



**Information
Technology &
Telecommunications**

**Michael R. Bloomberg
Mayor**

**REQUEST FOR PROPOSALS (RFP)
for Systems Integration Services for Technology Projects
Citywide**

PIN: 85813P0006

**Rahul Merchant
Commissioner and Chief Information and Innovation Officer**

**Barbara Lederman
Agency Chief Contracting Officer**

**IT IS ILLEGAL TO ENGAGE IN PRACTICES THAT COULD UNDERMINE OR PREVENT THE
FAIR AWARD OF A CONTRACT RELATED TO THIS SOLICITATION.**

**THE COMPTROLLER OF THE CITY OF NEW YORK IS CHARGED WITH THE AUDIT OF ALL NEW YORK CITY
CONTRACTS. ANY CONTRACTOR WHO BELIEVES THAT THERE HAS BEEN UNFAIRNESS, FAVORITISM OR
IMPROPRIETY IN THE PROPOSAL PROCESS SHOULD INFORM THE COMPTROLLER OF THE CITY OF NEW YORK,
OFFICE OF CONTRACT ADMINISTRATION, ONE CENTRE STREET, ROOM 835, NEW YORK, NEW YORK 10007;
TELEPHONE NUMBER 212-669-2797**

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AUTHORIZED AGENCY CONTACT PERSON

The Authorized Agency Contact Person for all matters concerning this Request for Proposals is:

Name: Margaret Budzinska
Title: IT Contract Specialist
Mailing Address: 255 Greenwich Street, 9th Floor
New York, NY 10007
Telephone #: (212) 788-6510
Fax #: (347) 788-4080
E-Mail Address: acco@doitt.nyc.gov

All questions to, and requests for information from, the City concerning this Request for Proposals by a Prospective Proposer or a Proposer, or a representative or agent of a Prospective Proposer or Proposer, should be directed only to the Authorized Agency Contact Person. Include “ **E-PIN: 85813P0006**” in all correspondence

Notice of Intent to Attend Pre-Proposal Conference

Vendors interested in attending the Pre-Proposal conference should express interest by e-mailing the attached “Intent to Attend Non-Mandatory Pre-Proposal Conference” form by **May 6, 2013 at 2:00PM (EST)** to Margaret Budzinska at acco@doitt.nyc.gov or by fax (347) 788-4080.

Pre-Proposal Conference

- **Date:** 10:30 AM
- **Time:** May 15, 2013
- **Location:** Emigrant Bank Building
49-51 Chambers Street, Lobby
New York, NY 10007

Individuals attending must bring two sets of picture identification, including where possible corporate identification. Vendors should arrive 1 hour prior to the meeting to allocate sufficient time for security checkpoint.

Questions from Prospective Proposers

1. Questions concerning this solicitation will be accepted from Prospective Proposers. All questions should be in writing and sent via e-mail or fax to the Authorized Agency Contact Person identified above.

2. No questions from Prospective Proposers will be accepted after **May 20, 2013, 2:00PM (EST)**. All questions and answers will be shared in writing with all Prospective Proposers that are on record with DoITT as having received this solicitation. Such questions and answers will be distributed in the form of an addendum to this Request for Proposals within two weeks, approximately, after the last date to submit written questions.

Proposal Due Date, Time and Location

- **Date:** **June 20, 2013**
- **Time:** **2:00PM (EST)**
- **Location:** Proposals shall be submitted to:

255 Greenwich Street, 9th Floor,
New York, NY 10007

Attn: Margaret Budzinska

Proposals in the format required by this Request for Proposals must be received by DoITT at the above Location, by the Date and Time prescribed above. E-mailed or faxed proposals will not be accepted by DoITT.

The City bears no responsibility for the cost of preparing a response to this solicitation.

Proposals received at this Location after the Proposal Due Date and Time are late and shall not be accepted by DoITT, except as provided under New York City's Procurement Policy Board Rules.

DoITT will consider requests made to the Authorized Agency Contact Person to extend the Proposal Due Date and Time specified above. However, unless DoITT issues a written addendum to this Request for Proposals which extends the Proposal Due Date and Time for all Proposers, the Proposal Due Date and Time specified above shall remain in effect.

1.0 Summary of Request for Proposals

1.1. Purpose of Request for Proposals

The City of New York (City) acting by and through its Department of Information Technology and Telecommunications (DoITT or Department) is seeking appropriately qualified vendors to provide systems integration services for City agencies through the issuance of task orders on an as-needed project basis.

DoITT, on behalf of the City, is seeking Contractors to provide Systems Integration Services, which include but are not limited to, analysis, design, architecture, development, provision, implementation, testing, training and maintenance of applications, systems, networks and information technology infrastructures. Using this solicitation, DoITT intends to enter into contracts with multiple Contractors who, once under contract with the City, will compete for assignments for City agency projects.

Following are the two (2) Classes of service included in this RFP:

Class 1: Projects up to \$5,000,000

Class 2: Projects above \$5,000,000 up to \$25,000,000

Each Class is being treated as a separate solicitation. Proposers may respond to either of the Classes, and may respond to both Classes. Proposers may not be awarded a contract in more than one Class. In the event that a proposer is eligible for award of both Classes of Service, DoITT reserves the right to determine, based on the proposer's demonstrated capability and the best interest of the City, which Class of Service the proposer will be awarded a contract.

The purpose of this solicitation is to establish a Contractor pool of up to eight (8) primary contracts and up to two (2) secondary contracts for each Class. Secondary Contractors will be offered the opportunity to be added to the Contractor pool when a Primary Contractor is terminated due to, failure to respond to a sufficient number of services requires, performance by the Primary Contractor that in DoITT's judgment is deemed deficient, defective or unacceptable, or for any other reason for termination allowed in the Contract.

The contracts for Classes 1 and 2 may be utilized by all City agencies on an as-needed project basis, through the issuance of Task Orders. Each project will be governed by a Task Order, signed by the Requesting Agency, DoITT and the Contractor, which will describe the scope of services, deliverables, approved resources and costs of the particular project. The Task Order will be submitted to the Comptroller by the Requesting Agency. The Contractor may be required to manage more than one Task Order at any given time. Task Orders will be issued pursuant to the procedures set forth in Section 2.3, and with guidelines developed by DoITT.

1.2. Invitation to Submit Proposals

On behalf of the City, DoITT is issuing this Request for Proposals ("RFP") to select appropriately qualified vendors to provide Enterprise-wide System Integration Services. The City reserves the right, at its sole discretion, to award fewer than eight contracts for either Class; or fewer than two for the Secondary Contracts; to award contracts only in certain Classes; to determine the appropriate number of Primary and Secondary contracts and to award no contracts.

