

Appendix A for Town+Gown Consortium Contract Only

APPENDIX A

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

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APPENDIX A

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

ARTICLE 1 - GENERAL PROVISIONS

Section 1.01 Definitions

All capitalized terms used in this Appendix A shall have the meanings ascribed to them in Article 1 of the Consortium Contract, to which this Appendix A is incorporated by reference, unless defined elsewhere in this Appendix A or a different meaning is clear from the context.

The Consortium Contract, to which this Appendix A is attached and incorporated by reference, is a multiple award task order/open-ended requirements contract to which academic institutions participating in Town+Gown can become a party during the one-year period from the date of registration of this Consortium Contract and, if the PPB codifies the method contained in the Innovative Procurement Approval pursuant to Section 3-12(f) of the Rules, for the remainder of the term of the Consortium Contract. Under and pursuant to the terms of the Consortium Contract, Consultants may respond to and be awarded Task Orders under the Consortium Contract. The provisions of this Appendix A apply to both the Consortium Contract and to each Task Order, and, for the purposes of this Appendix A, "Consortium Contract" shall be defined to include Task Order(s) related to each Consultant executing the Consortium Contract, to the extent required by the context.

Subject to the provisions of Section 2.8 of the Consortium Contract, the Consortium Contract can be used by City Agencies, which are subject to the provisions of Laws applicable to City Agencies, including the PPB Rules ("City Laws"), and Public Entities, which are not. Section 3.2 of the Consortium Contract and Section 6.1 of Appendix C to the Consortium Contract provide additional clarification about how Requestors/Practitioner Partners should draft the Mini RFP and related Task Orders to reflect differences in applicable Laws among Requesting City Agencies and Requesting Public Entities. To the extent that any provision of City Law as set forth in this Appendix A does not apply to a Public Entity, such provision shall be deemed not applicable to such Public Entity or a Certain Corporation, and provisions of Law applicable to such Public Entity or Certain Corporation, if any, shall, subject to the provisions of Section 3.2 of the Consortium Contract and Section 6.1 of Appendix C of the Consortium Contract, be deemed substituted. Further, in this Appendix A, to the extent that the context requires the defined term "City Agency Commissioner" to mean Public Entity Executive, such meaning shall be used.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Consortium Contract and Task Orders

A. The Consultant represents and warrants that no person or entity (other than an officer, partner, or employee working solely for such Consultant) has been employed or retained to solicit or secure the Consortium Contract 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 Consultant may retain consultants to draft proposals, negotiate contracts, and perform other similar services with respect to Task Orders under the Consortium Contract. The Consultant further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain the Consortium Contract or any other agreement between the parties. The Consultant makes such representations and warranties to induce the City to enter into the Consortium Contract, and the City relies upon such representations and warranties in the execution of the Consortium Contract.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the DDC Commissioner, acting on behalf of the applicable City Agency Commissioner, shall have the right to annul Task Orders entered into with the Consultant, without liability, entitling the City to recover all monies paid to the Consultant; and the Consultant shall not make claim for, or be entitled to recover, any

sum or sums due under this Consortium Contract. The rights and remedies of the City provided in this Section 2.01 are not exclusive and are in addition to all other rights and remedies allowed by Law or under the Consortium Contract. Public Entity Executives may exercise the foregoing rights related to Task Orders on which only Public Entities are Practitioner Partners.

Section 2.02 Conflicts of Interest

A. The Consultant 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 the Consortium Contract or any Task Order awarded to it. The Consultant further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Consultant in the performance of the Consortium Contract and any Task Order awarded to it.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Administrative 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, shall participate in any decision relating to the Consortium Contract or any Task Order issued thereunder that 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, the Consortium Contract or any Task Order issued thereunder. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Consultant from participating in decisions relating to the Consortium Contract and any Task Order issued thereunder where their sole personal interest is in the Consultant.

C. The Consultant 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 Consultant if such employment or service would violate Chapter 68 of the Charter.

Section 2.03 Fair Practices

A. The Consultant and each person signing a Task Order issued under the Consortium Agreement on its behalf shall certify, when executing Task Orders, 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 any Task Order have been arrived at independently, without collusion, consultation, communication, or agreement with any Consultant 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 any Task Order have not been knowingly disclosed by the Consultant, directly or indirectly, to any Consultant prior to submission of a Proposal in Response; and

3. No attempt has been made or will be made by the Consultant to induce any other Consultant to submit or not to submit a Proposal in Response for the purpose of restricting competition.

The foregoing certification shall not be deemed apply to Task Orders resulting from Proposals in Response prepared by two or more Consultants as permitted by Section 3.3(b) of the Consortium Contract.

B. The fact that the Consultant (i) has published price lists, rates, or tariffs covering services being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such services, or (iii) has sold the same services to other customers at the same prices and/or terms being proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

Section 2.04 VENDEX

The Consultant 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 MOCS. The Consultant understands that the City's reliance upon the accuracy and completeness of the information stated therein is a material condition to the execution of the Consortium Contract and any Task Order issued thereunder, and further represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Political Activity

The Consultant's provision of services under the Consortium Contract and any Task Order issued thereunder 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 any Task Order issued under the Consortium Contract 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 Consultant's provision of services under the Consortium Contract or any Task Order issued thereunder, nor shall any of the funds provided under any Task Order issued under the Consortium Contract be used for such purposes.

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

Pursuant to Administrative Code § 6-123, the Consultant shall not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Consultant shall include a provision in any agreement with a first-level Subcontractor performing services under any Task Order issued under the Consortium Contract 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 Consultant files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Consultant shall disclose such action to DDC and the Practitioner Partner with respect to all its Task Orders within five (5) Days of filing.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Consultant shall not assign, transfer, convey or otherwise dispose of the Consortium Contract or any Task Order issued thereunder, or the right to execute either, or the right, title or interest in or to either or any part of them, or assign, by power of attorney or otherwise, any of the monies due or to become due under any Task Order issued under the Consortium Contract, without the prior written consent of the DDC Commissioner and the applicable Practitioner Partner. 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 the Consortium Contract and any Task Order issued thereunder, a Consultant shall submit a written request for approval to DDC and the applicable Practitioner Partner, giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) calendar Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of DDC and the applicable Practitioner Partner, such Consultant 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 the Task Order issued under the Consortium Contract. DDC and the Practitioner Partner 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 the Task Order and the Consortium Contract with respect to such Consultant, at the option of DDC and the Practitioner Partner. The City and the applicable Practitioner Partner shall thereupon be relieved and discharged from any further liability and obligation to such Consultant, its assignees, or transferees, who shall forfeit all monies earned under the Task Order and the Consortium Contract, except so much as may be necessary to pay the Consultant's employees.

D. The provisions of this Section 3.01 shall not hinder, prevent, or affect an assignment by any Consultant for the benefit of its creditors made pursuant to the Laws of the State.

E. The Consortium Contract and any Task Order issued thereunder 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 Consultant with written notice of any such assignment.

Section 3.02 Subcontracting

A. For all subcontracts in an amount that does not exceed Five Thousand Dollars (\$5,000), calculated as provided in paragraph F below, the City Agency is deemed to have granted prior approval. For such Subcontracts, the Consultant must submit monthly reports to the Practitioner Partner indicating all such Subcontractors, all such subcontracts must be in writing, and, at the request of the Department, the Consultant shall provide the Department with a copy of any such subcontract. If the procurement rules applicable to Public Entities do not permit such deemed approval, the provisions in the following paragraphs shall apply, adjusted, as needed, with respect to the PPB Rule requirements.

