, at its own cost and expense, promptly remediate each vulnerability,

weakness, gap, deficiency, or breach that is identified in a report and provide the City with documentation of the remedial efforts within ten (10) days after their completion.

- 4.5.6. Performance Testing. Performance testing is required for all public-facing applications. Provider must demonstrate the ability to conduct performance testing and establish terms for testing and cost.
- 4.6. Logs. Provider must generate, maintain, constantly monitor, and analyze security audit logs that contain the information as specified in NIST Special Publication 800-92. If requested by the City, Provider shall provide the audit logs to the City in a format agreed upon by both parties.
- 4.7. Vulnerabilities. Provider's software applications and any third-party software applications embedded in Provider's software applications must be free from vulnerabilities and defects. Provider must conduct vulnerability scanning for critical systems or systems hosting sensitive data as often as required by law, relevant policy, to maintain certification(s), and in response to the Department of Homeland Security's critical vulnerability/patch publication(s). Provider must provide attestation by an objective third party, stating that the application has been tested for known security vulnerabilities, including, without limitation, those listed in the "OWASP Top-10" as published by the Open Web Application Security Project (see www.owasp.org for current list of the top 10), NIST 800-53 and the NIST Cybersecurity Framework (CSF). If requested by the City, Provider shall also provide the City with information about whether it patched critical vulnerabilities and the remediation steps it took.
- 4.8. Vulnerability Reporting and Notification Requirement. Provider shall inform the City and NYC3 of any identified vulnerabilities in information systems no later than ten (10) business days after receiving notification. Provider shall provide a report to the City and NYC3 that includes a detailed description of the identified vulnerabilities and a remedial plan with associated timelines informing the City and NYC3 of all actions Provider has taken or plans to take to rectify the vulnerabilities.
- 4.9. Authorization and Access. Provider's access controls must enforce the following information technology security best practices with respect to its services:
 - 4.9.1. Least Privilege. Provider shall authorize access only to the minimum amount of resources required for a function.
 - 4.9.2. Separation of Duties. Provider shall divide functions among its staff members to reduce the risk of one person committing fraud undetected.
 - 4.9.3. Role-Based Security. Provider shall restrict access to its services to only authorized users. Provider shall base access control on the role a user plays in an organization.
 - 4.9.4. If not utilizing single sign on and Provider's previously authorized resource should no longer have authorization/ access, Provider shall immediately revoke authorization. Provider shall periodically scan for dormant accounts and expeditiously remove/deactivate.
- 4.10. Change in Service. Provider shall notify the Department of any enhancement, upgrade, or other change in the Cloud Service that may impact the security, availability, or performance of the Cloud Services.

V. VENDOR INDUCED INHIBITING CODE, HARDSTOP/PASSIVE LICENSE MONITORING, MALWARE AND OTHER DESTRUCTIVE MECHANISMS

Provider shall not include any vendor induced inhibiting code (“**VIIC**”) or any other inhibitor in the Cloud Services or on reports and data submitted and provided to the City. VIIC means any deliberately included application or system code that shall degrade performance, result in inaccurate data, deny accessibility, or adversely affect, in any way, programs or data or use of the Cloud Services. Provider warrants that during the term of the Agreement, (a) the Cloud Services will contain no destructive programming that is designed to permit Provider or third parties unauthorized access to, or use of, the City’s systems or networks, or would have the effect of disabling or otherwise shutting down all or any portion of the Cloud Services, and (b) the Cloud Services will contain no viruses, Trojan Horses, worms, spyware, malware, or any other form of malicious code.

VI. ENCRYPTION AND AUTHENTICATION

- 6.1. Provider shall encrypt all City Data, including backups, while at rest and in transit from end to end using encryption standards and methods that are approved and recommended by NIST. The Department shall have ownership of the encryption keys unless Provider demonstrates to the satisfaction of the Department that Department ownership is not architecturally feasible.
- 6.2. The use of proprietary encryption algorithms is not allowed for any purpose, unless reviewed by qualified experts outside of Provider and approved in writing by the DoITT Chief Information Security Officer, and where appropriate, by the Citywide Chief Information Security Officer. Proven algorithms must be used as the basis for encryption technologies. All encryption modules must be FIPS 140-3 certified. Modules certified at FIPS 140-2 which are being submitted for FIPS 140-3 testing are acceptable as an interim solution not to exceed five (5) years of use. At a minimum, the preferred hash algorithm is SHA-2, or any other hashing algorithm defined in FIPS Publication 180-4 (excluding SHA-1). SSL implementations are not acceptable. TLS implementations must be version 1.2 or later, and must use AES for the cipher component and HMAC-SHA256/384, or AEA for the digest cipher. Provider shall never utilize deprecated, as defined by industry best practices or NIST (whichever is stricter) or weak encryption modules for algorithms.
- 6.3. If the system stores passwords, the passwords must be salted with at least 32 bits of random data and hashed using a one-way key derivation function such as Password-Based Key Derivation Function 2 (PBKDF2) or Balloon. The key derivation function must use an approved one-way function such as FIPS 198-1 (Keyed Hash Message Authentication Code (HMAC)), FIPS 202 (Secure Hash Algorithm 3 (SHA-3)), SHA-3 derived functions outlined in NIST SP 800-185 (Keccak Message Authentication Code (KMAC), Customizable SHAKE (cSHAKE), or ParallelHash), NIST SP200-38B (CMAC), or any approved hash function listed in NIST SP 800-107. The key derivation function should be iterated as much as possible without harming server performance, but in all cases, the function must be iterated at least 10,000 times. If possible, an additional hash with a salt generated by a random bit generator should be stored separately from the hashed password. The random bit generator must be listed in NIST SP 800-90Ar1, and must provide at least the minimum security strength specified in the latest revision of NIST SP 800-131A.
- 6.4. Shared keys used for IPSec tunnels must be complex, randomly generated pursuant to Section 6.3, and not be stored for later reference. During initial setup of an IPSec tunnel, the shared key must be transmitted out of band to the other party involved. Provider must utilize cryptographic algorithms that are acceptable to the City.
- 6.5. Digital Certificates that validate and secure communications used by the general public must be generated by trusted third-party providers. Certificates that validate communications used by internal

City of New York employees or business partners and/or web applications can be generated by the Citywide CITYNET Certificate Authority (internal PKI) or third-party providers. DoITT is responsible for managing and operating Citywide CITYNET Certificate Authority. For internal City of New York namespaces DoITT must generate digital certificates through the Citywide Certificate Authority (internal PKI), whereas for external namespaces, trusted third party providers must be used.