1.3. Anticipated Contract Term

It is anticipated that the term of the contracts awarded from this Request for Proposals will be for a period of three (3) years from the Notice to Proceed. The City has the option to renew the Contract for one (1) additional three-year period at the City's sole discretion, and may be terminated sooner at the City's sole discretion. The City reserves the right, prior to contract award, to determine the length of the initial contract term and each option to renew, if any.

Continuation: In the event that (1) services are required with respect to a Project, (2) a Task Order for the Project is issued during the term of the Contract, including the last day thereof, and (3) the time frame for completion of the Project extends beyond the term of the Contract, the Contract shall remain in effect for purposes of such Task Order through the completion of the Project.

If the Contract expires when any systems or parts thereof are still covered by warranty, the Contractor's warranty obligations shall survive the Contract expiration as if the Contract were still in full force and effect.

1.4. Nature of Anticipated Contract

The City will enter into contracts for Classes 1 and 2, respectively that are substantially the same as Appendix A and Appendix A-1 (General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services and Supplemental Provisions Governing Information Technology Contracts, respectively). Each Task Order shall be deemed to incorporate and be subject to the terms and provisions of the resulting contract. Task Orders will not vary any of the terms and conditions of the Contract pursuant to which they are issued. Price Proposals of the Tier 1 that are agreed upon will be appended to the contracts.

Contractors must agree in writing (in their Contracts with the City) to comply with all Citywide Information Security Policies and Standards as set forth in Attachment SCY and as published by DoITT at <http://www.nyc.gov/infosec> and <http://cityshare.nycnet/infosec> at no additional cost. This includes the Contractor cooperating with and ensuring the successful completion of any security accreditation tasks and processes relevant to the services and /or deliverables it provides. Contractor must bear the cost of compliance with all such procedures.

1.5. Examples of Utilization of System Integration Contracts

Following is a brief summary of the utilization of the contracts that resulted from the previous Systems Integration Service multiple contract pool, in effect from 2009 to the present. To date, task orders under this contract total approximately \$67 million in value. Examples of projects awarded for assignment under the existing Systems Integrator contract are:

DAC FIC – The office of the Criminal Justice Coordinator (CJC) created a Financial Intelligence Center (FIC) solution to allow users from the Financial Crimes Task Force (FCTF) to access city data and analysis tools to identify and research fraud and financial crime in New York City.

Jail Management System – The Department of Correction's (DOC) legacy Inmate Information System (IIS) has been in place for approximately 25 years and has been enhanced over the decades to keep up with changes in DOC's policies, regulations from oversight agencies, and technical environment. The current

version has become increasingly difficult to maintain and risky to enhance. As a result, a multitude of other ancillary systems have been developed by DOC to fill gaps in processes and functionality within IIS. In order to replace and consolidate these applications and to gain additional efficiencies in business operations, DOC has elected to replace IIS with an integrated Jail Management System (JMS). This Task Order will provide analysis, design, development, testing, and implementation services for JMS, and install a version of the Syscon Jail Management System owned by Syscon Justice Systems, Inc.

ACRIS REWRITE - The New York City Department of Finance's objectives are to transform the current Automated City Register System (ACRIS) to one that is written in a single (or mostly single) supportable software language without affecting the current City Register's business operations; to recommend upgraded hardware and software components to take advantage of the latest technology; and to implement numerous system and process enhancements to better serve the City Register in the 21st Century.

CITYWIDE PAYMENT SYSTEMS – The Department of Finance plans to design, build and implement the Citywide Payments & Receivables Repository (CPRR) to facilitate the communication of data between City agencies and payment service providers that receive payments on behalf of the City.

LIC IT Relocation – Will deliver, integrate and validate the LAN (Local Area Network), WLAN (Wireless Local Area Network), security, and IP telephony solutions for the NYC Department of Health and Mental Hygiene (DOHMH) Long Island City - 2 Gotham Center IT (Information Technology) Infrastructure Project. The network will support voice, data, text, wired and wireless devices, and video conferencing, and will connect to the NYC-DoITT IT infrastructure.

CITIServ - This Task Order will set the IT infrastructure strategy for the CITIServ data center program. The Service Offerings Workstream will provide assistance to DoITT to build out service request processes by designing the workflow and automation support required for handling agency requests for new services or changes to existing CITIServ services, information or assistance. The Technology Architecture Workstream will develop an efficient and optimized target Availability Services model platform based on established DoITT continuity and service tiering policies. The Service Delivery and Support Workstream will refine how services are delivered and supported in the new CITIServ target model. The Financial Model will provide access to cost data to respond to inquiries, reporting, what-if analysis and audits through financial cost modeling. The Transition Model will refine the assessment templates from the lessons learned from Phase 1 of the project and develop a process that will be used for the Phase 2 and subsequent Agency migrations and will execute the migration of IT services into the CITIServ target model or into the "penalty box" until the remediation plan for these services and applications is completed.

Land Marks Pillars – The New York City Landmarks Preservation Commission's (LPC) goals for Project PILLAR are: to integrate the existing, disparate LPC legacy databases into a single, unified, user friendly PILLAR system; to create a user-friendly Intranet for internal staff use; to utilize GIS functionality to synthesize information and to query and display landmarks data; to automate business processes with workflows; to create an Enterprise Content Management (ECM) System that is fully integrated with the consolidated database; to incorporate existing digital content into the ECM System; to scan and incorporate select agency documents into the ECM system; to build capacity in the ECM System to house future content from the digitization of backfile documents in future scanning projects; and to add select data to the public LPC website, including a user-friendly interactive map for query and display of landmarks information.

Electronic Summoning (ESAP) -The first phase of the Taxi and Limousine Commission’s ESAP project will implement electronic summons issuance. Phase 1 requirements include: business analysis and design, provision of software, development/customization of software as needed, integration services, data conversion, provision of hardware, training, and connectivity implementation services. ESAP will first deploy 10 mobile handheld devices, with an eventual Citywide deployment of up to 140 additional mobile handheld devices for use in the field. The handheld application will enable TLC field enforcement staff to remotely access licensee information contained in TLC’s existing TAMIS system, the New York State Department of Motor Vehicles (DMV) system, and the New York State Police Information Network (NYSPiN) database.