B. Before entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), calculated as provided in paragraph F below, for the performance of its obligations, in whole or in part, under the Consortium Contract, the Consultant shall submit a written request for the approval of the proposed Subcontractor to the Practitioner Partner, 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 Practitioner Partner, the Consultant shall submit a copy of the proposed subcontract to the Practitioner Partner. The Consultant shall submit the proposed Subcontractor's VENDEX Questionnaire, if required, within thirty (30) calendar Days after the City Agency ACCO has granted preliminary approval of the proposed Subcontractor. Upon the request of the Practitioner Partner, the Consultant 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 Consortium Contract. The Practitioner Partner shall make a final determination in writing approving or disapproving the Subcontractor after receiving all requested information. All such subcontracts must be in writing and, at the request of the Practitioner Partner, the Consultant shall provide the Practitioner Partner with a copy of any such subcontract.

C. For any subcontract in an amount greater than Five Thousand Dollars (\$5,000) but less than equal to Twenty-five Thousand Dollars (\$25,000), calculated as provided in paragraph F below, the Consultant may deem such Practitioner Partner's approval granted if the Practitioner Partner does not issue a written approval or disapproval within thirty (30) calendar Days of the earlier of the Practitioner Partner's receipt of the written request for approval and, if applicable, thirty (30) calendar Days after the Practitioner Partner's acknowledged receipt of fully completed VENDEX Questionnaires for the Subcontractor.

D. In addition to requirements of Section 2.07, 4.07, 7.03, 7.08 and 7.09 hereof, to the extent applicable, all subcontracts shall contain provisions specifying that:

1. The work performed by the Subcontractor must be in accordance with the terms of the Consortium Contract and applicable Task Order;

2. Nothing contained in the subcontract between the Consultant and the Subcontractor shall impair the rights of the City;

3. Nothing contained in the subcontract between the Consultant and the Subcontractor, in the Consortium Contract or in the applicable Task Order 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.

E. The Consultant specifically agrees with respect to each Task Order for which it enters into subcontracts that it will be as fully responsible to the Practitioner Partner for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by such Subcontractors as it is for the acts and omissions of any person directly employed by it.

F. For the purposes of determining the value of a subcontract under this Section 3.02, the value of all subcontracts with the same Subcontractor shall be aggregated.

G. The Practitioner Partner may revoke the approval of a Subcontractor granted or deemed granted pursuant to Paragraphs (A) and (C) of this Section 3.02 in writing if revocation is deemed to be in the interest of the City on no fewer than ten (10) calendar 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 Consultant shall cause the Subcontractor to cease all work under the applicable Task Order. The City shall not incur any further obligation for services performed by such Subcontractor pursuant to the Consortium Contract and applicable Task Order beyond the effective date of the revocation. The City shall pay for services provided by the Subcontractor prior to the effective date of revocation in accordance with the Consortium Contract and applicable Task Order. For Task Orders with only a Public Entity as a Practitioner Partner, if the procurement rules applicable to such Public Entity do not permit the actions described above, such provisions shall apply, adjusted as needed.

H. The Practitioner Partner's approval of a Subcontractor shall not relieve the Consultant of any of its responsibilities, duties and liabilities under the Consortium Contract or applicable Task Order.

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Consultant and DDC agree that the Consultant is an independent contractor and not an employee of the City, DDC or any Practitioner Partner. Accordingly, neither the Consultant 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 the Consortium Contract or any Task Order, and they will not, by reason of the Consortium Contract or any Task Order, 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 Consultant and all Subcontractors, consultants or independent contractors who are retained by the Consultant to perform services under the Consortium Contract and applicable Task Order are neither employees of the City nor under contract with the City. The Consultant, and not the City, DDC or any Practitioner Partner, is responsible for their work, direction, compensation, and personal conduct while engaged under the Consortium Contract and any applicable Task Order. Nothing in the Consortium Contract or any Task Order shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Consultant, or any officer, employee, or agent of the Consultant, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the Consultant, 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 the Consortium Contract or applicable Task Order, nothing in the Consortium Contract or applicable Task Order shall impose any liability or duty on the City to any person or entity.

Section 4.03 Replacement of Individuals on Academic Team

The Consultant shall not have anyone perform work under the Consortium Contract and any applicable Task Order who does not possess the experience, knowledge and character necessary to qualify them individually

for the particular services they will perform on the Project in a professional and competent manner according to the standards of the relevant field(s) and/or discipline(s). Whenever a City Agency Commissioner or Public Entity Executive shall inform the Consultant, in writing, that any individual on the Academic Team is, in his or her opinion, unable to perform services on the Project in a professional and competent manner according to the standards of the relevant field(s) and/or discipline(s), the Consultant and the City Agency Commissioner or Public Entity Executive shall have the opportunity to resolve such concerns in good faith, subject to the provisions of Section 10.02 of Appendix A, with options including but not limited to the Consultant replacing such member of the Academic Team with personnel who possess/possesses qualifications at least substantially similar to the person being replaced; provided however. This Section 4.03 relates to Section 3.3(c) of the Consortium Contract and Section 4.3 of the Task Order.

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 Consultant in the performance of the Consortium Contract and any applicable Task Order shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Consortium Contract.

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e [Not applicable]

A. If the Consortium Contract 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 Consultant agrees, as required by New York State Labor Law § 220-e, that:

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

2. Neither the Consultant, Subcontractor, nor any person acting on behalf of such Consultant or Subcontractor, shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under the Consortium Contract on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Consultant by the City under the Consortium Contract 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 the Consortium Contract; and

4. The Consortium Contract may be terminated by the City and all monies due or to become due hereunder may be forfeited in the event of a second or any subsequent violation of the terms or conditions of this Section 4.05.

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

Section 4.06 Non-Discrimination: Admin. Code § 6-108 [Not applicable]

If the Consortium Contract 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 Consultant 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 the Consortium Contract.

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 4.06 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. The Consortium Contract and any Task Order issued thereunder is subject to the requirements of City Executive Order No. 50 (1980), as amended, the Rules set forth at 66 RCNY § 10-01 et seq., and any rules and regulations promulgated thereunder (collectively, "E.O. 50"). No Task Order will be awarded unless and until these requirements have been complied with in their entirety. The Consultant 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 Consultant 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;

5. Will furnish, before any applicable Task Order under the Consortium Contract is awarded, all information and reports, including an Employment Report, which are required by E.O. 50 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 Consultant understands that in the event of its noncompliance with the nondiscrimination clauses of this Section 4.07 or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the applicable Task Order under the Consortium Contract and noncompliance with E.O. 50. 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 Consultant; and/or

2. Suspension or termination of the Task Order issued under the Consortium Contract and/or the Consortium Contract with respect to the Consultant; and/or

3. Declaring the Consultant in default of the Task Order issued under the Consortium Contract and/or the Consortium Contract; and/or

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

C. Failure to comply with E.O. 50 in one or more instances may result in DDC declaring the Consultant to be non-responsible under the applicable Task Order and/or the Consortium Contract.

D. In addition to the requirements of Section 3.02 hereof, the Consultant 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, so that such provisions will be binding upon each Subcontractor or vendor. The Consultant 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 Consultant needed to produce the item contracted for shall not be considered a Subcontractor or vendor for purposes of this Paragraph D.

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

F. Nothing contained in this Section 4.07 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 Consultant 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 the Consortium Contract and any applicable Task Orders.

Section 5.02 Retention of Records

The Consultant agrees to retain all books, records, and other documents relevant to the Consortium Contract and any applicable Task Orders, including those required pursuant to Section 5.01 hereof, for six (6) years after the final payment or expiration or termination of the Consortium Contract or any applicable Task Order, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning the Consortium Contract and any applicable Task Order has commenced before the expiration of such 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 Consultant 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 term of the Consortium Agreement and any applicable Task Order or during the record retention period set forth in Section 5.02 hereof, the City, including the applicable Practitioner Partner, DDC and DDC'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 Consultant pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Consultant kept pursuant to this Consortium Contract shall be subject to immediate inspection, review, and copying by DDC's Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Consultant

shall make such books, records and other documents available for inspection within boundaries of the City or shall reimburse the City for expenses associated with the out-of-City inspection.