VII. CITY SECURITY REVIEW OF PROVIDER'S CLOUD SERVICES / SOFTWARE SECURITY ASSURANCE (SSA) APPROVAL

- 7.1. The Cloud Services may be subject to a security review by the City. If such a security review has been completed and the City's written disposition requires Provider to comply with the City's prescribed security measures ("**City Security Measures**"), then, in addition to complying with this Agreement, Provider shall comply with the City Security Measures.
- 7.2. Any written disposition of a security review by the City shall not be deemed to constitute an endorsement of the Cloud Services or a certification that the Cloud Services meet the City Security Measures or the requirements under this Agreement. Provider remains fully responsible for ensuring compliance with the City Security Measures and this Agreement. At all times during the term of the Cloud Services, Provider agrees to cooperate with the City to ensure that Provider is in compliance with all City Security Measures and the provisions of this Agreement.
- 7.3. Following the review and written disposition described in Sections 7.1 and 7.2 above, Provider agrees to (a) if required by NYC3, submit information into the SSA tool, and (b) submit all devices, applications, systems, software and infrastructure used to support City systems to the City's applicable security testing process. The City's security testing process may include a formal application scan (in staging) and/or a penetration test of Provider's Cloud Services and any required remediation. Provider understands and acknowledges that failure to meet the City's security requirements is a material breach of this Agreement.
- 7.4. Prior to any application scan or penetration test, Provider shall execute any waiver that may be required by the City.

VIII. DATA OWNERSHIP

- 8.1. The City retains sole ownership and Intellectual Property Rights in and to all City Data. Provider shall not use the City Data for any purpose other than as required to provide the Cloud Services to the Department.
- 8.2. Except as provided in Section 10.4, Provider shall not retain any City Data after a ninety (90) day period following the expiration/termination of the term or following the City's request pursuant to Section 10.1.
- 8.3. The City hereby retains all right, title, and interest in and to any suggestion, enhancement request, recommendation, correction or other feedback provided to Provider relating to Provider's Cloud Services, except that Provider may use such information in connection with its provision of Cloud Services to the City. Any feedback from the City is provided "as is", and the City disclaims any and all warranties whatsoever.
- 8.4. Except as expressly provided in this Agreement, no ownership right or license to use, sell, exploit, copy or further develop City Data, any confidential information or Intellectual Property of the City is conveyed to Provider.

IX. NO SUPPLEMENTARY AGREEMENTS OR TERMS; NO UNILATERAL CHANGES; APPLICABILITY.

9.1. All click-through, click-wrap, or shrink-wrap agreements or other end user terms and conditions that are embedded in or provided with any of Provider's Cloud Services or presented to users in the course of the Department's use of the Cloud Services are not applicable to the City, even if use of Provider's Cloud Services require an affirmative acceptance of those terms. The terms and conditions of this Agreement are in static form, and no online terms and conditions that are incorporated by reference in this Agreement or set forth in hyperlinked websites are binding on the City, including any other privacy policies of Provider and third party providers.

9.2. To be valid, any amendment to this Agreement must be in writing and signed by the Parties.

X. SEPARATION ASSISTANCE

10.1. In the event of impending or actual separation (due to impending or actual expiration or earlier termination of this Agreement, whenever that may occur) and for up to ninety (90) days following such expiration or termination, the Department may request in writing that Provider do or permit the City to do any of the following, or any combination of the following:

10.1.1. Export and/or copy City Data, subject to any applicable charges as provided in this Agreement. If the Department requests an export of City Data, such exported data shall be in a format approved by the Department in writing.

10.1.2. Destroy any City Data. Any written request by the Department directing Provider to destroy City Data shall specify what data the Department is requesting to be destroyed. Except for actions required by this Agreement, Provider shall not destroy any City Data in the absence of a specific written request from the Department. If Provider destroys any City Data, it shall verify such destruction in writing. Destruction of City Data shall be performed by Provider in a manner that complies with NIST and precludes recovery or reconstruction of such data by all currently known methods and technology. Unless otherwise specified by the City, a request to destroy City Data includes destruction of live/production data as well as data housed as/in backup(s).

10.1.3. When applicable, upon the City's request, Provider shall verify it has turned off the City's access to the Cloud Services.

10.2. At no cost to the City, Provider must provide separation assistance to the Department to perform or support the exporting, copying, and/or destruction of City Data in accordance with the Department's written request.

10.3. Additionally, in the event of a termination by the City due to a breach by Provider of this Agreement, Provider shall provide transition assistance at no cost to the City.

10.4. In the event the parties are negotiating a renewal contract, Provider will not withhold the Cloud Services due to a lapse in the subscription term and the ninety (90) day provision in Section 8.2 of this Agreement shall not apply during the negotiations. Provider shall continue to retain City Data unless otherwise instructed by the Department.

XI. CONFIDENTIALITY

- 11.1. Provider agrees to hold confidential, both during and after the completion or termination of this Agreement, all the Non-Public City Data. Provider shall use the Non-Public City Data for no purpose other than providing the Cloud Services in accordance with this Agreement.
- 11.2. Provider agrees to maintain the confidentiality of the Non-Public City Data by using a reasonable degree of care, and at least the same degree of care that Provider uses to preserve the confidentiality of its own confidential information.
- 11.3. Provider agrees that the Non-Public City Data shall not be made available to any person or entity without the prior written approval of the Department, except that Provider may disclose the Non-Public City Data to its employees, officers, agents and consultants (“**Representatives**”) on a need-to-know basis. Provider shall ensure that its Representatives are bound by confidentiality obligations no less stringent than those in this Agreement, and shall be liable for a breach by its Representatives of the foregoing confidentiality obligations.
- 11.4. The obligation under this section not to disclose Non-Public City Data shall not apply where Provider is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“**disclosure demand**”), provided that Provider complies with the following: (a) Provider 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, (b) if requested by the Department, Provider shall not disclose such Non-Public City Data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such Data, and (c) Provider shall reasonably cooperate with the City in minimizing the Non-Public City Data disclosed. The previous sentence shall not apply if Provider is prohibited by law from disclosing to the Department the disclosure demand for such Non-Public City Data.

XII. ORDERS AND PAYMENT

- 12.1. Expenditures. Expenditures under this Agreement shall be determined by available funding levels. There is no guarantee of any expenditure level under this Agreement and the City shall procure only the specific Cloud Services that it requires.
- 12.2. PPB Rules Applicability. All payment terms, fees and taxes are subject to the PPB Rules. In the event of a conflict between this Agreement and the PPB Rules, the PPB Rules shall take precedence.