1.6. Tier 1 and Tier 2 Evaluation and Award Processes

“**Tier 1**” means the Proposal-evaluation and contract award process under this Request for Proposals.

“**Tier 2**” means the Project Proposal evaluation and Task Order award process, after a contract resulting from Tier 1 of this Request for Proposals has been awarded.

Section 2.3.2.2 of this Request for Proposals describes the procedures for a Project Proposal to be submitted by a Contractor under Tier 2. However, the Proposer should take care to follow the instructions (in Section 3.0) applicable to submitting a Tier 1 proposal under this Request for Proposals, and not make the mistake of inadvertently following the procedures applicable to Tier 2. The City has attempted to distinguish clearly between the procedures applicable to each of these two different tiers of this Request for Proposals.

1.7. Payment Structure

The Class 1 and Class 2 Contracts awarded from this Request for Proposals will contain hourly rates for each of Contractor’s job titles for each of the three years of the contract term which will be the basis of determining the costs of individual Task Orders. Because the Contractor may also provide equipment in connection with an assignment, the contracts for Class 1 and Class 2 will also include a maximum equipment mark-up rate or minimum equipment discount percentage or any other related pricing and discounts terms available from Contractor. . Assignments for individual projects may be based on “time and materials” (*i.e.*, hourly rates for services provided), fixed-price for defined deliverables, or any other payment structure that is appropriate for a particular project as determined by the City. The City is also willing to entertain payment structures in Task Orders issued pursuant to contracts resulting from this Request for Proposals that include financial incentives and/or disincentives tied to outcomes. Hourly rates charged in Task Orders for contractor or subcontractor staff may be lower than, but cannot exceed, the hourly rates contained in the resultant contract.

1.8. Insurance

Each contract awarded as a result of this Request for Proposals will require the Contractor to maintain insurance coverage during the term of the contract

1.9. Ownership, Title, License of Deliverables

The City’s preference is that the Products and all tangible or intellectual property created or developed in projects under Task Orders (*i.e.*, Custom Products) shall be owned by the City. Unless otherwise provided in a Task Order, the City will be the exclusive owner of Custom Products, without any license-back to

Contractor. Ownership rights in Existing Products owned either by the Contractor or third-parties shall remain either with the Contractor or other third-party owner.

In a given project, the City may agree that only the Contractor or other third-party owner shall have title in Custom Products; for example, if the project involves customization of the Contractor's or third-party's Existing Products. In such a case, the City will require appropriate license rights (*e.g.*, irrevocable, non-exclusive, transferable, paid-up, royalty-free, perpetual license; software/source code escrow) to ensure the intended and continuing utility of its investment.

1.10. Non-Exclusivity of Offered Third-Party Existing Products

The City requires Contractors not to enter into agreements with third-party owners of Existing Products that prevent the third-party from providing such Existing Product directly to the City or under a different Contractor's Task Order in connection with a Tier 2 project assignment. In other words, the City reserves the right to obtain an offered third-party Existing Product even if the Contractor that offered such third-party Existing Product is not awarded the Tier 2 assignment.

The purpose of this provision is to ensure that the City is not deprived of the best-available solution in a situation where such solution is proposed by a Contractor that is not offering the best overall approach and methodology for the implementation of the solution.

The City may buy procure software directly if so chooses.

1.11. Definitions

Definitions in this Section will be subordinated to the terms of the Contract, in the event that any terms differ.

"Business Day" shall mean Monday to Friday, except for the City holidays listed below in this Request for Proposals.

"Confidential Information" shall mean (i) all non-public information concerning or embodying the processes, statistics, software, systems, programs, research, development, strategic plans, or the like with respect to the operations and activities of the City, or (ii) any non-public information concerning the City's constituents that may be disclosed by the City to the Contractor or its agents, officers, employees or sub-contractors under the Agreement. All such information disclosed prior to the execution of the Agreement shall also be considered "Confidential Information." "Confidential Information" shall not include information that: (a) is already known by the Contractor at the time it is obtained, free from any obligation to keep such information confidential; (b) is or becomes publicly known through no wrongful act of the Contractor; (c) is rightfully received by the Contractor from a third party without restriction and without breach of the contract; or (d) is independently developed by the Contractor without using any Confidential Information.

"Contract" or **"Contracts"** means any agreement between the City and a Contractor resulting from this Request for Proposal.

"Contractor" shall mean a company or person that is a party to a contract resulting from this Request for Proposals.

"Contractor Personnel" means all individuals furnished by, though, or on behalf of, the Contractor including through its agents and subcontractors, to perform the Contractor's obligations under the Contract.

“Custom Products” has the meaning described in Article 11 of Appendix A1.

“Emergency” means a situation, which in the sole determination of the City, requires immediate action in order to preserve the City’s ability to use any of its information technology, telecommunications, and wireless technologies in the conduct of its business.

“Notice to Proceed” shall mean a written notice from DoITT to a Contractor informing the Contractor that its contract resulting from this Request for Proposals has been duly registered by the Office of the Comptroller of the City of New York. The date of such registration, which will also be the date listed on the Notice to Proceed, shall be the first day of the term of the contract resulting from this Request for Proposals.

“Products” has the meaning described in Article 1 of Appendix A-1.

“Project Proposal” means a document sent by a Contractor to a Requesting Agency containing offered services and pricing, in response to a Service Request from such Requesting Agency. The term **“Project Proposal”** is applicable only in relation to Tier 2 of this Request for Proposals. The Project Proposal includes the Contractor’s proposed “Statement of Work” and other information that the City will be use to evaluate the Project Proposal.

“Proposal” means a Proposer’s formal, written Tier 1 response to this Request for Proposals, consisting of two parts, a technical part and proposed pricing (respectively, the Technical Proposal and the Price Proposal).

“Proposer” means a company or person that has submitted a Proposal in response to this Request for Proposals. The term “Proposer” is applicable only to the Tier 1 selection process under this Request for Proposals.

“Prospective Proposer” means a company or person who is eligible to submit a Proposal in response to this Request for Proposals. The term “Prospective Proposer” is applicable only to the Tier 1 selection process under this Request for Proposals.

“Request for Proposals” or **“RFP”** means this written solicitation and any written Addenda hereto, for **Systems Integration Services for Technology Projects Citywide; Procurement Identification Number: 85813P0006.**

“Requesting Agency” means a City agency that requests a Project Proposal for System Integration Services in accordance with the procedures described in this Request for Proposals and which may issue a Task Order (defined below) to a Contractor. Any City agency may be a Requesting Agency.