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

C. The Consultant shall not be entitled to final payment until the Consultant has complied with any request for inspection or access given under this Section 5.03.

Section 5.04 Audit

A. The Consortium Contract and any applicable Task Order, and all books, records, documents, and other evidence required to be maintained or retained pursuant to the Consortium Contract and any applicable Task Order, 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 Practitioner Partner, DDC, and DDC'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 Practitioner Partner, DDC and DDC's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Administrative Code, as well as all orders, rules, and regulations promulgated thereunder.

C. The Consultant shall submit any and all documentation and justification in support of expenditures or fees under the Consortium Contract and any applicable Task Order as may be required by the Practitioner Partner, DDC and by the Comptroller in the exercise of his/her powers under Law.

D. The Consultant shall not be entitled to final payment until the Consultant has complied with the requirements of this Section 5.04.

Section 5.05 Removal of Records from Premises

As a result of Town+Gown's Organizational Character, it is likely that much of the required data for Research Projects will be publicly available under Law and it is further expected that there will be little need for limiting use of and access to data for Research Projects; thus, the following provisions shall not apply to any Research Project. However, to the extent that (1) the Law requires certain restrictions for some or all of the data needed for a particular Research Project or (2) a Requesting City Agency or Public Entity wishes to apply some or all of following provisions to some or all of the data needed for a proposed Research Project, and, with DDC's consent, includes such provisions in the applicable Mini RFP and related Task Order, the following provisions, in whole or in part, would apply:

Where performance of the Consortium Contract and any applicable Task Order involves use by the Consultant 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 Consultant 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 an Authorized Representative of the Practitioner Partner. Upon the request by the Practitioner Partner at any time during the Consortium Contract and applicable Task Order or after the Consortium Contract and applicable Task Order have expired or terminated, the Consultant shall return to the Practitioner Partner any City books, records, documents, or data that has been removed from the Practitioner Partner's 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 Clauses

A. The Consultant 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 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 fewer 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 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 described in Paragraph C above 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 the Consortium Contract or any applicable Task Order, 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 described in Paragraph C above 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 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 5.07 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 5.07 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 5.07 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 5.07 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 the Consortium Contract and any applicable Task Order, the Commissioner may in his or her sole discretion terminate the Consortium Contract and any applicable Task Order upon not less than three (3) Days’ written notice in the event the Consultant 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 the Consortium Contract and any applicable Task Order by the Consultant, or affecting the performance of the Consortium Contract and any applicable Task Order.

Section 5.08 Confidentiality

As a result of Town+Gown’s Organizational Character, in particular, increasing the common store of built environment knowledge by making its Research Project results available to all members of Town+Gown and to members of the public *via* its webpage, it is likely that little information related to its Research Projects will be required to be confidential under Law, and it is further expected that there will be little need for requiring confidentiality with respect to data, information and reports for Research Projects developed under Town+Gown; thus, the following provisions shall not apply to any Research Project. However, to the extent that (1) the Law requires confidentiality for some or all of the data, information and reports needed for a particular Research Project, in which case, the provisions below shall apply, or (2) a Requesting City Agency or Public Entity wishes to apply some or all of the following provisions to some or all of the data, information and reports for a proposed Research Project and, with DDC’s consent, includes such restrictions in the applicable Mini RFP and related Task Order, the following provisions, in whole or in part, would apply:

A. The Consultant agrees to hold confidential, both during and after the completion or termination of the Consortium Contract and applicable Task Order, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Consultant under the Consortium Contract and applicable Task Order. The Consultant agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Practitioner Partner. The Consultant 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 Consultant 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 5.08 (“Personal Identifying Information”), the Consultant shall utilize best

practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section 5.08 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 Consultant provides advance notice to the Practitioner Partner, in writing or by e-mail, that it intends to disclose such reports, information or data and the Practitioner Partner does not inform the Consultant, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Consultant shall provide notice to the Practitioner Partner within three (3) Days of the discovery by the Consultant of any breach of security, as defined in Administrative Code § 10-501(b), of any data, encrypted or otherwise, in use by the Consultant that contains Personal Identifying Information, where such breach of security arises out of the acts or omissions of the Consultant or its employees, Subcontractors, or agents. Upon the discovery of such security breach, the Consultant shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Practitioner Partner of such steps. In the event of such breach of security, without limiting any other right of the City, the Practitioner Partner shall have the right to withhold further payments under the Consortium Contract and applicable Task Order 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 Practitioner Partner shall provide the Consultant with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the discretion of the Practitioner Partner, or if monies remaining to be earned or paid under the applicable Task Order are insufficient to cover the costs detailed above, the Consultant shall pay directly for the costs, detailed above, if any.

C. The Consultant shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Consultant 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 Consortium Contract.

D. The Consultant, and its officers, employees, and agents shall notify the Practitioner Partner, at any time either during or after completion or termination of the Consortium Contract and applicable Task Order, 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 the Consortium Contract and applicable Task Order at least twenty-four (24) hours prior to any statement to the press or at least five (5) Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Consultant may not issue any statement or submit any material for publication that includes confidential information covered by this Section 5.08.

E. At the request of the Practitioner Partner, the Consultant shall return to the Practitioner Partner any and all confidential information in the possession of the Consultant or its Subcontractors. If the Consultant or its Subcontractors are legally required to retain any confidential information, the Consultant shall notify the Practitioner Partner 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 Consultant shall confer, in good faith, with the Practitioner Partner regarding any issues that arise from the Consultant retaining such confidential information. If the Practitioner Partner does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section 5 shall constitute a material breach of this Consortium Contract for which DDC and the Practitioner Partner may terminate the Consortium Contract and applicable Task Order pursuant to Article 10. The Practitioner Partner 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. The Town+Gown Standard. Town+Gown's Organizational Character intends that work product generated from Task Orders be available to Town+Gown community and members of the public via the Town+Gown website, and since such work product may not require the level of peer-review required for academic journal or equivalent publication, the City acknowledges that an Academic Partner may wish to use the Task Order-generated work product as the basis of a peer-reviewed article for academic journal or equivalent publication.

Since one of the elements of Town+Gown's Organizational Characters is supporting academic-practitioner collaborations by highlighting the importance of practice as a source of knowledge, with Academics and Practitioners as equal partners in knowledge creation, the Consultant agrees, in the event it, as an Academic Partner, wishes to use the Task Order-generated work product as the basis of a peer-reviewed article of an academic journal or equivalent publication, to include the Practitioner Partner as the equivalent of a peer reviewer, in all subsequent academic work related to the initial work product under a Task Order, including but not limited to review and comment on the drafts and to acknowledgement, as appropriate, the relevant staff members at the Practitioner Partner, all as provided in the Project Staffing and Organization in Section 2.4 of the Task Order.

To the extent any Task Order-generated work product ("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 et seq. (the "Copyright Act"), the Consultant will be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist, subject to the Practitioner Partner's reservation in the last sentence of this paragraph. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Consultant will have copyright ownership in and to the Copyrightable Materials, subject to such Practitioner's reservation below. Following federal policy, the Practitioner Partner reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for purposes of the City or applicable Public Entity, the copyright in any Copyrightable Materials developed under the Consortium Contract and applicable Task Order.

With respect to each Task Order, the Consultant will represent and warrant 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. Further, the Consultant will represent and warrant, that to the extent that the Copyrightable Materials incorporate any non-original material, either the Consultant has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under the Consortium Contract and applicable Task Order, copies of which shall be provided to the Practitioner Partner upon execution of the applicable Task Order, or such non-original material is within the fair use exception to the Copyright Act, based on the purpose and character of the use and the amount and substantiality of the particular use involved.

