



# **Request to Provide OPEB Valuation and Actuarial Consulting Services**

prepared by the  
**New York City  
Office of the Actuary**

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## Section 1 - Introduction

### Executive Summary

The New York City Office of the Actuary (OA) is inviting qualified firms to submit proposals to provide Other Postemployment Benefits (OPEB) valuation and actuarial consulting services. The selected proposer will be required to provide the OA with these services effective April 1, 2018.

All proposers will be expected to present their proposals as set forth in Section 2, Instructions.

### Background

The City of New York (City) and its related entities provide OPEB through the New York City Health Benefits Program (NYCHBP) that covers both active employees and eligible retirees and beneficiaries.

As of June 30, 2017, the NYCHBP covered approximately 650,000 individuals, including active members, certain members not currently in pay status, deferred vested members, and retirees.

A copy of the report in accordance with Governmental Accounting Standards Board (GASB) Statements 74 and 75 of the Other Postemployment Benefits provided under the NYCHBP for Fiscal Year ending June 30, 2017 can be found on the OA website ([www.nyc.gov/actuary](http://www.nyc.gov/actuary)) under the Reports tab.

The City also sponsors or participates in pension plans covering substantially all City employees and administers a number of closed pension funds. In addition, certain employees and retirees are provided benefits through Variable Supplements Funds (VSFs), Tax-Deferred Annuity (TDA) programs and Group Life Insurance Funds. More information on the City's five major actuarially-funded and related benefits can be found on the OA's website.

### The Office of the Actuary (Functions)

The overall responsibility for actuarial assessments for the New York City Retirement Systems and Pension Funds (NYCRS) rests with the Chief Actuary. The Chief Actuary serves as the agency head of the OA and is the legally-designated Technical Advisor to the Boards of Trustees of the NYCRS.

The OA currently provides multiple services to the five NYCRS, the City, certain component units (CUs) of the City, and other parties. These services include the following:

- Pension funding and accounting results
- OPEB accounting results
- Recommendations on actuarial assumptions and methods

- Financial Plan pension funding projections
- Benefit certifications and reviews
- Financial impact of proposed laws (Fiscal Notes)
- Special studies and other ad hoc services

#### The Office of the Actuary (Organization)

In addition to the Chief Actuary, the OA's actuarial staff is currently organized into two Divisions:

- A. Actuarial Services Division (ASD): Primarily, ASD performs annual actuarial valuations for the NYCERS to determine employers' annual pension contributions, provides pension and OPEB obligations and related accounting information and financial reporting for the City and certain CUs of the City, prepares reports to the New York State Department of Financial Services (DFS), and prepares Fiscal Notes and other analyses of costs for proposed benefit changes. The ASD consists of 16 individuals as of November 1, 2017, 10 of whom are credentialed actuaries.
  
- B. Certification Services Division (CSD): Primarily, CSD certifies retirement benefit calculations and member contribution rates, calculates employer reserves for members who transfer between retirement systems, and provides litigation support and related tasks. The CSD consists of 12 individuals as of November 1, 2017, one of whom is a credentialed actuary.

The remaining members of the OA include the General Counsel/Chief Administrative Officer, the Director of Communications, the IT staff, the secretarial staff, and the Administrative Division.

## **RFP Objectives**

This Request for Proposal (RFP) seeks a qualified firm to provide OPEB valuation and actuarial consulting services to the OA for a three-year period with an option to renew for an additional three-year period. The expected commencement date of the contract would be April 1, 2018 with an ending date of March 31, 2021.

The objective of this RFP is to obtain a vendor who will assist the OA in providing OPEB valuation services and ad-hoc actuarial consulting support in both the OPEB and pension areas. Conduent, Inc. currently provides the OPEB valuation services and is not precluded from responding to this RFP.

## Section 2 - Instructions

### Proposal Requirements

1. From the issue date of this RFP until a proposal is selected, all contact with employees of the OA concerning this RFP must be cleared through the Engagement Contact.
2. The complete proposal must be submitted in accordance with the terms and conditions of this RFP as described in the next section, "Submission Instructions."
3. The proposal should be divided between the Technical proposal and the Cost proposal as described within. The Technical and Cost proposals should be sealed and provided separately and no cost information should be included in the Technical proposal.
4. Proposals must include both OPEB valuation and actuarial consulting services.
5. Consulting services are to be provided for both the OPEB and pension plans on an ad-hoc, as needed basis.
6. The proposal should assume a three-year contract period commencing April 1, 2018 with an option to renew for an additional three-year period.
7. Valuation services are to be provided for the OPEB plan only.
8. The selected vendor will provide a secure method of file transmission with the OA (i.e. VPN, FTP, or other file transfer protocols).
9. As part of the acceptance testing, the selected vendor will be required to duplicate the valuation results for the Fiscal Year ended June 30, 2017. This is to be accomplished prior to or as soon after commencement as possible. Failure to produce consistent results may result in cancellation of the contract.
10. The proposal should identify those portions that are confidential or proprietary so the information can easily be separated from the rest of the proposal. Except for these portions, which the OA must agree may be kept confidential, the remainder of the winning proposal will be open to public inspection.

11. Proposals must include an explicit acknowledgement that the standard contract provisions included in City contracts and enclosed in the Appendix have been reviewed and deemed acceptable.
12. The proposal must be signed by an officer of the firm.
13. The selected vendor will be required to maintain all files and records for 10 years following termination of the contract.
14. The vendor will provide, at the end of each valuation cycle (e.g. June 30, 2018 valuations), electronic files containing all of the programs, census data, and documentation related to the valuation processing for that valuation cycle.
15. The prices and services submitted in the proposal must be guaranteed for at least 120 days from the proposal submission due date.
16. Exceptions to this RFP, including all its appendices and attachments, should be so stated by the proposer in the proposal. Such exceptions must be specific. General reservations or statements are not acceptable.
17. Proposals must include the following completed forms:
  - a. Tax Identification and Affirmation Form (Appendix A).
  - b. Acknowledgement of Addenda Form (Appendix B).
  - c. Local Law 34 of 2007 - Doing Business Data Form (Appendix C). Note: The Mayor's Office of Contract Services requires that the Doing Business Data Form to be completed in its fillable PDF format. This form can be found on the OA website or may be accessed and downloaded from the following site:  
[http://www.nyc.gov/html/prob/downloads/pdf/peak\\_attachment\\_5\\_doing\\_business\\_data\\_form.pdf](http://www.nyc.gov/html/prob/downloads/pdf/peak_attachment_5_doing_business_data_form.pdf).
  - d. Subcontractor Utilization Plan (Appendix D)
  - e. Conflict of Interest Disclosure (Appendix G)
  - f. Iran Divestment Rider (Appendix H)
  - g. Living Wage Certification (Appendix I)
  - h. MacBride Principles Provisions (Appendix K)
  - i. Paid Sick Leave Rider (Appendix L)

## Submission Instructions

Proposers are to present their proposals in accordance with the information set forth herein.

A. Requesting Agency

The New York City agency requesting this RFP is the:

New York City Office of the Actuary  
255 Greenwich Street, 9<sup>th</sup> Floor  
New York, NY 10007

B. Engagement Contact

The Engagement Contact for this RFP is:

Ms. Annette Charles  
Director of Administration  
New York City Office of the Actuary  
255 Greenwich Street, 9<sup>th</sup> Floor  
New York, New York 10007  
Telephone: (212) 312-0113  
[ActuarialServicesRFP@actuary.nyc.gov](mailto:ActuarialServicesRFP@actuary.nyc.gov)

From the issue date of this RFP until a proposal is selected, all contact with employees of the OA concerning the RFP must be cleared through the Engagement Contact.