“Service Request” means a document sent to the Contractor by DoITT on behalf of a Requesting Agency containing a description of Services desired by such Requesting Agency and soliciting an offer of services and pricing (including a proposed Statement of Work) from the Contractor. The term “Service Request” is applicable only to Tier 2 of this Request for Proposals.

“Systems Integration Services” or **“Services”** mean designing, installing and fully integrating projects into live operating environments. Systems Integration Services include but are not limited to: analysis of existing technological environments, including hardware, software, live operations and transaction volumes; design and development of new systems; add-ons or modifications to existing architecture, including single platform computer systems and distributed systems; development of functional and/or design specifications, technical writing and documentation; provision of operating system and/or applications programming recommendations, including acquisition of off-the-shelf products, or integration

of custom programming products; acquisition of hardware/software products and services; coordination and supervision of multiple service or product providers; installing, testing, auditing and integration of new systems within existing environments; and providing cultural transitioning of workforces to new environments, including training of employees and other end users.

“Task Order” means a document agreed upon by the Contractor, the Requesting Agency and DoITT describing the services the Contractor is required to provide to the Requesting Agency. The term “Task Order” is applicable only in relation to Tier 2 of this Request for Proposals.

“The City of New York” or the **“City”** means the municipal corporation that will be a party to any contract resulting from this Request for Proposals. The City includes all of the agencies, departments and offices (collectively, “City agencies”) created in the New York City Charter.

“Tier 1”: See Section 1.6

“Tier 2”: See Section 1.6

The terms defined in this Request for Proposals include the plural as well as the singular. Unless otherwise expressly stated, the words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Request for Proposals as a whole and not to any particular Section, Subsection, or other subdivision. The words “include” and “including” shall not be construed as terms of limitation. The word “or” shall mean “and/or” unless the context requires otherwise.

2.0 Scope of Services and Requirements

DoITT is a mayoral agency that provides cost-effective high-end computing, networking facilities, and technical services for agencies of the City of New York. The Commissioner of DoITT also holds the position of Chief Information and Innovation Officer (CIO) for the City of New York. DoITT is authorized to develop citywide Information Technology and Telecommunications Security standard and policies and provides centrally managed security services such as security operations and engineering, identity management, remote access, Internet content filtering, network vulnerability scanning and web application security assessment and accreditation.

2.1. Technical Environment

The City's computing infrastructure is large, and operates across multiple platforms, including, but not limited to:

Hardware

- Mainframe Hardware Platforms: IBM, Unisys, EMC, Storagetek
- Unix Hardware Platforms: Oracle/Sun, IBM, EMC, Nokia
- Other Computing Hardware Platforms: DEC Alpha/HP, Dell, Hitachi
- LAN / WAN Hardware: Nortel, Juniper, and Cisco based Routers, Hubs, Switches, DWDM, Wireless Devices, Firewalls, VoIP, Print Servers, BlackBerry Services
- Client devices: IBM-compatible and Apple desktop systems and laptops; thin client and zeroclient VDI devices.

Mobile data technologies.

- BlackBerry, iPhone, Android and other cell phones/smart phones.
- Apple iPad, BlackBerry Playbook and other tablet devices.

Radio and Wireless Environment

- 800 MHz Trunked Radio Network
- Cellular and BlackBerry Coordination
- FCC License Management and Support
- Citywide Interoperability
- Citywide wireless network (NYCWIN)Bluetooth, Wimax, Wifi, Microwave links
- Channel 16 (UHF 482-488 MHz) Trunked Radio System

Operating Systems

- Mainframe Operating Systems: IBM Z/OS, OS/390, VM, UNISYS 11000
- Unix Operating Systems: Sun Solaris, AIX, RedHat and Suse Linux, SCO, IPSO
- Windows Operating Systems: Windows XP, 2008, 2003, 2000, Windows NT, Windows7, Vista
- Mac OS X
- LAN Platforms: Windows 2003, Windows 2000, Novell, IPV6
- Virtual Systems: VMWare, Zen, Citrix

Development Tools

- Application Development Environment: Cobol, CICS, PL1, Fortran, Pascal, Basic, SQL, VTAM, TSO, JCL, SAR, Natural, Powerbuilder, Java, Cold Fusion, Interwoven, Oracle (Enterprise Manager, Discoverer, Portal, Application Server) ASP.NET, Visual Basic.NET, Visual Basic 5, Crystal Report Writer, Javascript, HTML, IIS
- Database Systems: UDB, DB2, IDMS, IMS, Informix, Oracle, Adabas, UNISYS 1100 RDMS (Including DPS, ECL) SQL, PL/SQL, DBASE, FoxPro, Sybase, SQL Server, MySQL, CVS, TeamCity, J2EE, Spring, Hibernate, WebLogic, ANT, iPlanet, iText, Documentum, Oracle BPM, IBM Websphere MQ, IBM Websphere Message Broker, IBM Websphere Datapower, JSP, Eclipse, SVN, Dojo, Python, Ruby, ArcObjects, Siebel Tools, Oracle BI Enterprise Edition, Oracle BI Publisher, Oracle Application Express, Informatica, Talend, iPlanet, WebTrends, Documentum

Database Related/Server Side Components:

- Geoserver, ArcGIS Server, ArcIMS (phasing out), SJSWS

Software Products

- Enterprise Applications: Siebel, Peoplesoft, Vignette, Interwoven, Weblogic, Oracle Analytics, MQ, McAfee
- Geographical Information Systems: ESRI, SmallWorld, MapInfo, ArcView, AutoCad
- Mail Services: Exchange 2010, 2007, 2003, 2000, GroupWise
- Application Platforms: Weblogic, Websphere, JBoss, Sun J2EE, MOSS
- Identity Management Applications: Novell Identity Manager, Roble based provisioning, eDirectory.
- User software: MS Office, Adobe, Visio

Security Products

- Security Hardware: Cisco, Checkpoint, IBM
- Security Software: Appscan, Net Forensics, Checkpoint, Nessus, Juniper IVE, SSL VPN, Qradar, Riverbed, Cascade, IBM IDS, Qualys, Foundstone, Mazu, Key management, mobile device management and DLP technologies.