B. The City Standard. However, to the extent that (1) the Law requires treatment of any materials produced pursuant to a Task Order as described below or (2) a Requesting City Agency or Public Entity wishes to apply any or all of such provisions to a particular Research Project, and, with DDC's consent, includes such restrictions in the applicable Mini RFP and Task Order, the following provisions, in whole or in part, would apply.

1. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Consortium Contract and applicable Task Order, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the Consortium Contract and applicable Task Order, shall upon their creation become the exclusive property of the Practitioner Partner.

2. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to the Consortium Contract and applicable Task Order ("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 et seq. (the “Copyright Act”), and the Practitioner Partner 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 Consultant hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the Practitioner Partner, free and clear of any liens, claims, or other encumbrances. The Consultant shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Consultant for no purpose other than in the performance of the Consortium Contract and applicable Task Order without the prior written permission of the Practitioner Partner. The Practitioner Partner may grant the Consultant a license to use the Copyrightable Materials on such terms as determined by the Practitioner Partner and set forth in the license.

3. The Consultant 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 Consultant shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

4. The Consultant represents and warrants that the Copyrightable Materials: (i) will be wholly original material not published elsewhere (except for material that is in the public domain); (ii) will not violate any copyright Law; (iii) will not constitute defamation or invasion of the right of privacy or publicity; and (iv) will not be an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, either the Consultant shall have either obtained all necessary permissions and clearances, in writing, for the use of such non-original material under the Consortium Contract and applicable Task Order, copies of which shall be provided to the Practitioner Partner upon execution of an applicable Task Order or such non-original material is within the fair use exception to the Copyright Act, based on the purpose and character of the use and the amount and substantiality of the particular use involved.

5. If the services under this Consortium Contract are supported by a federal grant of funds, the federal and State governments reserve 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 Consortium Contract.

6. If the Consultant publishes a work dealing with any aspect of performance under this Consortium Contract, 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

While Town+Gown’s Organizational Character intends that work product generated from Task Orders be available to Town+Gown community and members of the public *via* the Town+Gown website, it is possible that such work product may eventually lead to discoveries or solutions to problems initially identified by the Practitioner Partner that may become patentable and marketable applications and/or inventions (“discoveries or solutions”). Subject to the provisions below, the Consultant shall promptly and fully report to the Practitioner Partner and DDC any discoveries or solutions that it believes can result in patentable and/or marketable applications or inventions so that, consistent with the Practitioner Partner’s reservation of a royalty-free, non-exclusive irrevocable license, the Consultant can pursue such patentable and/or marketable applications or inventions, with the Practitioner Partner, at the Practitioner Partner’s election at such time, to participate:

A. as a full partner in the process of developing resulting applications or invention, sharing, with the Academic Partner, the associated costs of pursuant any patents, or

B. as the holder of a royalty-free license to use any resulting applications or inventions, after any necessary assignment of Practitioner Partner’s interests in the discoveries and solutions.

If the services under the Consortium Contract and applicable Task Order are supported, in part or in whole, by a federal grant of funds, the Consultant shall also 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. The Practitioner Partner's interests in any discoveries or solutions funded in part or in whole by a federal grant of funds shall be subordinated to those of the federal government.

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Consultant 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 the Consortium Contract that existed prior to or was developed or discovered independently from the activities directly related to the Consortium Contract.

Section 6.04 Antitrust [Not applicable]

The Consultant 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 City Agencies under the Consortium Contract and applicable Task Order. For Task Orders awarded and funded solely by a Public Entity, the provisions of this Section 6.04 shall apply, making such necessary alterations to reflect the sole presence of a Public Entity as a party, unless the Laws applicable to such Public Entity provides otherwise or such Public Entity provides for different provisions in its Mini-RFP and related Task Order.

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Consultant shall not commence performing services under any applicable Task Order unless and until all insurance required by this Article 7 is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article 7 throughout the term of all applicable Task Orders. For Task Orders awarded and funded solely by a Public Entity, the provisions of this Article 7 shall apply, making such necessary alterations to reflect the sole presence of a Public Entity as a party, unless the Laws applicable to such Public Entity provides otherwise or such Public Entity provides for different provisions in its Mini-RFP and related Task Order. For Task Orders involving an combination of City Agencies and Public Entities, the requirement(s) below of adding the City as an additional insured shall also include adding the Public Entity/Entities as additional insured(s).

Section 7.02 Commercial General Liability Insurance

A. The Consultant shall maintain Commercial General Liability Insurance covering the Consultant 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 Consultant from claims for property damage and/or bodily injury, including death that may arise from any of the operations under the Consortium Contract and any applicable Task Order. 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. To the extent the Consultant is providing professional services pursuant to the Consortium Contract and any applicable Task Order, the following provisions shall apply. The Consultant shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such professional services to be provided under the Consortium Contract and any applicable Task Order 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 Consultant under the Consortium Contract and any applicable Task Order arising

out of the negligent performance of professional services or caused by an error, omission or negligent act of the Consultant or anyone employed by the Consultant.

B. All Subcontractors of the Consultant providing professional services under the Consortium Contract and any applicable Task Order shall also maintain Professional Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Consultant shall provide to the Practitioner Partner, at the time of award of an applicable Task Order or a subsequent request for Subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Practitioner Partner.

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 Consultant 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 Consultant shall maintain, and ensure that each Subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws on behalf of, or with regard to, all employees providing services under the Consortium Contract and any applicable Task Order.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Consultant 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 the Consortium Contract and any applicable Task Order, then the Consultant 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 the Consortium Contract and any applicable Task Order. 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 Consultant 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 7 unless approved in writing by the City Law Department. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article 7 shall be the greater of (i) the minimum limits set forth in this Article 7 or (ii) the limits provided to the Consultant 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 Consultant shall file one of the following within ten (10) Days of award of a Task Order issued to it under the Consortium Contract. 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 the Consortium Contract, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Consultant shall file a certificate of insurance with the Department within ten (10) Days of award of a Task Order to it under the Consortium Contract (a "Certificate of Insurance"). 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 Consultant'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 as Schedule 1 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 Practitioner Partner prior to the expiration date of coverage of policies required under this Article 7. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Consultant shall provide the Practitioner Partner and/or the City Law Department with a copy of any policy required under this Article 7 upon the demand for such policy by the Practitioner Partner and/or the City Law Department.

E. Acceptance by the Practitioner Partner of a Certificate of Insurance or a policy does not excuse the Consultant from maintaining policies consistent with all provisions of this Article 7 (and ensuring that Subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Consultant receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Consultant shall immediately forward a copy of such notice to DDC, Attn: Commissioner, 30-30 Thomson Avenue, Long Island City, New York 11101, the Practitioner Partner as provided in the applicable Task Order, 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 7, the Consultant shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Consultant may not have coverage under such policy (for example, where one of Consultant'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 Consultant 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 Consultant fails to comply with the requirements of this paragraph, the Consultant 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 Consultant’s failure to maintain any of the insurance required by this Article 7 shall constitute a material breach of the Consortium Contract and any applicable Task Order. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Consultant or its Subcontractors of any liability under this Consortium Contract, 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 the Consortium Contract, any applicable Task Order or Law.

D. The Consultant 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 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Consultant and/or its Subcontractors in the performance of the Consortium Contract and any applicable Task Order.

E. In the event the Consultant requires any Subcontractor to procure insurance with regard to any operations under the Consortium Contract and any applicable Task Order and requires such Subcontractor to name the Consultant as an additional insured under such insurance, the Consultant 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 Consultant 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 Consultant’s and/or its Subcontractors’ operations under the Consortium Contract and any applicable Task Order.