Six hard copies of both the Technical proposal and the Cost proposal, in separately sealed packages, including exhibits and reference materials, should be sent to the Engagement Contact. The packages should be appropriately marked as to their contents (i.e. Volume One – Technical Proposal and Volume Two – Cost Proposal). The hard copies of the proposal (Technical and Cost components separately) must be received by 5:00 P.M. on January 4, 2018 at the New York City Office of the Actuary, 255 Greenwich Street, 9<sup>th</sup> Floor, New York, NY 10007.

In addition, a proposer must submit one version of its proposals (separating the Technical proposal from the Cost proposal) electronically in PDF format or in such format as acceptable to the OA to [ActuarialServicesRFP@actuary.nyc.gov](mailto:ActuarialServicesRFP@actuary.nyc.gov) by the same deadline as the hard copy.

Proposals arriving after the specified hour will not be accepted, regardless of the postmarked time on the envelope.

Please note that e-mail attachments may not exceed 10 megabytes.

**No references to costs may be included in the Technical proposal.**

Every page in the proposal, including all the exhibits, attachments and agenda, must be numbered to facilitate ease of reference and review by the Selection Committee. A table of contents with page references must also be included.

Proposers should submit questions about the RFP by December 4, 2017 to the attention of Ms. Annette Charles at [ActuarialServicesRFP@actuary.nyc.gov](mailto:ActuarialServicesRFP@actuary.nyc.gov). All questions and responses to such questions will be posted on the OA website. Only written responses will be considered official.

## Pre-Proposal Conference

A pre-proposal conference will be held on Wednesday, December 6, 2017 at 10:00 a.m. at the Office of the Actuary, 255 Greenwich Street, 9<sup>th</sup> Floor, New York, New York or at such other site as the Office of the Actuary may designate.

Please notify the Engagement Contact before the above date if you plan to attend. Attendance is strongly encouraged but not mandatory. If your firm is not attending but wishes to propose, please notify the Engagement Contact so that any pertinent materials may be forwarded.

Specific questions concerning the RFP may be submitted in writing to the Engagement Contact prior to the pre-proposal conference. This gives proposers the option of keeping questions anonymous.

## Proposal Timeline

Below is a schedule of RFP activities and the due date for each.

Release of RFP	November 27, 2017
Deadline to Submit Intent To Quote	December 1, 2017
Last Date for Pre-Proposal Conference Questions	December 4, 2017
Pre-Proposal conference	December 6, 2017
Deadline to Submit Proposals	January 4, 2018
Notification of Finalists	January 19, 2018
Presentations (at the discretion of the OA)	January 30, 2018
Selection of Vendor	February 7, 2018
Acceptance Testing begins	February 7, 2018
Contract Commencement Date	April 1, 2018

## Intent to Quote

Proposers should indicate their intent to quote on this proposal by December 1, 2017 in writing via email ([ActuarialServicesRFP@actuary.nyc.gov](mailto:ActuarialServicesRFP@actuary.nyc.gov)). Firms declining to quote may indicate the reason why but this is not required. The email should identify the name of the firm as well as the name, location, and telephone number of its authorized representative.

## Proposal Evaluation

Proposals will be evaluated and the selected proposer will be chosen by a Selection Committee (the Committee). The Committee will consist of representatives from the OA. Proposals submitted in response to this RFP will be evaluated in two steps. In the first step proposals will be evaluated without reference to costs based on their technical merits and compliance with the RFP's requirements. Costs will be factored in only after the most technically appropriate proposals are selected and ranked. Costs will be combined with the technical rating to arrive at an overall score.

### Scoring Methodology

	Weighting
<b>Technical Capabilities</b> <ul style="list-style-type: none"><li>• Demonstrates an understanding of the RFP's requirements.</li><li>• Ability to satisfy the activities outlined in the Scope of Services, including the ability to meet the required timelines.</li><li>• Commitment to minimizing the impact of transition costs and burdens on the OA.</li><li>• Quality of operational capabilities.</li></ul>	Up to 40%
<b>Experience Providing Similar Services</b> <ul style="list-style-type: none"><li>• The prior performance of the Proposer in providing OPEB valuation services and pension and OPEB consulting to large public pension systems and/or employers.</li><li>• Expertise in areas where additional services may be requested.</li><li>• Quality of references.</li></ul>	Up to 30%
<b>Availability and Quality of Personnel</b> <ul style="list-style-type: none"><li>• Overall experience of the principal members of the staff who will be assigned to the OA.</li><li>• Biographies of officers with direct overall responsibility for the contract and the partners or officers who will be assigned.</li><li>• Size of team and availability of key team members.</li></ul>	Up to 10%
<b>Other Factors</b> <ul style="list-style-type: none"><li>• Professionalism of proposal (e.g. no typos, quality of presentation, etc.).</li></ul>	Up to 5%
<b>Cost Proposal</b>	Up to 15%

### Finalist Presentations

Proposers selected as finalists may be required to make presentations of their proposals. This will provide an opportunity to clarify or elaborate on the proposals, but will in no way change the

proposer's original bid. The Engagement Contact will schedule the time and location, if presentations are necessary.

### **Vendor Selection and Negotiation of Contract**

The contract will be awarded to the proposer whose proposal is determined to be the most advantageous to the City and the OA, taking into consideration price and such other factors or criteria as set forth in the RFP.

After a proposal has been selected, the OA and the selected proposer will negotiate a contract. The OA will negotiate a contract only with the selected proposer. The proposer, upon award of a contract, shall be the only entity to receive payment from the OA.

Should negotiations fail to result in agreement within two weeks from the commencement of negotiations, the OA reserves the right to terminate negotiations and select another proposal, issue a new RFP, or take other action consistent with the best interests of the City and the OA. By issuance of this RFP, the OA is not obligated to award a contract.

The final award of this contract will be subject to the selected proposer's execution of such a contract, the review and approvals required by the City Charter and the Procurement Policy Board Rules, and the contract's approval by the OA.

After a contract is approved, the name of the selected proposer will be posted on the OA website.

## Section 3 - Requested Services and Bid Forms

### Scope of Services

The requested services are divided into two categories: Valuation Services, which are recurring, and Actuarial Consulting Services which are, in most cases, ad-hoc.

#### 1. Valuation Services

The expectations for the selected proposer include the ability to prepare, as determined by the OA, some, most, or all information required to develop actuarial results for the City's OPEB plan in accordance with GASB 74 and GASB 75 based on census data provided by the OA. This includes some or all of the following items:

- Review draft data collection correspondence and OPEB data collected by the OA.
- Produce counts and statistics.
- Calculate Entry Age Normal cost and actuarial accrued liability.
- Provide results for multiple iterations (i.e. plan experience, new assumptions, updated per-capita costs, etc.).
- Evaluate actual claims data of the covered retiree group. Absent sufficient claims data, advise the OA on the use of premium rates to value retiree medical benefits as set forth in Actuarial Standards of Practice (ASOP) Number 6. Currently, the OPEB valuation uses age-adjusted premium rates.
- Review OPEB-specific assumptions, individually and in the aggregate, and recommend changes to the OA following production of the experience results.
- Participate in the production of OPEB results for the CUs and in responding to inquiries from CU management, auditors, and actuaries.
- Draft preliminary GASB 74/75 report.
- Produce any additional information necessary for compliance with, including but not limited to, GASB 74/75.

These results are needed for each NYCERS and CU and must be split by benefit type (i.e. pre-Medicare, post-Medicare, Welfare Fund payments, Part B premium reimbursements, and Cadillac Tax) and by status (i.e. active, active/inactive, deferred vested, and retired). A sample of the typical valuation results output is provided in Appendix F.

The following items will be performed by the OA and are not the responsibility of the proposer:

- Gathering and reconciling all participant data except for CUNY TIAA actives, terminated vested and inactives (totaling approximately 2,500 records) for which collection and reconciliation will be the responsibility of the proposer.
- Creating Appendices A and C in the OPEB report.