XIII. RECORDS AND AUDIT

- 13.1 Records. Provider agrees to maintain separate and accurate books, records, documents and other evidence (“**books and records**”), and to utilize appropriate accounting procedures and practices in the performance of this Agreement. Provider agrees to retain all books and records, relevant to this Agreement, including those required pursuant to the foregoing sentence for six (6) 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 (6)-year period, the records must be retained until the completion of such litigation, claim, or audit.
- 13.2 Audit by City. This Agreement and all books and records required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books and records upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit under applicable law by (a) the City,

including the New York City Comptroller (the “**Comptroller**”), the Department, and the Department’s Office of the Inspector General, (b) the State, (c) the federal government, and (d) other persons duly authorized by the City. Provider 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 or her powers under law.

XIV. ADDITIONAL SECURITY REQUIREMENTS

- 14.1. Citywide Information Security Policy. Provider shall comply with the Policies and Standards. In addition, Provider shall ensure that all subcontractor(s) approved by the City in writing (each an “**Authorized Subcontractor**”) and any employee of Provider or an Authorized Subcontractor who needs to know the City Data in order to perform Provider’s obligations (each an “**Authorized Person**”) 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 this Section 14.1. Provider shall be liable for the breach by an Authorized Subcontractor or Authorized Person or any of its subcontractors or persons who are not considered Authorized Subcontractors or Authorized Persons.
- 14.2. DoITT User Responsibility Policy (“URP”). Provider shall require each Authorized Person 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 pursuant to this Agreement. Provider 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 pursuant to this Agreement.
- 14.3. Non-Disclosure Agreement. If requested by the City, Provider shall require its Authorized Subcontractors and Authorized Persons who either work in direct support of the Cloud Services or who may reasonably be anticipated to receive City Data to execute a Non-Disclosure Agreement in a form acceptable to the City.
- 14.4. Cooperation with Accreditation. Provider shall cooperate with and facilitate the successful completion of any security accreditation tasks and processes relevant to the Cloud Services it provides. Provider shall complete said security accreditation tasks and processes within thirty (30) business days unless granted an extension by the City.
- 14.5. Provider Security Questionnaire. Provider shall complete and respond to all security questionnaires from the City within thirty (30) business days.
- 14.6. Noncompliance Self Reporting Requirement. Provider shall notify the Department and NYC3 of any changes to the infrastructure of all information systems that would affect City Data or result in noncompliance with any federal or state law, Policies and Standards, of terms of this Agreement. Notification of each change shall be made to the City and NYC3 no later than three (3) business days after the change has occurred. For noncompliance, Provider shall submit to NYC3 a document that includes the following: (a) date of discovery; (b) how the noncompliance was identified; (c) nature of the noncompliance; (d) scope of noncompliance; and (e) corrective actions with associated timelines.
- 14.7. Remote Access Methods. Provider must obtain written permission from the City for each instance of remote access it wishes to use and access City Technology Assets.

XV. TERMINATION

The City may terminate this Agreement as follows:

- 15.1. Termination for Cause. Immediately, if Provider commits any material breach of this Agreement and fails to cure such breach within thirty (30) days after the Department notifies Provider in writing of such breach; or
- 15.2. Termination for Convenience. With or without cause by giving Provider fifteen (15) days prior written notice of termination.
- 15.3. Termination Consequences.
 - 15.4. In the event of a termination for cause under Section 15.1 or a termination for Security Incident under Section 3.10, all fees for Cloud Services provided after the date of the breach will be deemed to be waived by Provider, and Provider shall within the following thirty (30) days refund (a) any waived fees that have been paid, and (b) all unused prepaid fees. This provision is in addition to any rights that the City may have to recover damages under this Agreement or pursuant to applicable law.
 - 15.5. In the event of a termination for convenience under Section 15.2, the City shall, upon termination, pay to Provider the total undisputed amounts due and which accrued under this Agreement as of the termination date.

XVI. GENERAL

- 16.1. Order of Precedence. This Agreement takes precedence over any provision in any other separate agreement between the City and Provider, and the City and Reseller. In the event of a conflict between this Agreement and any other separate agreement, this Agreement shall prevail.
- 16.2. Survival. **All terms of this Agreement that should by their nature survive termination shall survive, including, [Section III \(Data Management and Security\)](#), [Section IV \(Data Privacy and Information Security Program\)](#), [Section 16.3](#) (Limitation of Liability), [Section 16.4.2](#) (Intellectual Property), [Section 16.5](#) (Publicity), [Section 16.6](#) (Indemnification), and [Section 16.8](#) (Source Code Escrow).**
- 16.3. Limitation of Liability
 - 16.3.1. Subject to the provisions of Section 16.3.2 below, each Party's aggregate liability for all claims arising out of the Cloud Services, whether in contract, tort or otherwise, shall not exceed the greater of: (a) forty-eight (48) times the average monthly charges paid by the City to Provider (or Reseller, if any), calculated over the prior twelve (12) month period immediately preceding the date on which liability for the claim first arose; (b) three times (3x) the contract value; or (c) one million dollars (\$1,000,000).
 - 16.3.2. The limitation of liability set forth in [Section 16.3.1](#) above shall not apply to Provider's liability arising out of any of the following: (a) Provider's indemnification obligations under this Agreement; (b) Provider's breach of the confidentiality provisions in this Agreement; (c) Provider's breach of [Section III \(Data Management and Security\)](#) or [Section IV \(Data Privacy and Information Security Program\)](#) of this Agreement, (d) the infringement by Provider, or any of its Affiliates or subcontractors, of the Intellectual Property of the City or of a third party; and (e) to the extent prohibited by law.

16.3.3. To the extent that Provider may be liable to the City for any action, inaction or operation of Provider under this Agreement, or under statutory or common law, for which a Reseller may also be liable, Provider's and the Reseller's (if any) liabilities are joint and several, and the City is not limited in its ability to seek recourse from one or the other.

16.3.4. The City shall not be liable to Provider for indirect, incidental, consequential, exemplary, reliance, special or similar damages, including damages for lost profits, regardless of the form of action, with regard to or arising out of the use or provision of the Cloud Services or any other conduct under this Agreement.

16.3.5. Any provision in the any other agreement limiting or disclaiming Provider's liability is hereby deemed to be void and unenforceable.

16.4. Warranties and Representations.

16.4.1. Uptime and Service Credits. Provider represents and warrants that the Cloud Service shall function in accordance with the service level agreement ("SLA") annexed hereto as Attachment A. In the event Provider fails to meet agreed-upon service levels in Attachment A, Provider shall provide the City with service credits pursuant to Attachment A.