2.2. Agency Assumptions Regarding Contractor Approach

The selected Contractor will be required to provide all services necessary and required for the system integration project, in accordance with Task Orders issued by the City. The Services the Contractor may be required to provide shall include, but are not limited to:

- Enterprise architecture, design, capacity planning, performance tuning of enterprise solutions
- Design, development, implementation, and deployment of integrated enterprise solutions;
- Installing, configuring and testing commercial-off-the-shelf systems;
- Designing, developing and implementing mobile and handheld applications
- Developing portals, web applications, and web accessible systems
- Legacy system data integration, upgrades and conversions
- Designing business intelligence systems, executive dashboards and workflows
- Evolution of Enterprise Architecture and related Enterprise Service Bus and service-oriented architecture components
- Managing local and wide area network design and implementation
- Implementing VOIP solutions
- Implementing business continuity and disaster recovery architectures

- Managing migrations to new applications and software
- Managing the development and implementation of data center upgrades
- Purchasing and installing hardware and software to support the implementation

Task Orders will be issued for a broad range of projects of varying size and complexity up to \$25 million. Examples of small projects may include LAN upgrades; small agency e-mail migrations; installing new applications such as correspondence tracking or case management systems; expanding data center capacity; creating web portals and applications.

Examples of large projects may include data center migrations; hot-site build-outs; implementing multi-agency applications with workflows and data exchanges; creating citywide technology services such as e-signatures or address validation.

Core competencies required to support these projects would include:

- Requirements gathering, development and validation
- Enterprise Architecture Frameworks and Processes
- Industry Standard Architecture Methods
- Applications and systems design
- Programming
- Full system development life cycle project management
- Coordination and supervision of stakeholders, service or product providers
- Scope, risk, communications, change and resource planning and management
- Strong verbal and written communications
- Technical writing for user, operations and system documentation
- Development and delivery of training for end users, operations staff, technical support staff, etc.
- Test planning and execution, including unit, integration, performance and stress testing
- Hardware, software and specialty services acquisition
- Documentation and knowledge transfer

2.3. Project Assignments and Task Orders

All Class 1 and Class 2 contracts awarded pursuant to this solicitation will be available for use by any Requesting Agency. This section describes the procedures for awarding Task Orders.

2.3.1. Task Orders (All Classes)

Any work pursuant to the Contracts to be awarded under this Request for Proposals will be specified in a Task Order which will define the agreed upon Statement of Work for the duration of that project assignment. The Task Order will incorporate the terms and conditions of the Contract between Contractor and DoITT and will specify the Statement of Work for the assignment, activity descriptions, stated objectives and measurable results and fees. The Task Order will include, but is not limited to, the following:

- Project objectives
- Project plans and detailed timelines
- High level and specific deliverables and their acceptance criteria
- Approach and methodology

- Project resources (City and Contractor); key personnel and an organization chart for the project
- Cost
- Work products and deliverables and other responsibilities, such as required reports, invoicing, etc.
- Performance specifications
- Testing and acceptance criteria
- Detailed listing of hardware and software being provided; and applicable warranty services and warranty periods
- The assignment period of performance (projected start and end dates and overall assignment duration)
- Status reports and meetings (form, content and frequency)
- Hourly rates by job title and total cost and payment structure (time and material, fixed price, payment milestones)
- Delay credits/service credits, if any
- Potential risks and proposed mitigation strategies.

The Task Order will be reviewed by the Requesting Agency, DoITT, and any oversight agencies as necessary to ensure that it meets the best interests of the City; is an appropriate use of, and is in accordance with the terms and conditions of the contract; and that the scope of work comprehensively addresses the Requesting Agency's needs. The City may employ a project monitoring/quality assurance (PM/QA) contractor to review Project Proposals and Task Orders to ensure that proposed solutions will meet the City's needs and best interests and will be performed according to generally accepted industry practices.

A Task Order template is included as Attachment TO. Depending upon the particular requirements that are set forth in a Service Request, the Contractor may need to modify the format or content of a Task Order that it drafts to correspond to such Service Request.

The Contractor's preparation of Project Proposals and Task Orders shall be performed at no charge to the City.

As part of the Task Order, Contractors will be required to provide the City with resumes for all resources that are being considered for the project, and, upon request, the City may interview these resources. The City reserves the right to screen and approve or deny all resources assigned to the project, or to the engagement overall. The selected Contractor should ensure that all resources engaged in the effort are experienced in providing the specific services requested and that all work provided meets high quality standards as deemed appropriate by the City and its project monitoring Contractor.

The selected Contractor will be required to develop and implement all projects for which there is an agreed-upon Task Order with the City on time and within budget, and should comply with City standards and protocols for such projects that are in effect at project inception.

During the course of the project, regular status reports (providing updated project plans, status of milestones and deliverables, costs to date and estimated cost to complete) will be submitted to the Requesting Agency. The detailed content, format, and schedule for status reports (weekly, bi-weekly, monthly) will be agreed upon within the Task Order for each project.

A Requesting Agency may ask the Contractors to propose pricing on a time and materials and fixed-price or other basis, as appropriate for the project. A Requesting Agency may ask for Project Proposals based on more than one possible payment structure, so that the Requesting Agency can choose which offered payment structure to use in the awarded Task Order.

2.3.2. Assignment of Tier 2 Projects

2.3.2.1. Service Requests-

DoITT, on behalf of a Requesting Agency, will begin the Tier 2 process by submitting a Service Request to all the Contractors in the applicable Class. The determination of which Class a Service Request should be submitted shall be based upon the City's best estimate that the total cost of project will be \$5 million or under (Class 1) or over \$5 million and below \$25 million (Class 2). Price proposals for a Class 1 project that exceed \$5,000,000, will be deemed non-responsive and will not be considered.

A Service Request will include all information the City believes necessary and appropriate to provide, including an indication of whether the Contractor's assigned Contractor Personnel will require security clearances and/or confidentiality/non-disclosure agreements, as well as the Contractor's procurement role for the project. A Service Request will indicate the due date for the receipt of Project Proposals, which will normally be between 21 to 42 days from the Contractor's receipt of the Service Request. The City will provide the same information to all of the Contractors. DoITT may conduct a joint pre-solicitation meeting and answer any questions that may be received by the City after the meeting as necessary. A Service Request will also indicate the evaluation criteria and their respective weights to be used by the Requesting Agency in selecting a Contractor for the assignment. The evaluation criteria will be developed by a Requesting Agency, in consultation with DoITT, and will be based on both technical and price criteria.