- Finalizing and signing the GASB 74/75 report.

## 2. Actuarial Consulting Services

These services will be provided on an as-needed basis, are expected to be minimal, and may include, but are not limited to:

- Assist OA staff in the analysis of the financial impact of proposed plan amendments (e.g. Fiscal Notes), including advice on appropriate approximations.
- Provide on-going information on changes in federal, State and City laws and regulations and analyze the impact of proposed and enacted federal, State and City legislation and regulatory pronouncements by other bodies (e.g. GASB) as they affect the NYCERS.
- Advise and update the OA as to the practices of other public employee retirement systems, such as their policies for conforming to the regulatory environment and accounting standards.
- Comment on recommendations made by the New York City Office of Labor Relations, and actuarial and financial auditors, and assist in the implementation of such recommendations.
- Sign or co-sign an a Statement of Actuarial Opinion (SAO) on projects where the Chief Actuary deems that a SAO would be required and/or the OA would benefit from the inclusion of such additional vendor staff qualification.
- Provide assistance on matters relating to the analysis of Workers' Compensation liabilities of the City and/or offsetting liabilities for the NYCERS.

## Technical Proposal

The Technical Proposal should describe a proposer's approach and capabilities for accomplishing the work outlined in the Scope of Services. The description should be complete enough to permit the Selection Committee to evaluate the proposal fairly and with minimal risk of misinterpretation.

### Firm Information

1. Provide a general description of your firm, including size, number of employees, primary business, other business or services, location of headquarters, location of the office that will be servicing the OA, and type of organization.
2. Name, title, telephone number, and e-mail address of the individual authorized to commit the proposer to the contract.
3. Name, title, telephone number, and e-mail address of the individual to be contacted regarding the content of the proposal.
4. Provide biographies for members of the core team that will be assigned to this account should your firm be awarded the business.

### Subcontractors

5. Proposals must indicate any business partnerships and/or subcontractors that may be utilized in your work for the OA and the extent of the services they will be asked to perform.
6. Confirm that your firm will assume full responsibility for the work of all its partners and subcontractors. The OA will sign an agreement only with the selected proposer.
7. Should your firm propose the use of subcontractors, the contract award will be subject to Section 6-129 of the New York City Administrative Code (Minority and Women-Owned Business Enterprise Program and Emerging Business Enterprise Program), as well as applicable provisions of federal, State and other local laws and executive orders requiring affirmative action.

### Relevant Experience

8. Indicate any public OPEB and pension plans for which the firm currently provides, or formerly provided within the last five years, actuarial valuation and/or consulting services, including name, approximate number of participants, plan asset size, and number of years your firm has been retained.

9. Provide three references from clients that have used your firm for OPEB valuation services and three references from clients that have used your firm for actuarial consulting services. You may use the same firm for both categories if they utilized both valuation and consulting services.

#### Valuation Capabilities

10. The OA currently uses Proval and proposers are required to use Proval for the OPEB valuation, and consulting services, if applicable.
11. Provide a detailed project plan for the OPEB valuation identifying the tasks and activities to be completed, the resources assigned to each task and activity, and project milestones and deliverables with proposed delivery schedules. In particular, proposer should set forth its understanding of the requirements to support the OA with respect to OPEB, including all aspects of assumption development, methodologies, etc.

#### Data Security

12. Describe your firm's data privacy and security policies and procedures including, but not limited to:
  - a. Does your organization have a written information security policy? If so, please provide a copy for review.
  - b. How is confidential data transferred to clients?
  - c. How is remote access to your firm's network controlled?
  - d. Where will data files from the OA be processed and housed? Please list all geographic locations, including primary production systems, stand-by or recovery systems, backup, and archive solutions.
  - e. Who would have the ability to access data files from the OA and how is that access controlled?
  - f. Are the file systems configured to capture who accessed the OA data and what changes were made?
  - g. Will the OA be notified if an information breach involving OA data occurred at your firm? If yes, how soon would the OA be notified?
  - h. Has your firm experienced an information security breach in the past five years? If so, please document what information was lost and how clients were notified.

#### Additional Information

13. Describe how your firm would recover and continue processing in the event of an interruption of services.

14. Describe and provide samples of any legal or industry research that is provided to clients. Please indicate the frequency with which it is provided and whether it would be part of your core services.

Listing and description of the firm's professional relationships, if any, within the past five years involving the City of New York, the NYCRS, VSFs, TDA Programs, or any City agencies, related governmental entities (e.g. New York City Housing Authority), or related labor organizations (e.g. United Federation of Teachers), together with a statement explaining why such relationship(s) do not constitute a conflict of interest relative to performing the requirements of the RFP or how the proposer would suggest to handle such conflicts.

## Cost Proposal

The Cost Proposal section should contain all information related to the proposed cost of services requested in this RFP.

Proposers must submit proposed fee schedules for all work. For actuarial valuation services, the Cost proposal should show estimated costs and a maximum, not-to-exceed amount, for each contract year (e.g. April 1, 2017 to March 31, 2018).

For consulting services, the Cost proposal should show hourly rates by staff level.

Fees are not subject to adjustment after the contract is awarded, except as explicitly provided. Fees for start-up and other costs should be incorporated in the proposal.

If the vendor selected is asked to renew for an additional three years, prices for contract years 2022 through 2024 will be subject to agreement between the OA and the vendor but may not increase by more than the Consumer Price Index (CPI) or such other rate as chosen and calculated by the OA. Costs for optional renewal years should not be included in the proposal.

The contract will not become final until registered by the OA with the City Comptroller.

Proposals may relate prices to resource usage or may call for fixed charges by time period. In all cases, Cost proposals must clearly spell out the assumptions upon which they are based.

Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Offers may only be withdrawn by submitting a written request to the Engagement Contact prior to contract award but after the expiration of 90 days after the opening of the proposals. This period may be extended by mutual agreement between the proposer and the OA. This shall not limit the discretion of the OA to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

Prices must not include any state or local sales taxes. The City is tax exempt.

## Exhibit 1

### Valuation Services – Proposed Hourly Billing Rates and Estimated Hours

Staff Level*	Contract Year 2019			Contract Year 2020			Contract Year 2021		
	Hourly Rate	Estimated Hours	Total Cost	Hourly Rate	Estimated Hours	Total Cost	Hourly Rate	Estimated Hours	Total Cost
Partner									
Principal									
Director									
Senior Actuary									
Junior Actuary									
Analyst									
<b>Total</b>	N/A			N/A			N/A		
<b>Comments:</b>									

\*Sample titles shown

## Exhibit 2

Please list and explain any additional costs that are not included in Exhibit 1:

Service/Charge Type	Total Cost		
	Contract Year 2019	Contract Year 2020	Contract Year 2021
<b>Total Cost</b>			
<b>Comments:</b>			

### Exhibit 3

Please indicate the total estimated charges and the maximum, not-to-exceed amounts for the actuarial valuation services:

OPEB Valuation	Contract Year 2019	Contract Year 2020	Contract Year 2021
Total Estimated Charges			
Maximum, Not-to-Exceed Amount			
<b>Comments:</b>			

## Exhibit 4

### Actuarial Consulting Services – Proposed Hourly Billing Rates

Staff Level*	Contract Year 2019	Contract Year 2020	Contract Year 2021
Partner			
Principal			
Director			
Senior Actuary			
Junior Actuary			
Analyst			

\*Sample titles shown

## **Section 4 - Additional Information and Disclosures**

### **RFP Terms and Conditions**

The OA reserves the right to:

1. Postpone or cancel this RFP, in whole or in part.
2. Revise the timeline for administering this RFP, in whole or in part.
3. Reject any and all proposals received in response to the RFP.
4. Accept a proposal for a contract other than that with the lowest cost.
5. Waive or modify any irregularities in proposals received after notification to the proposer.
6. Consider alternate proposals or modifications received at any time before the award is made, if such is in the best interest of the City and OA.
7. Conduct discussions with proposers submitting acceptable proposals.
8. Negotiate separately with any source whatsoever in any manner necessary to serve the best interest of the OA.
9. Award the contract without any discussions with proposers submitting acceptable proposals.
10. Award a contract without any guarantee of services being purchased.
11. Cancel a contract should vendor fail to satisfactorily perform acceptance testing.