16.4.2. Intellectual Property. Provider represents and warrants that it has the rights necessary to provide the Cloud Services to the City in accordance with this Agreement.

16.4.3. Additional Warranties and Representations. Provider further represents and warrants that: (a) the Cloud Services shall be provided in a professional, competent, and timely manner by appropriately qualified personnel in accordance with this Agreement and consistent with Provider's best practices; (b) Provider shall provide adequate training, as needed, to the Department on the use of the services; (c) the Cloud Services shall comply with all applicable international, federal, state, and local laws, rules, and regulations, including but not limited to laws relating to privacy, security, and anti-corruption; (d) the Cloud Services does not and shall not infringe the Intellectual Property Rights of any third party; (e) the Cloud Services are compatible and shall maintain compatibility with third party software, including any OSS; (f) there is no pending or threatened litigation involving Provider that may impair or interfere with the Department's right to use the services; and (g) Provider has sufficient authority to enter into this Agreement and grant the rights provided in such Agreement to the City.

16.5. Publicity. Provider shall not distribute any media releases or making other public announcements relating to this Agreement or the existence of the relationship or negotiations between the Parties, or otherwise using the City's name and trademarks without the City's prior written consent.

16.6. Indemnification

16.6.1. Provider's Indemnity. Provider shall defend, indemnify and hold the City and its employees, officers, and agents (collectively, "**Indemnitees**") harmless from any and all judgments, damages, liabilities, amounts paid in settlement, awards, fines, penalties, disbursements, costs and expenses (including witness fees, expert fees, investigation fees, travel expenses, bonds, the cost of establishing the right to indemnification under this Section 16.6.1, court or arbitration costs and reasonable attorney's fees) to which the Indemnitees may be subjected, become liable to pay, suffer or incur in connection with any claim, allegation, suit, subpoena, action or proceeding (whether completed, actual, pending,

threatened, civil, criminal, investigative, administrative, meritorious or without merit) that arises from or relates to (a) a Security Incident under Section 3.9; (b) breach of confidentiality; (c) costs and expenses to which the Indemnitees may suffer in connection with any operations of Provider and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act; (d) failure to comply with the provisions of this Agreement (including but not limited to a breach of representations and warranties) or of the law; and (e) the infringement of any copyright, trade secret, trademark, patent or other tangible or intangible property or personal right of any third party by Provider or its subcontractors. Provider shall defend, indemnify and hold the Indemnitees harmless regardless of whether or not the alleged infringement arises out of the use of the Cloud Service in a manner not expressly contemplated in this Agreement, or in combination with any hardware, equipment or other software not provided or authorized by Provider. Insofar as the facts or the law relating to any claim would preclude the Indemnitees from being completely indemnified by Provider, the Indemnitees shall be partially indemnified by Provider to the fullest extent permitted by law.

16.6.2. No Indemnification by the City. Any provision in any separate agreement requiring the City to provide indemnification is hereby deemed to be void and unenforceable.

16.7. Use of Third Party Providers

16.7.1. Provider must identify any third-party entities involved in the provision of the Cloud Service and provide the Department with a copy of Provider's agreement with the third-party provider. The agreement must be approved in writing by the City. Provider shall notify the Department in the event that Provider makes any change in the list of third-party providers that it uses prior to making any change along with a copy of any applicable terms. Notwithstanding the City's approval of such third party provider agreements, (a) Provider shall remain responsible for any and all performance required under this Agreement, including, but not limited to, the obligation to properly supervise, coordinate, and perform, all work required hereunder, and no third party provider agreement shall bind the City; and (b) Provider shall ensure that any third party provider complies with the requirements in this Agreement, including the minimum service levels set forth in the SLA. If Provider proceeds with an unapproved third-party provider, it shall be deemed liable to the City for any third-party claims to the same extent as the third party provider would have been liable had it agreed to the terms set forth in this Agreement.

16.7.2. Any subcontractor or Affiliate (as defined below) of Provider that provides any software or services in connection with the Cloud Services is deemed to be a subcontractor whose subcontracts must be approved in writing by the City. As used in this paragraph, "**Affiliate**" means any parent, subsidiary or other entity that is (directly or indirectly) controlled by, or controls, Provider. Any provision in this Agreement to the contrary is deemed to conflict with this Agreement.

16.8. Source Code Escrow. The Parties agree that in the event Provider becomes: (a) insolvent or bankrupt, (b) makes an assignment for the benefit of creditors, or (c) voluntarily or involuntarily initiates bankruptcy, insolvency, or reorganization proceedings, then the City and Provider shall negotiate in good faith to enter into a source code escrow agreement with a mutually agreed-upon source code escrow company setting forth source code escrow deposit procedures and source code release procedures, which include testing and review of such escrow.

16.9. Governing Law; Jurisdiction and Venue; Jury Waiver; No Arbitration. The laws of the State of New York, without reference to its choice of law principles, govern this Agreement, and any claims arising out of or relating to this Agreement, or their negotiation, execution, performance, or breach. All disputes and controversies arising out of or relating to the negotiation, execution, performance or breach of this Agreement must be resolved in accordance with the PPB Rules and in the New York State or federal courts in the City, County and State of New York, and each party irrevocably consents to the exclusive venue and personal jurisdiction of those courts for the resolution of disputes and waives all objections thereto. To the fullest extent permitted by law, each party irrevocably waives its right to a jury in any litigation arising out of or relating to this Agreement, their negotiation, execution, performance or breach. No dispute, controversy or claim arising out of or relating to this Agreement or the enforcement, breach, termination or validity thereof shall be submitted to arbitration or similar dispute resolution method.

16.10. Fees.

16.10.1. The City is not responsible for an early termination fee.

16.10.2. Rates and fees may only be increased pursuant to a written amendment to this Agreement that has been signed by both parties. Overage and excess usage fees are not permitted in the absence of the City's prior written agreement.

16.10.3. The City shall not be liable for any unauthorized use, including fees and charges that may become due to Provider as a result of that use.

16.10.4. The City's payment of an invoice without objection or failure to raise an objection to an invoice shall not constitute a waiver of any objections to that invoice.