Section 8.02 Protection of City Property

The Consultant 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 the Consortium Contract and any applicable Task Order, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of the Consortium Contract, any applicable Task Order or of Law by the Consultant, its officers, employees, agents or Subcontractors.

Section 8.03 Indemnification

The Consultant shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims 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 that are alleged to have arisen out of or in connection with any operations of the Consultant 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 the Consortium Contract, any applicable Task Order or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Consultant, the City shall be partially indemnified by the Consultant to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

To the extent that the provisions of Section 6.02 B (the City Standard) applies, the Consultant 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 Consultant of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Consultant and/or its Subcontractors in the performance of the Consortium Contract and any applicable Task Order. The Consultant shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the scope of services/scope of work in any applicable Task Order. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Consultant, the City shall be partially indemnified by the Consultant 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 8 shall not be limited in any way by the Consultant's obligations to obtain and maintain insurance as provided in this Appendix A.

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 the Consortium Contract and any applicable Task Order, other than an action between the City and the Consultant, the Consultant shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Consultant.

B. The Consultant shall report to the DDC and Practitioner Partner in writing within five (5) Days of the initiation by or against the Consultant of any legal action or proceeding in connection with or relating to the Consortium Contract and/or any applicable Task Order.

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 Consultant may be required to indemnify the City pursuant to the Consortium Contract and any applicable Task Order, the City shall have the right to withhold further payments under the Consortium Contract and any applicable Task Order 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 the Consortium Contract and any applicable Task Order 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 Practitioner Partner may, at its option, withhold for purposes of set-off any monies due to the Consultant under the Consortium Contract and any applicable Task Order up to the amount of any disallowances or questioned costs resulting from any audits of the Consultant or to the amount of any overpayment to the Consultant with regard to the Consortium Contract and any applicable Task Order.

E. The rights and remedies of the City provided for in this Section 8 shall not be exclusive and are in addition to any other rights and remedies provided by Law or the Consortium Contract and any applicable Task Order.

Section 8.08 No Third Party Rights

The provisions of the Consortium Contract and any applicable Task Order shall not be deemed to create any right of action in favor of third parties against the Consultant or the City or their respective officers and employees.

Section 8.09 Public Entities

For Task Orders awarded and funded solely or in part by a Public Entity/Public Entities, the provisions of this Article 8 shall apply, unless the Public Entity/Public Entities makes/make such necessary alterations in the Mini RFP and resulting Task Order, pursuant to Sections 2.8 and 3.2 of the Consortium Contract.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to the Consortium Contract, as authorized in Section 5.4 of the Consortium Contract, any applicable Task Order, and or any reductions pursuant to Section 10.01 A (2) below must comply with the provisions of the PPB Rules, which include approval by the DDC ACCO or Authorized Representative and/or the City Agency ACCO or Authorized Representative, as appropriate. Any amendment or change to the Consortium Contract and/or any applicable Task Order shall not be valid unless made in writing and signed by authorized representatives of parties as required by Section 5.4 of the Agreement. All approved amendments shall be in writing and reflected in a change order as the term is defined in the PPB Rules, which shall become a part of the Consortium Contract and/or applicable Task Order. Consultants deviating from the requirements of the Consortium Contract and/or applicable Task Order without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

For Task Orders awarded and funded solely or in part by a Public Entity/Public Entities, the provisions of this Section 9.01 8 shall apply, unless the Public Entity/Public Entities makes/make such necessary alterations in the Mini RFP and resulting Task Order, pursuant to Sections 2.8 and 3.2 of the Consortium Contract.

Section 9.02 Changes through Fault of Consultant

In the event that any change is required in the data, documents, deliverables, or other services to be provided under the Consortium Contract and any applicable Task Order because of the Consultant's failure to perform on the Project in a professional and competent manner, no additional compensation shall be paid to the Consultant for making such change, and the Consultant is obligated to make such change without additional compensation.

ARTICLE 10 - REDUCTIONS IN FUNDING, TERMINATION AND DEFAULT

Section 10.01 Reductions in Federal, State, City and/or Third Party Funding

A. Each Task Order under the Consortium Contract may be funded in whole or in part by funds secured from the federal, State and/or City governments, as well as third parties. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments or the applicable third party, the Practitioner Partner may

1. terminate the related Task Order, in whole, if in its judgment such termination in the best interest of the City or the Public Entity, with written notice of the termination and the reason(s) such termination are in the best interest of the City or Public Entity, subject to the procedures set forth in Sections 10.02 and 10.05 below;
2. with the advice and consent of the applicable Academic Partner, reduce the funding, level of services and/or elements of the scope of work under the Task Order occasioned by such action of federal, State and/or City governments or third parties, including, but not limited to, the reduction or elimination of services or service components or elements of the scope of work; the reduction of hours related to, or elimination of, members of the Academic Team, with corresponding reductions in the budget of, and in the total amount payable under, the related Task Order.
 - a. any such reductions shall be effective as of the date set forth in a contract change document complying with the provisions of Article 9.01 above, which shall be not fewer than thirty (30) calendar Days from the date of the Practitioner Partner and the Academic Partner agree to such reductions ("reduction effective date"),

- b. before the reduction effective date, the Practitioner Partner shall pay for services provided in accordance with the applicable Task Order pursuant to such terms
- c. the Practitioner Partner shall pay for any obligation necessarily incurred by the Consultant on account of the applicable Task Order before the reduction effective date but falling due after the reduction effective date, in accordance with the terms of contract change document negotiated pursuant to subsection 2 above; in no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Academic Partner and its landlord
- d. the Consultant shall continue the performance of the applicable Task Order to the extent not reduced pursuant to the provisions of this subsection A 2.

Section 10.02 Termination in the Best Interest of the Practitioner or Academic Partner

A. Either Practitioner Partner or Academic Partner shall have the right to terminate the Consortium Contract or any Task Order, in whole, if in the judgment of its Authorized Representative such termination is in the best interest of the Practitioner Partner or the Academic Partner, with written notice to the other party of such termination and listing the reason(s) such termination are in its best interest, subject to the procedures set forth in Section 10.05 below.

B. If either the City Practitioner Partner or the Academic Partner terminates the Consortium Contract or any Task Order pursuant to Section 10.01 A, the following provisions apply. The Practitioner Partner shall not incur or pay any further obligation pursuant to the Consortium Contract and/or any applicable Task Order beyond the effective termination date established pursuant to Section 10.05. The Practitioner Partner shall pay for services provided in accordance with the Consortium Contract and any applicable Task Order prior to such termination date pursuant to the provisions of Section 10.05. The Practitioner Partner shall, in addition, pay any obligation necessarily incurred by the Consultant on account of the Consortium Contract and any applicable Task Order before receipt of a notice of termination pursuant to Section 10.05 below and falling due after the effective termination date, in accordance with the terms of the Consortium Contract and such applicable Task Order. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Academic Partner and its landlord.

As further provided in Section 10.05, the Academic Partner shall make available to the Practitioner Partner such Project deliverables required by the Task Order, in whatever form they are as of the effective termination date, along with other information and materials, pursuant to and subject to the applicable provisions of Sections 6.01 and 6.02, as set forth in the applicable Task Order. The City Agency Commissioner and/or Public Entity Executive, pursuant to and subject to the applicable provisions of Sections 6.01 and 6.02, as set forth in the applicable Task Order, may, with notice to the DDC Commissioner and DDC ACCO, have the remaining components of the Project and services related to such remaining Project components completed by such means and in such manner as he or she may deem advisable in accordance with applicable PPB Rules, including but not limited to a subsequent Mini RFP solicitation under the Consortium Contract.