### **Contract Requirements**

#### **1. General Requirements**

All or part of this RFP and its exhibits and appendices, the selected proposal, treatment thereof as contained in the proposal, and any formal questions and presentation material distributed during the proposal process may be incorporated into and made a part of the final contract.

The contract to be entered into between the OA and the selected proposer shall contain negotiated provisions based on the specific requirements set forth in this RFP and the selected proposal's treatment thereof as contained in this proposal, as well as general City contract provisions including those in Appendix E herein.

Prior to the award of a contract to a selected proposer, all business partners and subcontractors are subject to all relevant City contracting requirements. These include, but are not limited to, the New York City Fair Share Criteria, the McBride Principles Law, New York City Local Law No. 34 of

2007, applicable provisions of federal, state and local laws and Executive Orders requiring affirmative action and equal employment opportunity, Section 6-108.1 of the New York City Administrative Code relating to the Local-Based Enterprise Program and its implementation rules, submission of New York City Department of Business Services/Division of Labor Services Employment Report, and the submission of completed VENDEX Questionnaires/Affidavits of No Change.

The final award of this contract will be subject to the firm's execution of such a contract, the New York City Corporation Counsel's approval of the contract, and the contract's registration with the New York City Office of the Comptroller.

## **2. Termination**

The contract to be entered into between the OA and the selected proposer is subject to modification or cancellation if the vendor's performance is not satisfactory as determined by the OA. The contract shall contain the following provisions dealing with termination, which provision shall be in addition to, and not in lieu of, any other termination provision: "If the vendor fails to fulfill any of the terms of this Agreement on time, the OA shall have the right to terminate the said agreement and award a new contract with another proposer and the vendor shall be responsible for damages and for additional costs incurred in reletting the contract."

In the event that adequate funds are not appropriated or made available to the OA for the continuation of the services in any fiscal year succeeding the first, the contract shall be subject to termination. The OA shall notify the vendor as soon as practical that the funds are not available for the continuation of the contract for the succeeding fiscal year. This, however, does not affect either the City's rights or the selected proposer's rights under any termination clause.

Notwithstanding any other termination clause in this contract, the OA will retain the right to terminate the contract with 30 days notice to the selected proposer if it is determined by the OA that termination of this contract is in the best interest of the City.

## **3. Work Products**

Materials and working papers developed during the engagement will be made available for inspection by the OA and copies thereof will be provided to the OA upon request.

## **4. Examination of Records**

In submitting a proposal, the proposer agrees that the OA or its duly appointed and authorized representatives have access to and the right to examine pertinent books, documents, papers, and records of the vendor as related to any contract resulting from the RFP until six years after final payment has been made.

## **5. Accounting System**

The vendor shall maintain an accounting system for purposes of audit and examination of any books, documents, papers, and records maintained in support of the contract resulting from this RFP.

Upon prior notice, the OA or its representatives will have access to such records, information, and data furnished to, prepared, or used by the selected proposer. Proposer will not make such records and information public, or otherwise make them available to any individual or organization, without the prior written consent of the OA.

## **6. Time and Manner of Payment**

The vendor shall be paid by the City by the applicable required payment date provided pursuant to Section 4-06 of the PPB Rules, subject to audit by the City Comptroller pursuant to applicable law. In the event the vendor has not been paid by such required payment date, and the vendor's invoice is not being audited by the Comptroller, then the vendor, if entitled to interest pursuant to such PPB Rules, may receive interest on the late payment at the maximum amount allowed by law or such lower interest rate as may be set jointly by the City Comptroller and the New York City Office of Management and Budget.

## **7. Maintenance**

The vendor shall provide on-going support services, such as providing guidance on the financial impact of any new legislation, benefit changes, assumption changes, etc., on a timely basis.

## **8. Notification of Selection**

After a proposal has been selected, the name of the selected proposer will be posted on the OA website.

By issuing this RFP the OA is not obligated to award a contract.

## **9. Disclaimer**

The OA is not liable for any costs incurred by proposers in the preparation of proposals or for any work performed prior to the designated commencement date of the executed contract.

## **10. Confidentiality**

All documents, reports, computer software, paper, and other materials (Papers), except for those generally available to the public, which are provided to the vendor by the OA, and any copies of any such Papers (including all information contained in such Papers as may be reproduced or otherwise procured by the vendor), and all Papers and other work product produced by the vendor

in connection with this agreement, shall be deemed and shall remain property exclusively of the OA and shall be available to the OA upon its request.

In the event the vendor does breach the aforementioned terms, the vendor shall not be relieved of liability to the OA for damages sustained by the OA by virtue of the breach of the agreement.

#### **11. Conflict of Interest**

If a proposer becomes a vendor to the OA, such vendor will need to be sensitive to potential conflicts of interest. For example, a vendor could be precluded, absent the approval of the OA, from accepting certain assignments with the City, other entities affiliated with the City, or the NYCRS.

## **Additional Disclosures**

### Proposer's Right to Appeal

Pursuant to the New York City Procurement Policy Board (PPB) Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations, and to protest an Agency's determination regarding the solicitation or award of a contract. A copy of the PPB Rules may be obtained by either contacting the PPB at (212) 788-0010 or by downloading the Rules at <https://www1.nyc.gov/site/mocs/resources/procurement-policy-board-ppb.page>.

### Unfairness in the Proposal Process

The New York City Comptroller is charged with the audit of contracts in the City. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, New York, NY 10007; telephone number (212) 669-2323.

### News Release

The proposer must not release any news or make any statements through any means to the public, press, or other media relating to matters pertinent to the proposal, contract, or reports to the OA without prior approval of the RFP Engagement Contact.

### Commencement of Work

Work will commence promptly after all the appropriate approvals as required by the PPB Rules, and after the contract has been executed and registered with the New York City Office of the Comptroller.

### Independent Fee Determination and Guidelines

By submission of the proposal, the proposer certifies that fee offerings have been arrived at independently.

### Matter of Public Record

Reports prepared as a result of the services requested herein, unless restricted or otherwise protected by law, will be matters of public record.

## **Appendix A - Tax Identification and Affirmation Form**

## AFFIRMATION

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

Full name of Proposer or Bidder *[below]*

\_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

### CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- ☐ A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER \_\_\_\_\_

- ☐ B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

- ☐ C - Corporation

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

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

## **Appendix B - Acknowledgement of Addenda Form**

## APPENDIX B

### Acknowledgement of Addenda

Request to Provide OPEB Valuation and Actuarial Consulting Services for the New York City  
Office of the Actuary

Directions: Complete Part I or II, whichever is applicable

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

Addendum A, dated \_\_\_\_\_, 2017

Addendum B, dated \_\_\_\_\_, 2017

Addendum C, dated \_\_\_\_\_, 2017

Addendum D, dated \_\_\_\_\_, 2017

Addendum E, dated \_\_\_\_\_, 2017

Addendum F, dated \_\_\_\_\_, 2017

Addendum G, dated \_\_\_\_\_, 2017

Addendum H, dated \_\_\_\_\_, 2017

Addendum I, dated \_\_\_\_\_, 2017

Addendum J, dated \_\_\_\_\_, 2017

Addendum K, dated \_\_\_\_\_, 2017

Addendum L, dated \_\_\_\_\_, 2017

Part II: \_\_\_\_\_ No addenda was received in connection with this RFP

Proposer (name): \_\_\_\_\_

Proposer (signature): \_\_\_\_\_

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

## **Appendix C - Local Law 34 of 2007 - Doing Business Data Form**

(please refer to the fillable PDF included separately on the OA website)