16.11. Insurance

16.11.1. Data Breach and Privacy Cyber Liability. Provider shall maintain at all times during the provision of Cloud Services, and as otherwise required herein, data breach and privacy cyber liability insurance with limits of no less than \$10,000,000 per claim and \$20,000,000 in the aggregate. This policy must include coverage for:

16.11.1.1. failure to protect confidential information, including personally identifiable information;

16.11.1.2. failure of the security of Provider's computer systems;

16.11.1.3. failure of the security of the City's systems or City Data due to the actions or omissions of Provider;

16.11.1.4. Data breach expenses, including forensic services, the cost of complying with privacy laws and regulations, cost of undergoing regulatory examinations and defending regulatory actions, including legal representation, cost of internal investigation to determine the cause of the breach, notification costs, public relations and crisis management costs, credit monitoring, fraud consultation, credit freezing, fraud alert, and identity restoration services;

16.11.1.5. Costs arising from cyber extortion threats, including the payment of ransom

demands;

16.11.1.6. The alteration, loss, corruption of data, including costs to recover, correct, reconstruct, and reload lost, stolen, or corrupted data;

16.11.1.7. The cost of replacing, repairing, or restoring computer systems, including hardware (including laptops and mobile devices), software, networking equipment, and storage;

16.11.1.8. Costs arising from an attack on a network or computer system, including denial of service attacks, malware, and virus infections;

16.11.1.9. Dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons;

16.11.1.10. Media liability; and

16.11.1.11. Cyber theft of customer's property, including but not limited to money and securities.

16.11.2. Technology Errors and Omissions. Provider shall maintain at all times during the provision of Cloud Services, and as otherwise required herein, technology errors and omissions insurance covering Provider in the amount of at least \$10,000,000 per occurrence and \$20,000,000 in the aggregate for damages arising from computer related services, including, but not limited to, one or any combination of the following: (a) consulting, (b) data processing, (c) programming, (d) system integration, (e) hardware development, (f) software development, (g) installation, (h) distribution or maintenance, (i) systems analysis or design, (j) training, (k) staffing or other support services, (l) cloud computing services, and (m) any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. This policy must include coverage for third-party fidelity, including cyber theft.

16.11.3. General Insurance Requirements

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

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

16.11.3.3. All insurance policies shall cover the City, together with its respective officials and employees, as additional insured.

16.11.3.4. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (a) the minimum limits required in this Agreement, or (b) the limits provided to Provider as named insured under all primary, excess, and umbrella policies of that type of coverage.

- 16.11.3.5. Policies of insurance provided pursuant to this Agreement must be primary and non-contributing to any insurance or self-insurance maintained by the City.
- 16.11.3.6. If Provider receives notice from an insurance company or other person that any insurance policy required under this Agreement shall expire or be cancelled or terminated for any reason, Provider shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.
- 16.11.3.7. Insurance coverage in the minimum amounts required in this Article shall not relieve Provider or its subcontractors of any liability, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it.
- 16.11.3.8. Provider waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Provider or its subcontractors in the performance of Cloud Services.
- 16.11.3.9. All claims-made policies must have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, Provider shall purchase extended reporting period coverage effective on cancellation or termination of the claims-made insurance unless a new policy is secured with the same retroactive date as the expired policy.
- 16.12. Open Source Software. If the Cloud Services consist of any Open Source Software, Provider shall, upon request, furnish the Department with the applicable OSS licensing terms (the "**Licensing Terms**"). Provider shall be responsible for all third party software and OSS incorporated in the Cloud Services. If the Cloud Services do not utilize any OSS, Provider shall affirm such in writing to the Department in advance of its processing of any order for such Cloud Services.
- 16.13. Open Data Law. Pursuant to NYC Administrative Code §§ 23-501 et seq. (the City's "Open Data Law"), Provider must design all systems so that non-private, City-managed digital data can be made available to the public via an open data portal ("**Open Data Portal**"). Provider must automatically update the data as often as necessary to preserve the integrity and usefulness of the data, but no less frequently than once per month. The City shall identify which portions, if any, of the data in the system, database or program are considered private data that should not appear on the Open Data Portal.
- 16.14. Assignment. Provider may not assign or delegate its rights and/or obligations, or any part thereof under this Agreement to any or all of its Affiliates without City's prior written consent. Any attempted assignment or transfer by Provider of this Agreement is null and void.
- 16.15. Severability. All rights and remedies whether conferred in this Agreement, or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. The failure of any Party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such Party thereafter to enforce such provisions. The terms and conditions stated herein are declared to be severable. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any

way be affected or impaired thereby.

16.16 Notices. Provider shall submit notices as required in this Agreement as follows:

To NYC3 regarding Security Incidents: soc@cyber.nyc.gov and 718-403-6761

To NYC3 regarding anything other than Security Incidents: CISO@cyber.nyc.gov

To the Department: [DEPARTMENT NAME, DEPARTMENT CONTACT INFO]

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURES FOLLOW]

ACKNOWLEDGED AND ACCEPTED BY:
THE CITY OF NEW YORK

PROVIDER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A SERVICE LEVEL AGREEMENT

1. INTRODUCTION

This attachment Service Level Agreement (“SLA”) to the Agreement describes the performance standards and service levels to be achieved by Provider in providing the Cloud Services. This is subject to the provisions of the Agreement which are incorporated herein by reference. In the event of a conflict between the provisions of the Agreement and any provision of this SLA, the Agreement will govern.

2. DEFINITIONS

Unless otherwise set forth in this SLA, capitalized terms not separately defined will have the respective meanings ascribed in the Agreement. As used in this SLA, the following terms shall have the following meaning:

- 2.1 “**Available**” or “**Availability**” means the Cloud Services shall: (a) be available for access and use over the Internet; (b) provide the functionality and content required under the Agreement and any applicable work order; and (c) operate without any Severity 1 or Severity 2 Defect, other than a minor malfunction that does not impact an Authorized User’s ability to use the Cloud Services to achieve an intended goal.
- 2.2 “**Days and Hours of Coverage**” means the days of coverage as set out in Section 4.1 of this SLA.
- 2.3 “**Defect**” means a malfunction of the Cloud Service resulting in functionality differing from expected functionality as designed or a failure of the Cloud Services to operate in accordance with its documentation, the Agreement and this SLA.
- 2.4 “**Force Majeure**” means an act or event beyond the control and without any fault or negligence of Provider. 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 Provider.
- 2.5 “**Software Patch**” means a fix to one or more Defects.
- 2.6 “**Severity Level**” means the level assigned to a reported Defect by the City based on the description of the Defect under this SLA.
- 2.7 “**Problem**” means an unknown underlying cause of one or more Defects.
- 2.8 “**Response Time**” means the response time linked to the relevant Severity Level as set forth in this SLA.
- 2.9 “**Resolution Time**” means the resolution time linked to the relevant Severity Level as set forth in this SLA.
- 2.10 “**Service Credits**” means the support services fees credited to the City following claim approval as set forth in this SLA.