2.3.2.2. Project Proposal and Selection Process

- 1.** After DoITT submits the Service Request to all Contractors, the Contractor will use the Service Request as the basis for developing its Project Proposal, including a proposed Statement of Work, timelines, resources, resumes of key personnel and costs.
- 2.** The hourly rates contained in the Contract(s) will be the basis for determining costs associated with Task Orders. The time and material hourly rates in the Project Proposal may be equal to or lower than the hourly rates included in the Contract between DoITT and the Contractor, but cannot exceed such hourly rates. The Service Request may ask for both fixed-fee and time and material price proposals.
- 3.** Each Contractor shall respond to every Service Request for an individual Task Order for which it is solicited. If a Contractor declines to propose on the Service Request, a "no bid" response must be submitted within the time for submission of the Project Proposal, as specified in the Service Request. If a Contractor repeatedly submits a "no bid" such that it fails to submit a proposal for at least 75% of the Service Requests issued in a single contract year, (i.e. the Contractor must submit a proposal on at least 75% of all Service Requests) the City may take appropriate action, including termination of the Contract. For the purposes of this Section, failure to bid without an adequate explanation will have the same effect as a "no bid".
- 4.** The Requesting Agency will evaluate the Project Proposals (including the statement of work, timelines, resources, resumes of key personnel and proposed costs) in accordance with evaluation

criteria defined in the Service Request and select the Project Proposal that best meets the City's requirements. Unless otherwise stated in the Service request, the evaluation criteria shall be as follow:

- Staffing and Experience – 35%
- Organizational Capability – 20%
- Approach and Methodology – 25%
- Cost – 20%

The cost score is a calculated score in which the Contractor with the lowest cost will receive the highest score, and the Contractor with higher costs will receive proportionately lower cost scores, relative to the lowest cost proposed.

5. As part of the evaluation, the Contractor will be required to provide the Requesting Agency with resumes containing the proposed job title categories for all resources that are being considered for the project . Upon request, the Requesting Agency may interview these resources and check client references. Note: Submission of consultant's resumes, whether direct employees or subcontractors, implies that such individuals will be available to perform the services for which their names and resumes have been submitted. Contractor should clearly explain how each key project activity will be addressed and by whom on the Contractor's project team. Contractor must commit that Contractor Personnel identified in its Project Proposal will actually perform the assigned work. The Requesting Agency reserves the right to cancel the Service Request, re-award the Task Order to other vendors, cancel the Task Order, or take other appropriate actions if proposed Contractor Personnel become unavailable after the City selects a Tier 2 vendor.
6. As part of the evaluation the Contractor(s) may be required to provide written clarifications, presentations and/or demonstrations of their Project Proposal.
7. The Requesting Agency and the selected Contractor will enter into a Task Order.

Unless otherwise stated in the Service Request, sub-contracting is permitted. The Contractor is required to disclose its intention to use the services of a sub-contractor in its proposed Statement of Work, and the City reserves the right, in its sole discretion, to prior review and approval of each proposed sub-contractor and its technical staff. The Contractor's proposed Statement of Work should describe what ownership or license rights the Requesting Agency will have in the deliverables.

2.3.2.3 Primary and Secondary Contract Status Procedures

The City shall maintain up to eight (8) Primary Contractors and up to two (2) Secondary Contractors in each Class. The City reserves the right to award less than the maximum number of contracts or decrease the size of each pool, in the City's best interest.

Contractor and the City agree that only Primary Contractors shall receive Requests for Services. A Contractor that is designated as a Secondary Contractor agrees it shall not accept or respond to Requests for Services issued under this Contract during such designation. A Secondary Contractor may be moved to "Primary Contractor" status if a Primary Contractor withdraws, is removed from the pool as provided for hereunder or is terminated in accordance with the termination provisions of the contract.

In order to retain the Primary Contractor designation, Contractor must meet compliance standards and perform adequately. A Primary Contractor may be removed from the pool if:

- Contractor repeatedly submits a “no bid” such that it fails to submit a proposal for at least 75% of the Service Requests issued in a single contract year, (i.e. the Contractor must submit a proposal on at least 75% of all Service Requests)
- It is in the best interests of the City based on such relevant factors, including, but not limited to, the quality of performance, the ability for improved performance, the costs to the City of continuing, or any issues specific to a particular project, etc.

At least on an annual basis, the City shall review each Primary Contractor’s compliance and performance with such standards and remove any Primary Contractor from the pool that has not met these requirements. Upon termination or removal of a Primary Contractor, a Secondary Contractor will be designated a “Primary Contractor”, this designation will be made to the Secondary Contractors based on their rank order.

Any existing task orders with a Primary Contractor that has been removed from the pool as a Primary Contractor, will survive unless otherwise terminated by the Requesting Agency.

A Contractor is not guaranteed business; even if selected for Primary Contractor status.

2.4. Contractor Responsibilities for All Classes

The Contractor’s responsibilities shall be as set forth in the resulting Contract; however, the following description elaborates the City’s expectations regarding the matters addressed beneath:

2.4.1. Staffing

- A.** The Contractor shall provide an account manager and/or a project manager (neither necessarily dedicated full-time to the Contract) at no cost to the City. Such account manager or project manager must be a person with sufficient experience and expertise to act as the primary liaison between Contractor and the Requesting Agency and to assume overall responsibility for the Contractor’s performance under the Contract; must have direct access to the officers or other key decision-makers of Contractor; and must have the authority to call upon the experience, expertise, and resources of Contractor to assure proper performance of the contract. The account manager and/or project manager is responsible to:
 - 1. Maintain control over the work duties, schedule, budget and performance of the Contractor’s team members, including all sub-contractors, on all projects;
 - 2. Report all material project events. The content, format and means of distribution for reports will be contained in the contract or established at the beginning of a project assignment;
 - 3. Attend regular status meetings held in City offices; and,
 - 4. Exercise overall responsibility for the success of the projects that make up the assignment.
- B.** The Contractor shall ensure that (i) all Contractor Personnel throughout the duration of each individual’s performance have all of the skills, knowledge, training, and experience necessary to perform the Services in a competent and professional manner and in accordance with the

requirements of the Contract and any Task Order, including the Statement of Services, and (ii) an adequate number of such appropriately qualified Contractor Personnel will be available to timely perform the Contractor's obligations.