## **Appendix D - Subcontractor Utilization Plan**

Tax ID #: \_\_\_\_\_

APT E-  
PIN #: \_\_\_\_\_

## SCHEDULE B – M/WBE Utilization Plan

### Part I: M/WBE Participation Goals

**Part I to be completed by contracting agency**

#### Contract Overview

APT E- Pin #	_____	FMS Project ID#:	_____
Project Title/ Agency PIN #	_____		
Bid/Proposal Response Date	_____		
Contracting Agency	_____		
Agency Address	City	State	NY Zip Code
Contact Person	Title		_____
Telephone #	Email	_____	

#### Project Description *(attach additional pages if necessary)*

#### M/WBE Participation Goals for Services

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

Prime Contract Industry: \_\_\_\_\_

Group	Percentage
<u>Unspecified</u>	%
or	
Black American	%
Hispanic American	%
Asian American	%
Women	%
<b>Total Participation Goals</b>	%

Line 1

**SCHEDULE B - Part II: M/WBE Participation Plan****Part II to be completed by the bidder/proposer.**

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

**Section I: Prime Contractor Contact Information**

<b>Tax ID #</b> _____	<b>FMS Vendor ID #</b> _____
<b>Business Name</b> _____	<b>Contact Person</b> _____
<b>Address</b> _____	
<b>Telephone #</b> _____	<b>Email</b> _____

**Section II: M/WBE Utilization Goal Calculation: Check the applicable box and complete subsection.****PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS**

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

**PRIME CONTRACTOR OBTAINED PARTIAL WAIVER APPROVAL: ADOPTING MODIFIED M/WBE PARTICIPATION GOALS**

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

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

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

☐ MBE ☐ WBE

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

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

**Section IV: General Contract Information**

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

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

✓ Scopes of Subcontract Work

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

**Section V: Vendor Certification and Required Affirmations**

*I hereby:*

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

**Signature** \_\_\_\_\_**Date** \_\_\_\_\_**Print Name** \_\_\_\_\_**Title** \_\_\_\_\_

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

### Contract Overview

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

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

\_\_\_\_\_ %  
Agency M/WBE Participation Goal

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

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

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

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

### References

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

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

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

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

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

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

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

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

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Print Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

*Shaded area below is for agency completion only*

**AGENCY CHIEF CONTRACTING OFFICER APPROVAL**  
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**CITY CHIEF PROCUREMENT OFFICER APPROVAL**  
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### Waiver Determination

Full Waiver Approved: ☐  
 Waiver Denied: ☐  
 Partial Waiver Approved: ☐  
 Revised Participation Goal: \_\_\_\_\_ %

## **Appendix E – Sample Contract Language**

## APPENDIX E

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

#### **ARTICLE 1 - DEFINITIONS**

##### **Section 1.01 Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 2 - REPRESENTATIONS AND WARRANTIES**

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

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

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

### **Section 2.02 Conflicts of Interest**

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

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal

interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

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

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

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

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

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

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

### **Section 2.03 Fair Practices**

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

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

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

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

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

### **Section 2.04 VENDEX**

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

### **Section 2.05 Political Activity**

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for

public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

#### **Section 2.06 Religious Activity**

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

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

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

#### **Section 2.08 Bankruptcy and Reorganization**

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

### **ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING**

#### **Section 3.01 Assignment**

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

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

shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

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

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

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

### **Section 3.02 Subcontracting**

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

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

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the City and the Contractor;

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

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

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

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

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

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

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

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

## **ARTICLE 4 - LABOR PROVISIONS**

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

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the

City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

### **Section 4.02 Employees**

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

### **Section 4.03 Removal of Individuals Performing Work**

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

### **Section 4.04 Minimum Wage**

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

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

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

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

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

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

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

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

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

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

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

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly

or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

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

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

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

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;
3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;
4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;
5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

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

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

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

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

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

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

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

**ARTICLE 5 - RECORDS,  
AUDITS, REPORTS, AND INVESTIGATIONS**

**Section 5.01 Books and Records**

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence, and to utilize appropriate accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

**Section 5.02 Retention of Records**

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

**Section 5.03 Inspection**

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

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

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

**Section 5.04 Audit**

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

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

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

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

**Section 5.05 No Removal of Records from Premises**

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

**Section 5.06 Electronic Records**

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

### Section 5.07 Investigations Clause

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

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

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

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

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

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

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

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

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

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

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

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

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

F. Definitions

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

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

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

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

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

### **Section 5.08 Confidentiality**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the

costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

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

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

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

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

**ARTICLE 6 - COPYRIGHTS,  
PATENTS, INVENTIONS, AND ANTITRUST**

**Section 6.01 Copyrights**

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

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

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

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

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

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-

exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

### **Section 6.02 Patents and Inventions**

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

### **Section 6.03 Pre-existing Rights**

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

### **Section 6.04 Antitrust**

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

## **ARTICLE 7 - INSURANCE**

### **Section 7.01 Agreement to Insure**

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

### **Section 7.02 Commercial General Liability Insurance**

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise

from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

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

### **Section 7.03 Professional Liability Insurance**

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

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

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

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

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

### **Section 7.05 Unemployment Insurance**

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

**Section 7.06 Business Automobile Liability Insurance**

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

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

**Section 7.07 General Requirements for Insurance Coverage and Policies**

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

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

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

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

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

**Section 7.08 Proof of Insurance**

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

1. C-105.2 Certificate of Workers' Compensation Insurance;

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

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

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

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

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

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

### **Section 7.09 Miscellaneous**

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall

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

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

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

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

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

## **ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION**

### **Section 8.01 Reasonable Precautions**

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

### **Section 8.02 Protection of City Property**

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

### **Section 8.03 Indemnification**

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

### **Section 8.04 Infringement Indemnification**

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

### **Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation**

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

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

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall

diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

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

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

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

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

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

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

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

#### **Section 8.08 No Third Party Rights**

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

### **ARTICLE 9 - CONTRACT CHANGES**

#### **Section 9.01 Contract Changes**

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly

approved and executed change order document, or written contract modification or amendment, do so at their own risk.

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

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

## **ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING**

### **Section 10.01 Termination by the City Without Cause**

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

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

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

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

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any

suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

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

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

### **Section 10.03 Contractor Default**

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

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

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

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

#### **Section 10.04 Force Majeure**

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

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

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

#### **Section 10.05 Procedures for Termination**

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a

post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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

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

#### **Section 10.06 Miscellaneous Provisions**

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

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

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

## **ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**

### **Section 11.01 Prompt Payment**

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

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

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

### **Section 11.02 Electronic Funds Transfer**

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

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

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

## **ARTICLE 12 - CLAIMS**

### **Section 12.01 Choice of Law**

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

### **Section 12.02 Jurisdiction and Venue**

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

### **Section 12.03 Resolution of Disputes**

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

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

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

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

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

D. Presentation of Dispute to Agency Head.

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

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

negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

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

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

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

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

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

3. **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful

failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

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

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

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

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

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

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

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials

submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

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

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

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

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

6. **Finality of CDRB Decision.** The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the

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

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

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

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

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

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

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

#### **Section 12.06 General Release**

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

**Section 12.07 No Waiver**

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

**ARTICLE 13 - APPLICABLE LAWS**

**Section 13.01 PPB Rules**

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

**Section 13.02 All Legal Provisions Deemed Included**

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

**Section 13.03 Severability / Unlawful Provisions Deemed Stricken**

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

**Section 13.04 Compliance With Laws**

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

**Section 13.05 Americans with Disabilities Act (ADA)**

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor’s compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan (“Compliance Plan”) which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the

program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

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

### **Section 13.06 Voter Registration**

A. Participating Agencies. Pursuant to Charter § 1057-a, if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. display any political preference or party allegiance;

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

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

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

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

### **Section 13.07 Participation in an International Boycott**

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

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

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

### **Section 13.08 MacBride Principles**

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

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

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

### **Section 13.09 Access to Public Health Insurance Coverage Information**

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

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

or request for change of address form in the daily administration of the subcontractor's contractual obligation.