- 2.11 “**Severity 1**” means a Defect that _____.
- 2.12 “**Severity 2**” means a Defect that _____.
- 2.13 “**Severity 3**” means a Defect that _____.
- 2.14 “**Severity 4**” means a Defect that _____.
- 2.15 “**Subscription Fee**” means the amount paid by the City to Provider for the procurement of the license/s to the Cloud Services.
- 2.16 “**Ticket**” means any registration in the Provider’s helpdesk system for an identified Problem.

3. AVAILABILITY REQUIREMENT

- 3.1 Provider shall ensure that Cloud Services shall be available _____% of the time, excluding the time the Cloud Services are not Available as a result of one or more of the exceptions in Section 3.2.
- 3.2 No period of Service downtime will be included in calculating Availability to the extent that such downtime is caused by any of the following:
- 3.2.1 Any planned downtime of which Provider gives at least one (1) week advance notice to the City;
 - 3.2.2 Any delay, act or omission by the City, access to or use of the Cloud Services by the City, or using the City's user identification and password, that does not comply with this Agreement; or
 - 3.2.3 A Force Majeure event.
- 3.3 For any partial calendar month during which the City subscribes to the Cloud Services, availability will be calculated based on the entire calendar month, not just the portion for which the City subscribed.
- 3.4 Should the Availability of Covered Services fall below the threshold set forth in Section 3.1 hereto in a calendar month, Provider shall provide a credit as set forth in the table below:

Availability	Service Credit
___% to ___%	_____ percent (___%) of monthly Subscription Fee
___% to ___%	_____ percent (___%) of monthly Subscription Fee
___% to ___%	_____ percent (___%) of monthly Subscription Fee
___% to ___%	_____ percent (___%) of monthly Subscription Fee

- 3.5 Any service credits duly claimed by the City under Section 3.4 and Section 7.7 shall be promptly remitted to the Department either by direct payment, or withheld as a set-off against pending invoices submitted by Provider pursuant to a work order or this Agreement, at the Department’s election.

4. SUPPORT

- 4.1 The Provider shall perform its support obligations during the following Days and Hours of Coverage:
 - 4.1.1. Twenty-four (24) hours a day, seven (7) days a week for Severity 1 and 2 Defects; and
 - 4.1.2. Business Days, 8:00 AM to 12:00 AM EST for all other Severity Levels.
- 4.2. All support (including remote support) must be provided by Provider from the United States.
- 4.3. During the Days and Hours of Coverage, Provider shall provide the following support services:
 - 4.3.1. Technical support, which shall include assisting the City in its use of the Cloud Services, resolving technical Defects, and communicating relevant information regarding the Cloud Services;
 - 4.3.2. Communication support, which shall include help desk support, unlimited telephone and email consultation and resolution communication support;
 - 4.3.3. Administrative support, which shall include user maintenance (administrative provisioning, password resets), troubleshooting assistance and responses to general inquiries; and
 - 4.3.4. Provision of documentation, which shall include incident reports and reports on Provider's compliance with Response Time and Resolution Time requirements under this SLA.

5. SUPPORT REQUESTS

- 5.1. Provider will grant access to a system where the City can communicate potential Defects to the Provider.
- 5.2. If the City encounters a problem Defect in the usage of the Cloud Services, the City shall (a) diagnose and reasonably assign a Severity Level to the noted Defect; and (b) send a support request to Provider by opening a Ticket.

6. INCIDENT MANAGEMENT

- 7.1 Provider shall promptly conduct a root cause analysis of the Defect upon notification. If Provider discovers the Defect before the City does, Provider shall diagnose and reasonably assign a Severity Level to the noted Defect. The City may require that the Defect be assigned a different Severity Level. Provider may advise the City and dispute the City's determination.
- 7.2 The Provider shall investigate and rectify a Defect in accordance with the applicable Severity Levels, Response, and Resolution Times.
- 7.3 In the event a Defect is determined to be caused (in whole or in part) by the Cloud Services, the Provider will be liable for all failures to meet the Response and Resolution times listed in Section 7.4 which may then result in Service Credits.
- 7.4 Severity Level, Response and Resolution Times during Days and Hours of Coverage are defined in the following table:

Severity Level	Response Times	Resolution Times
Critical (1)		
Major (2)		
Medium (3)		
Minor (4)		

- 7.5 The Response Time shall be calculated from the moment a Ticket is initiated until the moment a repair commences.
- 7.6 Resolution Time shall be calculated as the time between the initiation of the Ticket by the City according to the mutually agreed upon procedures and the time the Provider's Service Desk declares the actions to resolve the Defect in the Ticket completed as verified by the City.
- 7.7 If the Provider fails to provide the incident management services within the agreed timelines as set forth in 7.4, the City is entitled to claim Service Credits as follows:

Severity Level	Qualification Period	Service Credit
(1) Critical	Each day or part of a day that the applicable response and resolution time in Section 7.6 has been missed.	\$___ per day or partial day.
(2) Major	Each day or part of a day that the applicable response and resolution time in Section 7.6 has been missed.	\$__ per day or partial day.
(3) Medium	Each day or part of a day that the applicable response and resolution time in Section 7.6 has been missed.	\$__ per day or partial day.
(4) Minor	N/A	N/A

- 7.8 Failure on the part of the Provider to provide a correction or a workaround for a Severity 1 or Severity 2 Defect within seven (7) consecutive days provides the City with the option to engage a third-party to fix the issue, while preserving the City's right to terminate in accordance with the Agreement.

APPENDIX A

**GENERAL PROVISIONS GOVERNING WDC CONTRACTS FOR
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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. “WDC” means the Workforce Development Corporation.
- B. “Agreement” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the WDC.
- C. “City” means the City of New York.
- D. “WDC Executive Director” or “duly authorized representative” means the position delegated authority by the WDC Board of Directors to coordinate and oversee all activities, including procurement activity of the WDC.
- E. “Contractor” means the entity entering into this Agreement with WDC.
- F. “Days” means calendar days unless otherwise specifically noted to mean business days.
- G. “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.
- H. “State” means the State of New York.

ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES

Section 2.01 Conflicts of Interest

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.

Section 2.02 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 2.02.

Section 2.03 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 WDC within seven days of filing.

Section 2.04 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 WDC Executive Director or duly authorized representative. 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 WDC Executive Director or duly authorized representative giving the name and address of the proposed assignee. Upon the request of the WDC, 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 WDC 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 WDC Executive Director. The WDC 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 WDC to any corporation, agency, or instrumentality having authority to accept such assignment. The WDC shall provide the Contractor with written notice of any such assignment.