- C.** The Contractor should be prepared to provide a full-time project manager to each project assigned to the Contractor by a Requesting Agency as dictated by the needs of the project assignment. Contractor Personnel proposed for project assignments shall be persons that are experts in their field (as appropriate for such job title classifications), and have significant experience in all of the technologies and solutions that are being recommended. Unless otherwise agreed by the City in a Task Order, should the job title classification of individuals assigned to a project change during the project, the City will continue to be billed at the job classification rate in the original Task Order.
- D.** The Contractor shall not assign individuals to a project other than those expressly authorized in writing by the City.
- E.** The City is entitled, at no additional charge, to interview, check the references of, and accept or reject all proposed Contractor Personnel. At the City's request, the Contractor shall provide the City with the resumes and work histories of Contractor Personnel and shall, upon the City's request, update such information as appropriate.
- F.** The Contractor shall maintain continuity of Contractor Personnel throughout each respective project. The Contractor shall not transfer or replace the project manager or other individuals designated as "key personnel" for a project for the duration of such project assignment unless such transfer or replacement is at the request of the City or due to a bona fide illness, family leave, disability, termination of employment, or other circumstance beyond the Contractor's reasonable control. Prior to any permitted transfer of "key personnel" to another position, the Contractor shall provide the Requesting Agency with at least thirty (30) days' notice of such transfer.
- G.** If Contractor Personnel are reassigned during the term of the project assignment, the Contractor shall ensure a smooth transition at no additional cost to the City, including the provision of knowledge transfer documentation and cooperation between the replaced and the newly-assigned Contractor Personnel or, where appropriate or in the case of planned replacements, an overlap in the project assignment of the replaced and newly-assigned Contractor Personnel for a duration of at least ten (10) Business Days (excluding City holidays). Contractor shall replace unplanned departures within five (5) Business Days. The newly-assigned Contractor Personnel must have qualifications as good as or better than those of the replaced Contractor Personnel and will be charged at the same rate or lower than the replaced Contractor Personnel.
- H.** The City may notify the Contractor when it finds any Contractor Personnel to be unacceptable for any lawful reason, including but not limited to, performance-related or security concerns, or the violation of a law or City/DoITT/Requesting Agency rule, policy or practice. DoITT shall provide notice to the Contractor requesting removal, the effective date of such removal, whether such Contractor Personnel requires replacement; the Contractor shall cause such individual to cease work on such effective date.
- I.** The Contractor shall take all necessary and appropriate steps to determine that each individual employed by the Contractor to perform work under the Contract is legally eligible to work in the United States and that such eligibility shall be maintained at all times that such individual is engaged by the Contractor under the Contract.

- J.** The Contractor shall be aware of, and shall not participate in the violation of, the laws or rules (i.e., under Chapter 68 of the City Charter) applicable to the Contractor's employment of current or former City employees.
- K.** If the Task Order states that all or certain Services will be performed at City-provided facilities, the individuals thus assigned must at a minimum, unless otherwise agreed in writing by the Requesting Agency, be expected to be present during the hours of 9 AM to 5 PM, Monday to Friday, except for holidays designated by the City. Unless the Contractor is notified otherwise by the City, such holidays are:
- New Year's Day
 - Martin Luther King, Jr. Birthday
 - Presidents Day
 - Memorial Day
 - Independence Day
 - Labor Day
 - Columbus Day
 - Election Day
 - Veterans Day
 - Thanksgiving Day
 - Christmas Day

When one of these holidays occurs on a Saturday, it is the City's normal practice to consider the preceding Friday a holiday; and when one of these holidays occurs on a Sunday, to consider the following Monday a holiday.

- L.** Upon the City's request, the Contractor shall provide, for the City's review, any materials regarding the Contract or a Task Order distributed by the Contractor to Contractor Personnel for training purposes.
- M.** The Contractor shall ensure that Contractor Personnel are notified of start times, confidentiality, security policies, and all other relevant information pertaining to the Contractor Personnel's assignment, including but not limited to:
- Consultants must execute non-disclosure and confidentiality agreements as required by the City
 - Consultants are required to be familiar with and adhere to the Citywide Information Security Policies and Standards as published on the internet at <http://www.nyc.gov/infosec> and on the intranet at <http://cityshare.nycnet/infosec>
 - Consultants will receive a copy of the User Responsibilities Policy and must provide their City manager with a signed acknowledgement of receipt and understanding of the policy.
- N.** The Contractor is responsible for (i) providing its own secretarial support – the City will not provide any such support or associated materials; (ii) maintaining responsibility for its own administrative

support – the City will not provide such support, associated materials, nor reimburse the Contractor for such services; and (iii) except as a Task Order may otherwise provide any necessary tools or equipment in support of Contractor Personnel.

2.4.2. City Security Procedures

- A.** If requested by the City, prior to any Contractor Personnel being granted access to any City facilities, data processing systems, Confidential Information, or data, the Contractor shall require such individuals to obtain security clearances, which may include at the City’s discretion a criminal history and/or background investigation. It is the Contractor’s responsibility to conduct security clearances. The Contractor agrees to assume, without any reimbursement by the City, any third-party costs incurred in connection therewith. Where an Emergency or other circumstance occurs which renders immediate compliance impractical, the City may, in its sole judgment, defer an individual’s compliance and grant temporary access. Such deferment may not be construed as a waiver of the City’s right subsequently to require security clearance for any individual previously granted such temporary access. The City reserves the right, in its sole discretion, and without liability to the Contractor or Contractor Personnel, to refuse to permit access to facilities, data processing systems, Confidential Information or data: (i) to any Contractor Personnel who refuses to comply with the security or non-disclosure procedures required by the City or (ii) where the City determines that the Contractor Personnel may present a risk to its security interests. The Contractor must submit information to the City about Contractor Personnel it proposes to assign to work under the Contract sufficiently in advance to allow the City to perform any such security clearance procedures without delaying the Contractor’s work performance. The City is not liable for payments or damages of any kind if the Contractor’s work is delayed or the Contractor is required to assign different Contractor Personnel on account of the City’s delay or refusal to grant Contractor Personnel a security clearance under the Contract.
- B.** The Contractor shall require that Contractor Personnel comply with all applicable facility, data processing and other security policies and procedures of the City in effect during the term of the Contract in performing the work under the Contract, including but not limited to Internet usage, office equipment usage and timekeeping procedures. This may include being required to sign-in and –out and enter time worked into a timekeeping system provided by the City. The Contractor shall promptly notify the Requesting Agency’s project manager in writing when any Contractor Personnel previously engaged by the Contractor under the contract to gain access to any City facilities, information systems or data contained therein is no longer authorized by the Contractor to do so.
- C.** The Contractor shall require Contractor Personnel to execute non-disclosure agreements in such form as the City may approve.

REPORTS

The Contractor shall provide a Monthly Report and Rollup Statement to DoITT including all projects supported by the Contractor for the previous month. The reports will include, sorted by Requesting Agency, for each project a description of work performed, hours billed, amount billed, total charges to date, and budget remaining.