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

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

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

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

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

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

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

### **Section 13.10 Distribution of Personal Identification Materials**

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 ("E.O. 150"), if this Agreement is with a participating City agency and the Contractor has regular

contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: Administration for Children's Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

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

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

## **ARTICLE 14 - MISCELLANEOUS PROVISIONS**

### **Section 14.01 Conditions Precedent**

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

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

### **Section 14.02 Merger**

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

### **Section 14.03 Headings**

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

**Section 14.04 Notice**

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

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

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

**AFFIRMATION**

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

Full name of Proposer or Bidder *[below]*

\_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:**

A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER \_\_\_\_\_

B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

C - Corporation

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

By \_\_\_\_\_

Signature

\_\_\_\_\_

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

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

**CERTIFICATION BY BROKER**

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

**CERTIFICATION BY BROKER**

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

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

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

\_\_\_\_\_  
[Signature of authorized officer of broker]

\_\_\_\_\_  
[Name of authorized officer (typewritten)]

\_\_\_\_\_  
[Title of authorized officer (typewritten)]

\_\_\_\_\_  
[Contact Phone Number for Broker (typewritten)]

\_\_\_\_\_  
[Email Address of Broker (typewritten)]

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
NOTARY PUBLIC

## Appendix F – Sample Valuation Results Output

**New York City Health Benefits Program**  
**6/30/2016 Valuation Results of GASB OPEB**  
**Fire**  
**Not Including Component Unit Liability**

	6/30/2015 Stage 4	6/30/2016 Stage 1 (Experience)	6/30/2016 Stage 2 (Unit Costs)	6/30/2016 Stage 3 (Participation Assumptions)	6/30/2016 Stage 4 (Discount Rate)
<b>Discount Rate Used:</b>	<b>4.00%</b>	<b>4.00%</b>	<b>4.00%</b>	<b>4.00%</b>	<b>3.17%</b>
<b>DEMOGRAPHICS</b>					
<b>Actives</b>					
Number	10,780	10,951	10,951	10,951	10,951
Average Age	40.77	40.68	40.68	40.68	40.68
Average Service	14.13	14.00	14.00	14.00	14.00
Future Years of Service	New Stat	New Stat	New Stat	New Stat	136,159
Salary	\$ 1,164,994,036	\$ 1,180,226,281	\$ 1,180,226,281	\$ 1,180,226,281	\$ 1,180,226,281
Present Value of Future Salary	\$ 15,140,349,586	\$ 15,789,149,675	\$ 15,789,149,675	\$ 15,656,625,483	\$ 16,896,019,136
Present Value of Future Working Lifetime	98,637	101,011	101,011	100,536	106,992
<b>Inactives</b>					
Number	18	21	21	21	21
Average Age	39.00	36.62	36.62	36.62	36.62
Average Service	11.06	8.19	8.19	8.19	8.19
Future Years of Service	New Stat	New Stat	New Stat	New Stat	329
<b>Deferred Vesteds</b>					
Number	28	58	58	58	58
Average Age	45.04	42.16	42.16	42.16	42.16
<b>Retirees/Participants</b>					
Pre - Medicare Number	6,926	7,005	7,005	7,005	7,005
Medicare Number	9,261	9,172	9,172	9,172	9,172
Welfare Funds Number	15,348	15,378	15,378	15,378	15,378
Pre - Medicare Part B Premium Number	6,926	7,005	7,005	7,005	7,005
Medicare Part B Premium Number	9,261	9,172	9,172	9,172	9,172
Total Retiree Headcount	16,187	16,177	16,177	16,177	16,177
Pre - Medicare Average Age	55.05	55.39	55.39	55.39	55.39
Medicare Average Age	75.34	75.54	75.54	75.54	75.54
Welfare Funds Average Age	66.52	66.71	66.71	66.71	66.71
Pre - Medicare Part B Average Age	55.05	55.39	55.39	55.39	55.39
Medicare Part B Average Age	75.34	75.54	75.54	75.54	75.54
<b>Retirees' Covered Spouses</b>					
Pre - Medicare Number	6,325	6,383	6,383	6,383	6,383
Medicare Number	5,222	5,187	5,187	5,187	5,187
Pre - Medicare Part B Premium Number	6,325	6,383	6,383	6,383	6,383
Medicare Part B Premium Number	5,222	5,187	5,187	5,187	5,187
Pre - Medicare Average Age	54.00	54.25	54.25	54.25	54.25
Medicare Average Age	74.14	74.39	74.39	74.39	74.39
Pre - Medicare Part B Average Age	54.00	54.25	54.25	54.25	54.25
Medicare Part B Average Age	74.14	74.39	74.39	74.39	74.39
<b>Children Valued</b>					
Number	4,989	4,932	4,932	4,932	4,932
<b>Adult Children on Medicare</b>					
Number	53	62	62	62	62
Average Age	40.00	59.00	59.00	59.00	59.00

**New York City Health Benefits Program**  
**6/30/2016 Valuation Results of GASB OPEB**  
**Fire**  
**Not Including Component Unit Liability**

	6/30/2015 Stage 4	6/30/2016 Stage 1 (Experience)	6/30/2016 Stage 2 (Unit Costs)	6/30/2016 Stage 3 (Participation Assumptions)	6/30/2016 Stage 4 (Discount Rate)
Discount Rate Used:	4.00%	4.00%	4.00%	4.00%	3.17%
<b>TOTAL PRESENT VALUE</b>					
<b>Actives</b>					
Pre - Medicare	\$ 3,259,950,008	\$ 3,464,052,771	\$ 3,458,358,553	\$ 3,430,020,913	\$ 4,055,175,131
Medicare	1,074,272,477	1,152,770,352	1,125,243,996	1,098,413,289	1,526,913,794
Welfare	516,125,788	542,131,852	506,302,805	497,782,848	640,966,327
Part - B	654,677,127	702,385,466	697,262,208	687,545,050	946,312,790
Cadillac Tax	93,861,749	115,845,646	105,694,102	107,038,433	141,120,512
<b>Total</b>	<b>\$ 5,598,887,149</b>	<b>\$ 5,977,186,087</b>	<b>\$ 5,892,861,664</b>	<b>\$ 5,820,800,533</b>	<b>\$ 7,310,488,554</b>
<b>Inactives</b>					
Pre - Medicare	\$ 2,212,446	\$ 2,777,414	\$ 2,772,829	\$ 2,756,768	\$ 3,329,710
Medicare	732,692	925,445	903,348	881,094	1,257,859
Welfare	342,371	414,228	386,836	380,653	503,886
Part - B	446,270	563,142	559,039	550,760	778,539
Cadillac Tax	76,058	115,030	104,726	106,288	137,629
<b>Total</b>	<b>\$ 3,809,837</b>	<b>\$ 4,795,259</b>	<b>\$ 4,726,778</b>	<b>\$ 4,675,563</b>	<b>\$ 6,007,623</b>
<b>Deferred Vesteds</b>					
Pre - Medicare	\$ 10,483,157	\$ 23,752,559	\$ 23,718,767	\$ 23,064,042	\$ 26,422,854
Medicare	2,622,943	5,995,492	5,852,832	5,759,740	7,907,685
Welfare	1,615,159	3,517,533	3,285,068	3,219,367	4,021,776
Part - B	1,607,379	3,671,918	3,645,166	3,618,584	4,916,387
Cadillac Tax	55,825	408,462	353,936	351,652	433,082
<b>Total</b>	<b>\$ 16,384,463</b>	<b>\$ 37,345,964</b>	<b>\$ 36,855,769</b>	<b>\$ 36,013,385</b>	<b>\$ 43,701,784</b>
<b>Retirees</b>					
Pre - Medicare	\$ 1,670,835,823	\$ 1,735,138,110	\$ 1,736,192,000	\$ 1,736,886,066	\$ 1,848,823,020
Medicare	962,144,772	1,015,078,630	985,089,371	985,299,668	1,149,119,484
Welfare	523,667,213	540,094,616	506,194,657	506,194,657	569,713,236
Part - B	572,289,641	602,319,391	597,745,135	597,745,135	692,938,920
Cadillac Tax	2,773,948	3,514,079	3,177,626	3,177,626	4,183,065
<b>Total</b>	<b>\$ 3,731,711,397</b>	<b>\$ 3,896,144,826</b>	<b>\$ 3,828,398,789</b>	<b>\$ 3,829,303,152</b>	<b>\$ 4,264,777,725</b>
<b>Total - Total Present Value</b>					
Pre - Medicare	\$ 4,943,481,434	\$ 5,225,720,854	\$ 5,221,042,149	\$ 5,192,727,789	\$ 5,933,750,715
Medicare	2,039,772,884	2,174,769,919	2,117,089,547	2,090,353,791	2,685,198,822
Welfare	1,041,750,531	1,086,158,229	1,016,169,366	1,007,577,525	1,215,205,225
Part - B	1,229,020,417	1,308,939,917	1,299,211,548	1,289,459,529	1,644,946,636
Cadillac Tax	96,767,580	119,883,217	109,330,390	110,673,999	145,874,288
<b>Total</b>	<b>\$ 9,350,792,846</b>	<b>\$ 9,915,472,136</b>	<b>\$ 9,762,843,000</b>	<b>\$ 9,690,792,633</b>	<b>\$ 11,624,975,686</b>