Section 3.02 Subcontracting

A. All subcontractors must be approved by the WDC prior to commencing work under a subcontract. The WDC in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

B. The WDC 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 WDC to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work.

C. Upon receipt of all relevant documentation, the WDC 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 WDC.

D. 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 WDC and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the WDC and/or the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the Agreement between the WDC and the Contractor, shall create any contractual relation between the subcontractor and the WDC; and

4. The subcontractor specifically agrees to be bound by Section 4.05(B) and Article 5 of this Appendix A and specifically agrees that the WDC may enforce such provisions directly against the subcontractor as if the WDC were a party to the subcontract.

E. The Contractor agrees that it is as fully responsible to the WDC 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.

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

G. The WDC 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 WDC 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 WDC shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The WDC shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

H. The WDC'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 WDC, the Contractor shall provide the WDC a copy of any subcontract.

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

Section 3.03 Equipment

Unless otherwise directed by the WDC, title to all equipment or other property purchased at a price in excess of \$500 with funds obtained through this Agreement shall be in the name of the WDC. Contractor shall properly maintain and keep in good repair all equipment acquired with funds obtained through this Agreement. Contractor shall dispose of such equipment as directed by the WDC, and shall maintain detailed records concerning such dispositions. At the WDC's request, Contractor must execute a UCC-1 to evidence the WDC's interest in equipment purchased at a price in excess of \$5,000 and to enable the WDC to perfect that interest by filing or otherwise.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the WDC agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the WDC and/or 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 WDC and/or 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 WDC and/or the City nor under contract with the WDC and/or the City. The Contractor, and not the WDC and/or 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 WDC and/or 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 WDC and/or 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 WDC and/or 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 WDC and/or the City, including any department, agency, office, or unit of the WDC and/or 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 WDC and/or the City for any right or benefit applicable to an official or employee of the WDC and/or 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 WDC and/or 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 WDC Executive Director 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 WDC Executive Director shall provide the Contractor an opportunity to be heard on no less than five Days' written notice. The WDC Executive Director may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the WDC Executive Director's determination.

Section 4.04 Minimum Wage; Living Wage

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.

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. 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 WDC Executive Director 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 WDC declaring the Contractor to be non-responsible.

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(B)(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(B).

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(B).

6. Nothing contained in this Section 4.05(B) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

A. 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.

B. Contractor shall retain proper and sufficient bills, vouchers, duplicate receipts and documentation for any payments, expenditures or refunds made to or received by Contractor in connection with this Agreement. Contractor shall make all procurement expenditures in excess of \$1,000 by check or credit card.

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 WDC and/or the City including the Comptroller and the Department of Investigation, as well as City, State, and federal auditors and any other persons duly authorized by the WDC 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 WDC, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the WDC. The Contractor shall make such books, records documents, and other evidence available for

inspection in the City of New York or shall reimburse the WDC for expenses associated with the out-of-City inspection.

B. The WDC shall have the right to have representatives of the WDC, and/or City, State, and/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 WDC and/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 WDC and/or City, including the Comptroller; (ii) the State; (iii) the federal government; and (iv) other persons duly authorized by the WDC. 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, 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 (i) the WDC and/or City, including the Comptroller; (ii) the State; (iii) the federal government in the exercise of its 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 WDC and/or City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at WDC and/or 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 WDC's Executive Director or duty authorized representative . Upon the request by the WDC at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the WDC any WDC and/or City books, records, documents, or data that has been removed from WDC and/or 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, federal government, 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, license, or agreement 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 WDC; City, State, and/or federal government; and/or any political subdivision or public authority thereof; and/or the Port Authority of New York and New Jersey; and/or any local development corporation within the City; and/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, State, or federal 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 WDC, City, State, federal government, or any political subdivision thereof, or any local development corporation within the City, then;

C. The penalties that may attach after a final determination by the WDC Executive Director 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 WDC; and/or

2. The cancellation or termination of any and all such existing WDC 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 WDC 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 WDC.

D. The WDC Executive Director 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 WDC.

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 WDC Executive Director 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.

E. 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 WDC, or otherwise transacts business with the WDC.

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.

F. In addition to and notwithstanding any other provision of this Agreement, the WDC Executive Director 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 WDC Executive Director 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 WDC 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 WDC. 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 WDC Executive Director, 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 WDC, the Contractor shall not disclose such reports, information, or data until the WDC 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 WDC the disclosure demand for such reports, information or data.

B. The Contractor shall provide notice to the WDC 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 WDC of such steps. In the event of such breach of security, without limiting any other right of the WDC, the WDC 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 WDC 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 WDC shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the WDC’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 WDC, 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 WDC, the Contractor shall return to the WDC 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 WDC 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 WDC, in good faith, regarding any issues that arise from the

Contractor retaining such confidential information. If the WDC 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 WDC may terminate this Agreement pursuant to Article 10. The WDC 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 WDC.

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 WDC 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 WDC, 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 WDC. The WDC may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the WDC and set forth in the license.

C. The Contractor acknowledges that the WDC 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 WDC 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 WDC shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for any purposes.

Section 6.02 Patents and Inventions

The Contractor shall promptly and fully report to the WDC 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 WDC 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 WDC 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 WDC, and as required by N.Y. Workers’ Compensation Law, the Contractor shall submit proof of Contractor’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to the WDC 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 WDC.

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 WDC and City, together with their respective 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.

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.

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 WDC, evidence of such professional liability insurance on a form acceptable to the WDC.

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. *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 WDC 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 WDC, and City, together with their respective officials and employees, as additional insured.

E. *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 WDC unless prior written approval is obtained from the WDC; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the WDC and City, including their respective officials and employees (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 WDC, and City, including their respective officials and employees are 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 WDC Executive Director. Any such self-insurance program shall provide the WDC and City, including their respective officials and employees, 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 WDC and City, including their respective 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 Article 7 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the

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WDC and City, including their respective officials and employees, is an additional insured 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 WDC and City, including their respective 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 Article 7 and Schedule A of this Agreement must be submitted to the WDC prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.04(A).

C. The Contractor shall provide the WDC with a copy of any policy required under this Article 7 upon the demand for such policy by the WDC Executive Director or a duly authorized representative.

D. Acceptance by the WDC Executive Director or a duly authorized representative 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 addresses referred to in Section 7.06(A) and Schedule A.