Section 10.03 Consultant Default

A. A Practitioner Partner shall have the right to declare the Consultant in default of an applicable Task Order and DDC shall have the right to declare the Consultant in default of the Consortium Contract and any applicable Task Order:

1. Upon a breach by the Consultant of a material term or condition of the Consortium Contract, including performance of services under an applicable Task Order, in a professional and competent manner; solely for convenience of reference and without limiting the nature of this provision, this Appendix A makes specific references to breach in Sections 2.01 B, 3.01, 4.04, 4.05, 4.06, 4.07, 5.07, 7.09, 12.03 and 13.05.

2. Upon insolvency or the commencement of any proceeding by or against the Consultant, either voluntarily or involuntarily, under the federal bankruptcy code or relating to the insolvency, receivership, liquidation, or composition of the Consultant for the benefit of creditors;

3. If the Consultant refuses or fails to proceed with the services under an applicable

Task Order pursuant to its terms;

4. If the Consultant 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 Consortium Contract or an applicable Task Order 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 Consultant 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 Consultant 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. A Practitioner Partner and/or DDC shall exercise its right to declare the Consultant in default under the Consortium Contract and/or any applicable Task Order by sending the Consultant a written notice of the conditions of default, signed by the applicable City Agency Commissioner and/or Public Entity Executive and/or DDC Commissioner, setting forth the ground or grounds upon which such default is declared (the "Notice to Cure"), with a copy to the DDC Commissioner and DDC ACCO, if necessary. The Consultant shall have ten (10) calendar 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 "Cure Period"). The Practitioner Partner and/or DDC Commissioner may temporarily suspend services under the Consortium Contract and applicable Task Order pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the Cure Period, the applicable City Agency Commissioner and/or Public Entity Executive may declare the Consultant in default pursuant to this Section 10.03. Before the applicable City Agency Commissioner and/or Public Entity Executive and/or DDC Commissioner may exercise his or her right to declare the Consultant in default, the applicable City Agency Commissioner and/or Public Entity Executive and/or DDC Commissioner shall give the Consultant an opportunity to be heard, at such Commissioner's or Executive's discretion, in writing or in person, upon not fewer than five (5) Days' notice. Such opportunity to be heard need 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 pursuant to the terms above, the DDC Commissioner may terminate the Consortium Contract with respect to the Consultant and/or the applicable City Agency Commissioner and/or Public Entity Executive may terminate the applicable Task Order, in whole, upon finding the Consultant in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.

E. After declaring the Consultant in default, the City Agency Commissioner and/or Public Entity Executive, pursuant to and subject to the applicable provisions of Sections 6.01 and 6.02, as set forth in the applicable Task Order, may, with notice to the DDC Commissioner and DDC ACCO, have the remaining

components of the Project and services related to such remaining Project components completed by such means and in such manner as he or she may deem advisable in accordance with applicable PPB Rules, including but not limited to a subsequent Mini RFP solicitation under the Consortium Contract.

Section 10.04 Force Majeure

A. For purposes of the Consortium Contract and any applicable Task Order, a force majeure event is an act or event beyond the control and without any fault or negligence of the Consultant (“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 Consultant.

B. In the event the Consultant cannot comply with the terms of the Agreement or any Task Order (including any failure by the Consultant to make progress in the performance of the services for the Research Project) because of a Force Majeure Event, then the Consultant may ask the City Agency Commissioner and/or Public Entity Executive to excuse the nonperformance and/or terminate the applicable Task Order. If the City Agency Commissioner and/or Public Entity Executive, in his or her reasonable discretion, determines that the Consultant cannot comply with the terms of the Consortium Contract and applicable Task Order because of a Force Majeure Event, then the City Agency Commissioner and/or Public Entity Executive shall excuse the nonperformance and may terminate the applicable Task Order. Such a termination shall be deemed to be without cause.

C. If the City Agency Commissioner and/or Public Entity Executive terminates the applicable Task Order pursuant to this Section 10.04, the following provisions apply. The Practitioner Partner shall not incur or pay any further obligation pursuant to the applicable Task Order beyond its termination date. The Practitioner Partner shall pay for services provided in accordance with the applicable Task Order before its termination date. The Practitioner Partner shall pay any obligation necessarily incurred by the Consultant on account of the applicable Task Order before receipt of notice of termination and falling due after the termination date in accordance with the terms of the applicable Task Order. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Consultant and its landlord.

Section 10.05 Procedures for Termination

A. Any written notice of termination required by this Article 10 shall specify the applicable provision(s) under which the Consortium Contract and/or applicable Task Order is to be terminated and the effective date of the termination, except as otherwise provided in the Consortium Contract, and shall specify an effective date of termination.

For termination in the best interest or without cause, the effective date of the termination shall not be fewer than ten (10) calendar Days from the date the notice is personally delivered, or fifteen (15) calendar 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 or such earlier date as the Commissioner may determine.

B. Upon termination or expiration of an applicable Task Order, the Consultant shall comply with the close-out procedures of the Practitioner Partner, including but not limited to:

1. Accounting for and refunding to the Practitioner Partner, within forty-five (45) calendar Days, any unexpended funds which have been advanced to the Consultant pursuant to the applicable Task Order;

2. Furnishing within forty-five (45) calendar Days an inventory to the Practitioner Partner of all equipment, appurtenances and property purchased through or provided under the applicable Task Order and its final disposition as provided in the applicable Task Order;

3. Pursuant to and subject to the applicable provisions of Sections 6.01 and 6.02, as set forth in the applicable Task Order, turning over to the Practitioner all books, records, documents and materials specifically relating to the applicable Task Order that the Practitioner Partner has requested be turned over in addition to the deliverables in subparagraphs 4 and 5 below;

4. Submitting to the Practitioner Partner, within ninety (90) calendar Days, final deliverables including (a) a statement and report, prepared by a certified or licensed public accountant or official financial officer of the Academic Practitioner, relating to the applicable Task Order and (b) a report describing the methodological approach followed by the Academic Partner until the effective termination date and, to the extent feasible, a description of results, including component elements of the Research Project that had been substantially completed, so that the Practitioner Partner will be able to use the results of the Research Project as of the effective termination date in order to transition the remainder of the Project to another Consultant or within the Practitioner Partner entity pursuant to subparagraph 5 below; and

5. Consistent with the applicable provisions of Sections 6.01 and 6.02, as set forth in the applicable Task Order and 10.03 E of this Appendix A, providing reasonable assistance to the Practitioner Partner in the transition, if any, to another Consultant or with the Practitioner Partner entity.

Section 10.06 Miscellaneous Provisions

A. The City Agency Commissioner and/or Public Entity Executive, in addition to any other powers set forth in the Consortium Contract and/or applicable Task Order or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under the applicable Task Order whenever in his or her judgment such suspension is required in the best interest of the City Agency and/or Public Entity, following the procedures with respect to notice set forth in Section 10.05 A. If the City Agency Commissioner and/or Public Entity Executive suspends any applicable Task Order pursuant to this Section 10.06, the City Agency and/or Public Entity shall not incur or pay any further obligation pursuant to the applicable Task Order beyond the suspension date until such suspension is lifted. The City Agency and/or Public Entity shall pay for services provided in accordance with an applicable Task Order prior to the suspension date. In addition, any obligation necessarily incurred by the Consultant on account of an applicable Task Order prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City Agency and/or Public Entity in accordance with the terms of the applicable Task Order.

B. Notwithstanding any other provisions of the Consortium Contract or any applicable Task Order, the Consultant shall not be relieved of liability to the Practitioner Partner for damages sustained by the Practitioner Partner by virtue of the Consultant's breach of the Consortium Contract or applicable Task Order, and the Practitioner Partner may withhold payments to the Consultant for the purpose of set-off in the amount of damages due to the Practitioner Partner from the Consultant.