**New York City Health Benefits Program**  
**6/30/2016 Valuation Results of GASB OPEB**  
**Fire**  
**Not Including Component Unit Liability**

	6/30/2015 Stage 4	6/30/2016 Stage 1 (Experience)	6/30/2016 Stage 2 (Unit Costs)	6/30/2016 Stage 3 (Participation Assumptions)	6/30/2016 Stage 4 (Discount Rate)
<b>Discount Rate Used:</b>	<b>4.00%</b>	<b>4.00%</b>	<b>4.00%</b>	<b>4.00%</b>	<b>3.17%</b>
<b>FIRST YEAR PAYOUT - TPV</b>					
<b>Actives</b>					
Pre - Medicare	\$ 5,393,943	\$ 6,037,253	\$ 6,020,201	\$ 5,889,552	\$ 5,889,552
Medicare	21,310	25,895	25,899	25,584	25,584
Welfare	545,287	567,529	559,681	548,514	548,514
Part - B	15,024	18,297	18,146	18,083	18,083
Cadillac Tax	-	-	-	-	-
<b>Total</b>	<b>\$ 5,975,564</b>	<b>\$ 6,648,974</b>	<b>\$ 6,623,927</b>	<b>\$ 6,481,733</b>	<b>\$ 6,481,733</b>
<b>Inactives</b>					
Pre - Medicare	\$ 1,807	\$ 1,052	\$ 1,049	\$ 1,034	\$ 1,034
Medicare	-	-	-	-	-
Welfare	195	118	116	114	114
Part - B	-	-	-	-	-
Cadillac Tax	-	-	-	-	-
<b>Total</b>	<b>\$ 2,002</b>	<b>\$ 1,170</b>	<b>\$ 1,165</b>	<b>\$ 1,148</b>	<b>\$ 1,148</b>
<b>Deferred Vesteds</b>					
Pre - Medicare	\$ 44,409	\$ 32,881	\$ 32,763	\$ 32,292	\$ 32,292
Medicare	-	-	-	-	-
Welfare	5,559	3,755	3,703	3,629	3,629
Part - B	-	-	-	-	-
Cadillac Tax	-	-	-	-	-
<b>Total</b>	<b>\$ 49,968</b>	<b>\$ 36,636</b>	<b>\$ 36,466</b>	<b>\$ 35,921</b>	<b>\$ 35,921</b>
<b>Retirees</b>					
Pre - Medicare	\$ 137,084,120	\$ 149,917,580	\$ 149,844,441	\$ 149,588,583	\$ 149,588,583
Medicare	28,118,113	29,474,342	29,112,843	29,116,924	29,116,924
Welfare	28,122,268	28,552,424	28,172,785	28,172,785	28,172,785
Part - B	17,299,865	18,025,641	17,877,560	17,877,560	17,877,560
Cadillac Tax	-	-	-	-	-
<b>Total</b>	<b>\$ 210,624,366</b>	<b>\$ 225,969,987</b>	<b>\$ 225,007,629</b>	<b>\$ 224,755,852</b>	<b>\$ 224,755,852</b>
<b>Total - First Year Payout</b>					
Pre - Medicare	\$ 142,524,279	\$ 155,988,766	\$ 155,898,454	\$ 155,511,461	\$ 155,511,461
Medicare	28,139,423	29,500,237	29,138,742	29,142,508	29,142,508
Welfare	28,673,309	29,123,826	28,736,285	28,725,042	28,725,042
Part - B	17,314,889	18,043,938	17,895,706	17,895,643	17,895,643
Cadillac Tax	-	-	-	-	-
<b>Total</b>	<b>\$ 216,651,900</b>	<b>\$ 232,656,767</b>	<b>\$ 231,669,187</b>	<b>\$ 231,274,654</b>	<b>\$ 231,274,654</b>
<b>ACTUARIAL ACCRUED LIABILITY - EAN (Level %)</b>					
<b>Actives</b>					
Pre - Medicare	\$ 1,208,439,311	\$ 1,270,693,245	\$ 1,268,317,863	\$ 1,246,512,740	\$ 1,337,257,317
Medicare	439,168,236	465,438,218	454,339,376	444,863,597	558,816,725
Welfare	206,833,585	216,106,991	201,247,043	197,383,854	232,860,804
Part - B	266,934,002	283,015,978	280,949,663	278,008,617	345,709,436
Cadillac Tax	18,119,860	21,836,472	19,265,654	19,486,629	23,197,037
<b>Total</b>	<b>\$ 2,139,494,994</b>	<b>\$ 2,257,090,904</b>	<b>\$ 2,224,119,599</b>	<b>\$ 2,186,255,437</b>	<b>\$ 2,497,841,319</b>
<b>Total - Accrued Liability</b>					
Pre - Medicare	\$ 2,891,970,737	\$ 3,032,361,328	\$ 3,031,001,459	\$ 3,009,219,616	\$ 3,215,832,901
Medicare	1,404,668,643	1,487,437,785	1,446,184,927	1,436,804,099	1,717,101,753
Welfare	732,458,328	760,133,368	711,113,604	707,178,531	807,099,702
Part - B	841,277,292	889,570,429	882,899,003	879,923,096	1,044,343,282
Cadillac Tax	21,025,691	25,874,043	22,901,942	23,122,195	27,950,813
<b>Total</b>	<b>\$ 5,891,400,691</b>	<b>\$ 6,195,376,953</b>	<b>\$ 6,094,100,935</b>	<b>\$ 6,056,247,537</b>	<b>\$ 6,812,328,451</b>
<b>NORMAL COST - EAN (Level %)</b>					
<b>Actives/Total</b>					
Pre - Medicare	\$ 145,929,571	\$ 151,823,916	\$ 151,640,274	\$ 150,866,909	\$ 174,108,626
Medicare	43,669,641	45,764,472	44,677,325	43,687,517	59,824,798
Welfare	23,547,299	24,184,302	22,699,281	22,356,419	28,106,970
Part - B	26,744,049	28,011,529	27,807,026	27,469,642	37,251,463
Cadillac Tax	3,097,468	3,727,127	3,367,767	3,413,053	4,215,099
<b>Total</b>	<b>\$ 242,988,028</b>	<b>\$ 253,511,346</b>	<b>\$ 250,191,673</b>	<b>\$ 247,793,540</b>	<b>\$ 303,506,956</b>