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 WDC and City, including their respective officials and employees. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the WDC and the City, including its officials and employees, 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 Workforce Development Corporation and 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 both the address referred to in Schedule A and 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 WDC and City, together with their respective 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 WDC and City, together with their 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 WDC and/or 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 WDC and/or 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 WDC and City, including their respective 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 WDC and the City, including their respective 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 WDC 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 WDC and City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to WDC and/or City property, including property and equipment leased by the WDC or 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 WDC and City, including their respective 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 WDC and/or City, including their respective 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 WDC and/or City, including their respective officials or employees from being completely indemnified by the Contractor, the WDC and City, including their respective 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 WDC and City, including their respective 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 WDC and/or City, including their respective 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 WDC and City, including their respective 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 WDC and City, including their respective officials and employees, from being completely indemnified by the Contractor, the WDC and City, including their respective 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 WDC and City, including their respective 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 WDC and/or City, including their respective 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 WDC and the Contractor, the Contractor shall diligently render to the WDC without additional compensation all assistance that the WDC may reasonably require of the Contractor.

B. The Contractor shall report to the WDC 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 WDC and City for which the Contractor may be required to indemnify the WDC and City pursuant to this Agreement, the WDC 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 WDC and/or City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the WDC 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 WDC shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Article 7 above has accepted the WDC's tender of the claim or action without a reservation of rights.

D. The WDC 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 WDC and 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

A. 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 WDC and/or City, including their respective officials and employees.

B. Contractor, without recourse to the WDC or the City, or their respective officials and employees, shall be responsible for the settlement and satisfaction of all contractual obligations and administrative issues arising out of any procurement or leasing contracts paid with funds obtained through this Agreement.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the WDC Executive Director or duly authorized representative. 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 WDC Without Cause

A. The WDC 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 WDC 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 WDC terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The WDC shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the WDC pursuant to Section 10.05. The

WDC 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 WDC 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 WDC 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 WDC 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 WDC shall not be bound to utilize any of the Contractor's suggestions and that the WDC shall have sole discretion as to how to effectuate the reductions.

C. If the WDC reduces funding pursuant to this Section 10.02, the following provisions apply. The WDC 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 WDC 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 10.03 Contractor Default

A. The WDC 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 WDC Executive Director or duly authorized representative;

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 WDC 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 WDC, 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 WDC Executive Director, 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 WDC Executive Director 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 WDC Executive Director may declare the Contractor in default pursuant to this Section 10.03. Before the WDC Executive Director may exercise his or her right to declare the Contractor in default, the WDC Executive Director shall give the Contractor an opportunity to be heard upon not less than five business days’ notice. The WDC Executive Director 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 WDC Executive Director 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 WDC Executive Director, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner as he or she may deem advisable. Should the expense of such completion, as certified by the WDC Executive Director, 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 WDC. The excess expense of such completion, including any and all related and incidental costs, as so certified by the WDC Executive Director, 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 WDC Executive Director to excuse the nonperformance and/or terminate the Agreement. If the WDC Executive Director, 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 WDC Executive Director shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

F. If the WDC terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The WDC shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The WDC 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 WDC 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 WDC 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 13.03. 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 WDC Executive Director may determine. If the WDC 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 WDC close-out procedures, including but not limited to:

1. Accounting for and refunding to the WDC, 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 WDC of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any WDC directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the WDC or its designees all books, records, documents and material specifically relating to this Agreement that the WDC has requested be turned over;

4. Submitting to the WDC, 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 WDC waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and

5. Providing reasonable assistance to the WDC in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The WDC, 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 WDC. If the WDC suspends this Agreement pursuant to this Section 10.06, the WDC shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The WDC 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 WDC 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 WDC and/or City for damages sustained by the WDC and/or City by virtue of the Contractor's breach of the Agreement, and the WDC may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the WDC and/or City from the Contractor.

C. The rights and remedies of the WDC and/or 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 WDC and/or City will suffer by reason of such noncompliance and not as a penalty.

ARTICLE 11 - CLAIMS

Section 11.01 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 11.02 Jurisdiction and Venue

Subject to Section 11.03, the parties agree that any and all claims asserted by or against the WDC and/or 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 11.02, the Contractor shall be responsible for and shall promptly reimburse the WDC and/or City for any attorneys' fees incurred by the WDC and/or City in removing the action to a proper court consistent with this Section 11.02.

Section 11.03 Claims and Actions

A. Any claim against the WDC 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 11.04 No Claim Against Officials, Agents, or Employees

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

Section 11.05 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 WDC and 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 WDC prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

Section 11.06 No Waiver

Waiver by either the WDC 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 12 - APPLICABLE LAWS

Section 12.01 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 12.02 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 12.03 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 12.03 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. *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 12.04 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 WDC 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 WDC 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 WDC terminating this Agreement.

Section 12.05 Political Activity

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

Section 12.06 Religious Activity

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

Section 12.07 Participation in an International Boycott

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

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

ARTICLE 13 - MISCELLANEOUS PROVISIONS

Section 13.01 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 13.02 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 13.03 Notice

A. The Contractor and the WDC 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 13.03 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.

WDC Appendix A - 2024 (Public Funds)

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 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 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 WDC in enforcement of laws, as well as to provide the WDC a means of identifying businesses seeking WDC 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 <input checked="" type="checkbox"/> Disability Benefits Insurance §7.02 <input checked="" type="checkbox"/> Employers' Liability §7.02	Statutory amounts.
<input checked="" type="checkbox"/> Commercial General Liability §7.03(A)	<u>\$1,000,000.00</u> per occurrence <u>\$1,000,000.00</u> personal & advertising injury <u>\$2,000,000.00</u> annual aggregate <u>\$0</u> products/completed operations Additional Insureds: 1. <u>Workforce Development Corporation</u> , 2. <u>Economic Development Corporation</u> , 3. <u>City of New York, and</u> 4. <u>Their respective officials and employees.</u>
<input type="checkbox"/> Commercial Auto Liability §7.03(B)	<u>\$1,000,000.00</u> per accident combined single limit
<input type="checkbox"/> Professional Liability/Errors & Omissions §7.03(C)	<u>\$1,000,000.00</u> per claim
<input type="checkbox"/> Cyber Liability Insurance §7.03(E)	<i>TBD</i>
Section 10.07 – Liquidated Damages	
Section 13.03 – Notice	
WDC's Mailing Address and Email Address for Notices	Workforce Development Corporation c/o NYC Department of Small Business Services 1 Liberty Plaza, 11th Floor New York, NY 10006 Email: cdennis@sbs.nyc.gov and wdccontracting@sbs.nyc.gov

WDC Appendix A – 2024 (Public Funds)

Contractor's Mailing Address and Email Address for Notices	<i>See Agreement</i>

CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the Workforce Development Corporation 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 _____



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

DOI CAN ALSO BE REACHED BY MAIL
OR 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

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