C. The rights and remedies of the Practitioner Partner provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under the Consortium Contract and any applicable Task Order.

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 the Consortium Contract and any applicable Task Order. The Consultant shall submit a proper invoice to receive payment pursuant to the provisions of the applicable Task Order. The provisions generally require the payment to the Consultant of interest on payments made after the required payment date, as set forth in the PPB Rules. 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.

B. For Task Orders awarded and funded solely or in part by a Public Entity/Public Entities, the provisions of this Section 11.01 shall apply, unless the Public Entity/Public Entities makes/make such necessary alterations in the Mini RFP and resulting Task Order, pursuant to Sections 2.8 and 3.2 of the Consortium Contract.

Section 11.02 Electronic Funds Transfer

A. For contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above, in accordance with Administrative Code § 6-107.1, the Consultant agrees to accept payments under the Consortium Contract

and any applicable Task Order 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 any applicable Task Order, the Consultant shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the DDC or City Agency ACCO or at <http://www.nyc.gov/dof> in order to provide the Commissioner of the Department of Finance with information necessary for the Consultant 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 Consultant shall constitute full satisfaction by the City for the amount of the payment under an applicable Task Order. The account information supplied by the Consultant to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The City Agency Commissioner 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 City Agency Commissioner 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. For Task Orders awarded and funded solely by a Public Entity, the provisions of this Section 11.02 shall apply unless the Public Entity/Public Entities makes/make such necessary alterations in the Mini RFP and resulting Task Order, pursuant to Sections 2.8 and 3.2 of the Consortium Contract.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

The Consortium Contract and any applicable Task Order shall be deemed to be executed in the City and State, regardless of the domicile of the Consultant, and shall be governed by and construed in accordance with the Laws of the State (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 Practitioner Partner arising under or related to the 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 Consultant initiates any action contrary to the provisions of this Section 12.02, the Consultant shall be responsible for and shall promptly reimburse the Practitioner Partner for any attorneys' fees incurred by the Practitioner in removing the action to a proper court consistent with this Section 12.02.

For Task Orders awarded and funded solely or in part by a Public Entity/Public Entities, the provisions of this Section 12.02 shall apply, unless the Public Entity/Public Entities makes/make such necessary alterations in the Mini RFP and resulting Task Order, pursuant to Section 3.2 of the Consortium Contract.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between DDC and/or a City Agency and the Consultant that arise under, or by virtue of, the Consortium Contract and/or an applicable Task Order shall be finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as

interpreted by the State courts) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the applicable Task Order, the interpretation of the Construction Contract documents, the amount to be paid for extra work or disputed work performed in connection with the Construction Contract, the conformity of the Consultant's work to the Construction Contract, and the acceptability and quality of the Consultant's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Commissioner makes a determination with which the Consultant disagrees. For construction, this Section 12.03 shall not apply to termination of the Consortium Contract or applicable Task Order. [Not applicable]

B. All determinations required by this Section 12.03 shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the terms of the Consortium Contract and applicable Task Order shall remain in full force and effect and, unless otherwise directed by the DDC ACCO and the City Agency ACCO, the Consultant shall continue to perform work in accordance with the Consultant Contract and applicable Task Order pursuant to its terms. Failure of the Consultant to continue the work pursuant to the provisions of this Section 12.03 shall constitute a waiver by the Consultant of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

D. Presentation of Dispute.

1. Notice of Dispute and Agency Response. The Consultant shall present its dispute in writing ("Notice of Dispute"), with respect to the Consortium Contract only, to the DDC Commissioner and ACCO, and with respect to any applicable Task Order, to the City Agency Commissioner and ACCO, with a copy to the DDC Commissioner and ACCO, within the time specified herein, or, if no time is specified, within thirty (30) calendar 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 Consortium Contract and any applicable Task Order. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Consultant relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Consultant in the dispute was arrived at. Within thirty (30) calendar Days after receipt of the complete Notice of Dispute, the respective ACCO shall submit to the respective Commissioner all materials he or she deems pertinent to the dispute. Following initial submissions to the respective Commissioner, 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 State courts. Any question of relevancy shall be determined by the respective Commissioner and such decision shall be final. Willful failure of the Consultant to produce any requested material whose relevancy the Consultant has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Consultant of its claim.

2. Commissioner Inquiry. The respective Commissioner shall examine the material and may, in his or her discretion, convene an informal conference with the Consultant and the respective ACCO to resolve the issue by mutual consent prior to reaching a determination. The respective Commissioner 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 respective Commissioner's ability to render, and the effect of, a decision under this Section 12.03 shall not be impaired by any negotiations in connection with the dispute presented, regardless of whether the respective Commissioner participated therein. The respective Commissioner may and, at the request of any party to the dispute, shall compel the participation of any other Consultant with a contract related to the work of the disputed Consortium Contract and/or applicable Task Order and that Consultant shall be bound by the decision of such Commissioner. Any Consultant thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Consultant initiating the dispute.

3. Commissioner Determination. Within thirty (30) calendar Days after the receipt of all

materials and information, or such longer time as may be agreed to by the parties, the respective Commissioner shall make his or her determination and shall deliver or send a copy of such determination to the Consultant and respective ACCO, together with a statement concerning how the decision may be appealed.

4. Finality of Commissioner Decision. The respective Commissioner's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board, established pursuant to Section 4-09 of the PPB Rules, consisting of the chief administrative judge of the Office of Administrative Trials and Hearings ("OATH"), or his or her designated OATH administrative law judge, who shall act a chairperson, the CCPO or his or her designee, and a person with appropriate expertise who is not a City employee, all pursuant to the provisions of such Section 4-09 ("CDRB") and the provisions of this Section 12.03. Neither DDC nor a City Agency may take a petition to the CDRB. However, if the Consultant should take a petition to the CDRB, the DDC or a City Agency may seek, and the CDRB may render, a determination less favorable to the Consultant and more favorable to DDC or a City Agency than the decision of the respective Commissioner.

E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Consultant to the CDRB, the Consultant 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) calendar Days of receipt of a decision by the respective Commissioner, the Consultant shall submit to the Comptroller and to the respective Commissioner a notice of claim regarding its dispute with DDC or the City Agency complying with the following provisions (the "Notice of Claim"). 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 Consultant contends the dispute was wrongly decided by the respective Commissioner; (ii) a copy of the decision of the respective Commissioner; and (iii) a copy of all materials submitted by the Consultant to the respective Commissioner, including the Notice of Dispute. The Consultant may not present to the Comptroller any material not presented to the respective Commissioner, except at the request of the Comptroller.

2. DDC or City Agency Staff Response. Within thirty (30) calendar Days of receipt of the Notice of Claim, DDC or the City Agency staff shall make available to the Comptroller a copy of all material submitted by DDC or the City Agency staff to the respective Commissioner in connection with the dispute. DDC or City Agency staff may not present to the Comptroller any material not presented to the respective Commissioner, 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 Administrative 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 Consultant. Willful failure of the Consultant to produce within fifteen (15) calendar Days any material requested by the Comptroller shall constitute a waiver by the Consultant of its claim. The Comptroller may also schedule an informal conference to be attended by the Consultant, DDC or City 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) calendar 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 Consultant and the Comptroller, to a maximum of ninety (90) calendar Days from the Comptroller's receipt of all the materials. The Consultant may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph 4 has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Consortium Contract and/or applicable Task Order.

F. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Consultant, within thirty (30) calendar Days thereafter, may petition the CDRB to review the respective Commissioner determination.