## **Appendix G – Conflict of Interest Disclosure**



**Mayor's Office of  
Contract Services**

**Bill de Blasio**  
Mayor

**Lisette Camilo**  
City Chief Procurement Officer and Director of Contract Services

**253 Broadway, 9th Floor**  
**New York, NY 10007**

**212 788 0001 tel**  
**212 788 0049 fax**

**Conflict of Interest Disclosure and Compliance Certification**

*A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS CERTIFICATION, AND/OR THE FAILURE TO CONDUCT APPROPRIATE DUE DILIGENCE IN VERIFYING THE INFORMATION THAT IS THE SUBJECT MATTER OF THIS CERTIFICATION, MAY RESULT IN RENDERING THE VENDOR NON-RESPONSIBLE FOR THE PURPOSE OF CONTRACT AWARD, AND A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS CERTIFICATION MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.*

**No Conflict of Interest:** Except as otherwise fully disclosed below (attach additional pages as needed), the Vendor affirms, to the best of its knowledge, information and belief, that no City Elected Official, nor any person associated with any City Elected Official, is an employee, Director or Trustee, Officer or consultant to/of, or has any financial interest, direct or indirect, in the organization, or has received or will receive any financial benefit, directly or indirectly, from the organization or from this funding. For purposes of this certification, "associated" persons include: a spouse, domestic partner, child, parent or sibling of a City Elected Official; a person with whom a City Elected Official has a business or other financial relationship, including but not limited to employees of a City Elected Official and/or a spouse, domestic partner, child, parent or sibling of such employees; and each firm in which a City Elected Official has a present or potential interest.

**NOTE:** THE VENDOR IS ENCOURAGED TO DISCLOSE ANY CONNECTION TO A CITY ELECTED OFFICIAL THAT COULD CREATE AN APPEARANCE OF A CONFLICT OF INTEREST, REGARDLESS OF WHETHER IT MEETS THE LISTED DEFINITIONS.

**Incorporation:** Vendor is incorporated under NYS Not-for-Profit Corp. Law (☒ one) ☐ Yes ☐ No (explain below)

Explain corporate status if you are not incorporated under NPCL:

**NOTE:** INFORMATION CONCERNING THE VENDOR'S CORPORATE STATUS WILL BE USED BY THE CITY TO VERIFY COMPLIANCE WITH APPLICABLE REQUIREMENTS FOR CHARITIES REGISTRATION, PAYMENT OF TAXES AND OTHER LEGAL MANDATES AND THIS CONTRACT WILL NOT BE ENTERED INTO UNLESS THE VENDOR IS IN COMPLIANCE.

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Signature of Authorized Official/Date

\_\_\_\_\_  
Vendor's Address

\_\_\_\_\_  
Print Name/Title of Signer

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Vendor's EIN

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

\_\_\_\_\_  
Notary Public



## **Appendix H – Iran Divestment Rider**

**IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR  
NEW YORK CITY CONTRACTORS**

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

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

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

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

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

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

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

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

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

*[Please Check One]*

**BIDDER'S CERTIFICATION**

- ☐ By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
- ☐ I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Sworn to before me this  
\_\_\_\_ da y of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

Dated:

## **Appendix I – Living Wage Certification**

## CERTIFICATION

The undersigned affirms and declares under the penalties of perjury, that the following information is true:

The proposer/bidder/contractor ("Contractor") agrees to comply with the requirements of section 6-109 of the Administrative Code of the City of New York, and with all applicable federal, state and local laws. The Contractor acknowledges that a finding by the City that the Contractor has violated the requirements of section 6-109 of the administrative code of the City of New York may result in the cancellation or rescission of this contract.

The Contractor provides the following information. Attach additional sheets if necessary.

1. Procurement Identification Number (PIN) \_\_\_\_\_
2. Full Name of Contractor \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_
3. Full name of the Chief Executive Officer of the Contractor  
\_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_
4. For employees of the Contractor that will be covered employees under this Agreement, state the following:  
  
A. The absolute number of covered employees and the number of full-time equivalent covered employees.  
  
\_\_\_\_\_

B. For all categories of covered employees, the following information broken down by category:

(1) job classifications of covered employees in each category.

---

(2) the wages and benefits provided covered employees in each category  
(including a description of individual and family health coverage, and sick, annual and terminal leave).

---

5. For employees of any subcontractor, known at this time, that will be covered employees under this Agreement, state the following:

Full Name of Subcontractor\_\_\_\_\_

Address\_\_\_\_\_

City\_\_\_\_\_ State\_\_\_\_\_ Zip Code\_\_\_\_\_

A. The absolute number of covered employees and the number of full-time equivalent covered employees.

---

B. For all categories of covered employees, the following information broken down by category:

(1) job classifications of covered employees in each category.

---

(2) the wages and benefits provided covered employees in each category  
(including a description of individual and family health coverage, and sick, annual  
and terminal leave).

---

6. To the extent permitted by law, provide a record of any instances during the preceding  
five years in which the Contractor has been found by a court or government agency to  
have violated federal, state or local laws regulating payment of wages or benefits, labor  
relations or occupational safety and health, or, to the extent permitted by law, in which  
any government body initiated a judicial action, administrative proceeding or  
investigation of the applicant in regard to such laws.
- 

Dated:

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Must be signed by an officer or duly authorized representative.

## **Appendix J – Fraud or Unethical Conduct Flyer**

**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](http://www.nyc.gov/doi)

**All communications are confidential**

**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



← **Scan the QR Code at Left to File a Complaint**

## **Appendix K – MacBride Principles Provisions**

## **MACBRIDE PRINCIPLES PROVISIONS FOR NEW YORK CITY CONTRACTORS RIDER**

### **ARTICLE I: NOTICE TO ALL PROSPECTIVE CONTRACTORS**

Local Law No. 34 of 1991 became effective on September 10, 1991 and added section 6-115.1 to the Administrative Code of the City of New York. The local law provides for certain restrictions on City contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of workplace opportunity.

Pursuant to Section 6-115.1, prospective contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business in Northern Ireland operations conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 31 3(b)(2) of the City Charter.

In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

### **PART A**

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

### **PART B**

For purposes of this section, the following terms shall have the following meanings:

1. "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

(1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

(2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;

(3) ban provocative religious or political emblems from the workplace;

(4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

(5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

(6) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

(7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;

(8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

(9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

## ARTICLE II: ENFORCEMENT OF ARTICLE I

The Contractor agrees that the covenants and representations in Article I above are material conditions to this Agreement. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this Agreement for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this Agreement and the cost to the contracting entity of completing performance of this Agreement either itself or by engaging another contractor or contractors. In the case of a requirements contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this Agreement, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this Agreement or by operation of law.

Dated:        \_\_, New York  
              \_\_, 20

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

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

\_\_\_\_\_  
Notary Public

Dated:

## **Appendix L – Paid Sick Leave Rider**

## **PAID SICK LEAVE LAW CONTRACT RIDER**

### **Introduction and General Provisions**

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

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

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

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

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

Pursuant to the PSLL and the Rules:

### **Applicability, Accrual, and Use**

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

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

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

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

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

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

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

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

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

## Exemptions and Exceptions

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

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

## Retaliation Prohibited

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

## Notice of Rights

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

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

## Records

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

#### Enforcement and Penalties

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

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

#### More Generous Policies and Other Legal Requirements

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