1. Form and Content of Petition by the Consultant. The Consultant 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 Consultant contends that the dispute

was wrongly decided by the respective Commissioner; (ii) a copy of the decision of the respective Commissioner; (iii) copies of all materials submitted by the Consultant to the respective Commissioner; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and materials submitted by the Consultant to, the Comptroller's Office. The Consultant shall concurrently submit four (4) complete sets of the petition: one (1) to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three (3) to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Consultant shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the respective Commissioner and the Comptroller.

2. DDC or City Agency Staff Response. Within thirty (30) calendar Days of receipt of the petition by the Corporation Counsel, DDC or the City Agency staff shall respond to the statement of the Consultant and make available to the CDRB all material it submitted to the respective Commissioner and Comptroller. Three (3) complete copies of the DDC or City Agency staff response shall be submitted to the CDRB at OATH's offices and one (1) to the Consultant. Extensions of time for submittal of the DDC or City Agency staff 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) calendar Days.

3. Further Proceedings. The CDRB shall permit the Consultant to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit DDC or the City Agency to present its case in response to the Consultant by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of DDC's or the City Agency's case. Neither the Consultant nor the DDC or the City 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) calendar 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) calendar Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the Consortium Contract and/or applicable Task Order and Law. 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 Consultant, the respective ACCO, the Corporation Counsel, the Comptroller and the CCPO. A decision in favor of the Consultant shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) calendar 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 (4) months of the date of the CDRB's decision, in a court of competent jurisdiction of the State, 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.

G. Any termination, cancellation, or alleged breach of the Consortium Contract and any applicable Task Order before or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the respective Commissioner or CDRB to make a binding and final decision pursuant to this Section 12.03.

H. For Task Orders awarded and funded solely or in part by a Public Entity/Public Entities, the provisions of this Section 12.03 shall apply, unless the Public Entity/Public Entities makes/make such necessary alterations in the Mini RFP and resulting Task Order, pursuant to Sections 2.8 and 3.2 of the Consortium Contract.

Section 12.04 Claims and Actions

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

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 a Task Order, or within six (6) months of the termination or expiration of a Task Order, or within six (6) months after the accrual of the cause of action, whichever first occurs.

C. For Task Orders awarded and funded solely or in part by a Public Entity/Public Entities, the provisions of this Section 12.04 shall apply, unless the Public Entity/Public Entities makes/make such necessary alterations in the Mini RFP and resulting Task Order, pursuant to Sections 2.8 and 3.2 of the Consortium Contract.

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Consultant against any officer, agent, or employee of the Practitioner Partner in their personal capacity for, or on account of, anything done or omitted in connection with the Consortium Contract and/or any Task Order.

Section 12.06 General Release

The acceptance by the Consultant or its assignees of the final payment under any Task Order, 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 applicable Practitioner Partner from any and all claims of and liability to the Consultant, of which the Consultant was aware or should reasonably have been aware, arising out of the performance of such Task Order based on actions of the Practitioner 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 Practitioner Partner or the Consultant of a breach of any provision of the Consortium Contract and any Task Order 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 Consortium Contract or Task Order 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

The Consortium Contract and all Task Orders issued thereunder are subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of the Consortium Contract or any Task Order, 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 the Consortium Contract or any Task Order is hereby deemed to be a part of the Consortium Contract and each Task Order, whether actually inserted or not.

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

The Consultant shall perform all services under the Consortium Contract and any Task Order 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. The Consortium Contract and any Task Order are 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 Consultant shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to the Consortium Contract and applicable Task Order. If directed to do so by the Practitioner Partner to ensure the Consultant’s compliance with the ADA during the term of the Consortium Contract and/or applicable Task Order, the Consultant 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 in the Consortium Contract and applicable Task Order 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, the Consultant 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 the Consortium Contract and applicable Task Order, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Consultant 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 Consultant’s failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of the Consortium Contract and applicable Task Order and result in the City terminating the Consortium Contract and/or applicable Task Order with respect to the Consultant.

Section 13.06 Whistleblower Protection Expansion Act

A. In accordance with Sections 6-132 and 12-113 of the Administrative Code, respectively,

(1) The Consultant shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to the Consortium Contract or any Task Order thereunder to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the CCPO, an ACCO or City Agency Commissioner.

(2) If any of the Consultant’s officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) above, he or she shall be entitled to bring a cause of action against the Consultant to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two (2) times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney’s fees.

(3) The Consultant shall post, in a prominent and accessible place where employees performing work under Task Order would have access, a notice provided by the City containing

information about:

(a) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Consortium Contract or any Task Order; and

(b) the rights and remedies afforded to its employees under the Administrative Code Sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Consortium Contract or any Task Order.

(4) For the purposes of this Section 13.06, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

(5) This Section 13.06 is applicable to all of the Consultant’s subcontractors having subcontracts with a value in excess of \$100,000; accordingly, the Consultant shall include this Section 13.06 provisions in all subcontracts with a value a value in excess of \$100,000.

B. The provisions of paragraph A above are not applicable to any Task Order under the Consortium Contract valued at \$100,000 or less, and the provisions of subparagraphs (1), (2), (4), and (5) of paragraph A above are not applicable to any Task Order under the Consortium Contract if it was solicited pursuant to a finding of an emergency.

C. For Task Orders awarded and funded solely or in part by a Public Entity/Public Entities, the provisions of this Section 12.04 shall apply, unless the Public Entity/Public Entities makes/make such necessary alterations in the Mini RFP and resulting Task Order, pursuant to Sections 2.8 and 3.2 of the Consortium Contract.

Section 13.07 Participation in an International Boycott

A. The Consultant agrees that neither the Consultant 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 Consultant 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 the Consortium Contract and/or any applicable Task Order.

C. The Consultant shall comply in all respects, with the provisions of Administrative 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 Administrative Code § 6-115.1, the Consultant stipulates that the Consultant and any individual or legal entity in which the Consultant 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 Consultant 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 Consultant agrees that the covenants and representations in Paragraph A above are material conditions to the Consortium Contract and any applicable Task Order.

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

Section 13.09 Not Used

Section 13.10 Not Used

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. For the Consortium Contract and any applicable Task Order to be binding and effective each must be registered pursuant to Charter § 328.

B. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for the Consortium Contract and any applicable Task Order to be effective and for the expenditure of City funds.

Section 14.02 Merger

The written Consortium Contract contains and subsequent Task Orders will contain all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of the Consortium Contract or applicable Task Order shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in the Consortium Contract or applicable Task Order, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A and Section 6.4 of the Consortium Contract or Section 10.01 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 the Consortium Contract and any applicable Task Order.

Section 14.04 Notice

A. DDC, the Practitioner Partner, and the Consultant designate the business addresses set forth in Section 6.8 of the Consortium Contract and the applicable Task Order 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 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

Section 14.05 Monies Withheld

When the Practitioner Partner shall have reasonable grounds for believing that: (1) the Consultant will be unable to perform the Consortium Contract and applicable Task Order fully and satisfactorily within the time fixed for performance; or (2) a meritorious claim exists or will exist against the Consultant or the Practitioner Partner arising out of the negligence of the Consultant or the Consultant's breach of any provision of the Consortium Contract and/or any applicable Task Order; then the Practitioner Partner or the Comptroller, each with notice to each other and with DDC, as administrator of the Consortium Contract, may withhold payment of any amount otherwise due and payable to the Consultant under the Consortium Contract and such Task Order. Any amount so withheld may be retained by the Practitioner Partner for such period as

it may deem advisable to protect the Practitioner Partner against any loss and may, after written notice to the Consultant, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the Practitioner Partner, and no person shall have any right against the Practitioner Partner or claim against the City or Public Entity by reason of the Practitioner Partner's failure or refusal to withhold monies. No interest shall be payable by the Practitioner Partner on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the Practitioner Partner.

CERTIFICATION BY BROKER

[Pursuant to Article 7 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 [insert name of Practitioner Partner] 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