In addition, the Contractor shall provide DoITT with an M/WBE Utilization and Subcontractor Quarterly Report.

2.4.3. Additional Requirements and Obligations

- A.** The Contractor shall fully conform to the City's policies, technical standards, security and privacy policies and procedures.
- B.** All software (off-the shelf or otherwise) introduced by the Contractor shall be free of significant vulnerabilities and defects. Any vulnerability identified during the course of the project assignment shall be remediated at the Contractor's expense.
- C.** During the course of a project, unless the Task Order provides otherwise, the Contractor shall update its work plan and time schedule for each project on a weekly basis. Contractor shall be responsible to update project information in electronic reporting tools such as Clarity.
- D.** The Contractor shall be responsible for daily backups of any software it develops as part of a project, as well as overall change management related to an application development lifecycle.
- E.** The Contractor shall be responsible for internal quality control of all deliverables. The City may engage its own quality assurance consultant to advise the City, and in such event the Contractor shall cooperate with the City's consultant in providing information about the project.
- F.** Contractor shall provide the Requesting Agency an annotated outline of each major Deliverable (as determined by the Requesting Agency) before beginning development of the Deliverable. This outline will be reviewed by the Requesting Agency and approved by the Requesting Agency program manager.
- G.** Final determination of the acceptance of deliverables lies with the Requesting Agency's project manager. Unless otherwise provided in a Task Order, final acceptance of a system shall not occur until such system has operated in its intended production environment for a period of at least thirty (30) consecutive days without a failure or interruption for which the Contractor is responsible.
- H.** Contractor may not provide a solution whose functionality or performance does not meet legal requirements. In cases where the functionality and/or performance is less than current standards or than is currently available, the Requesting Agency must specifically sign off on the proposed solution.
- I.** For solutions based on Commercial off-the-shelf (COTS) software, Contractor will be required to prepare a written disposition addressing each requirement that requires customization.
- J.** The Contractor shall be responsible for providing any necessary tools or equipment in support of Contractor Personnel. The Task Order may provide that the City will provide desktop PCs, Microsoft Office Professional suite software, access to shared drives and the Internet, or license to use workspace, duplicating/faxing equipment, telephone service or other necessary software.
- K.** The Contractor shall invoice each respective Requesting Agency monthly, and must submit the associated timesheets with the invoice. Weekly timesheets signed by the employee, the project manager and the Requesting Agency project manager with each employee's hours and rate detailed at the Task Order/project level should be submitted to the Requesting Agency.

- L.** Project documentation. For each project, unless a Task Order otherwise provides, the Contractor shall:
- Conduct time and cost reviews on a regular basis to identify variances between “actuals” and estimates, and provide an assessment of the impact of any variances to the overall project.
 - Deliver to the City, at the conclusion of each project, all material and documentation that was developed during the assignment. Examples may include, but are not limited to:
 - All project documentation and source code;
 - A report of findings and recommendations for business process analyses or re-engineering designs;
 - All application configuration items, including relevant code, products, objects, style sheets and supporting documentation;
 - Product specifications;
 - All relevant code, documentation of test plans, test scripts and test results, documentation of development, installation, and maintenance protocols, and all supporting documentation for new applications developed; and
 - Knowledge transfer to staff designated by the Requesting Agency to ensure that the Requesting Agency has the means to continue to utilize the benefits/features of the project.

2.4.4. Procurement Responsibilities

The Task Order will set forth the Contractor’s intended procurement role. In the event the Contractor engages in procurement on the City’s behalf under a Task Order, the Contractor shall secure products and subcontracted services at the lowest available price in accordance with the best interests of the City. Contractor is required, upon request, to provide written affirmation to the Requesting Agency of the procedures that it has followed to procure such products while optimizing the factors of quality, cost and efficiency – and, upon request, shall implement instructions or recommendations of the Requesting Agency in effectuating such procurements.

2.4.5. DoITT Citywide Program Management Responsibilities

DoITT will serve as the primary point of contact for the Contractors and the Requesting Agencies and will manage the Tier 2 Task Order award process. As needed, DoITT will:

- A.** Provide consultative services to a Requesting Agency concerning a proposed Service Request, including matters such as subject matter and content of the Service Request, the due date for Project Proposals, and the evaluation criteria and their weights.
- B.** Participate as needed in a Question and Answer session for Contractors regarding the Service Request after the distribution of Service Requests.
- C.** Participate as needed in the review of written answers to written questions received from Contractors after the Q & A session.

- D. Provide consultative services as needed to the Requesting Agency’s evaluation committee that is reviewing Project Proposals.
- E. Inform each Contractor that submitted a Project Proposal of the decision that was made.
- F. Review and approve proposed Task Orders.
- G. After award of the Task Order, provide the Requesting Agency with strategic direction and documentation;
- H. Assign a staff member to act as liaison and primary contact for the engagement and project teams.
- I. Prepare status reports for the Technology Steering Committee

2.4.6. Requesting Agency Responsibilities

- A. The Requesting Agency issues the Service Request and will participate in a Question and Answer session to respond to the Contractors’ oral questions regarding the Service Request.
- B. The Requesting Agency will respond to the Contractors’ post-Q & A session written questions, providing a copy of the same information to each Contractor (except that a Contractor that has submitted a “no bid” response to the Service Request need not be provided with further information).
- C. The Requesting Agency will give the selected Contractor guidance, if any changes in the proposed Statement of Work are needed, regarding preparation of the Task Order. The Requesting Agency will review the Contractor’s proposed Task Order in consultation with DoITT.
- D. Following award of a Task Order, the Requesting Agency’s project manager shall insure that Contractor project teams are provided with documentation and other information requested by the Contractor as reasonably needed by such project teams in their delivery of services under the Task Order.
- E. The Requesting Agency will arrange workspace for the teams at City locations (consulting work may be conducted at the Contractor’s or subcontractor(s)’ offices, by mutual agreement). If work is to be performed at the Requesting Agency’s facilities, the Contractor should assume in its Project Proposal that basic requirements would be provided for (*i.e.*, desk space, basic day-to-day photocopying, *etc.*); provided, however, that any such work that might incur substantial additional cost to the City (*e.g.*, large-scale photocopying, *etc.*) should be performed by the Contractor.
- F. As reasonably requested by the Contractor, the Requesting Agency’s project manager will (as necessary, in consultation with CSM staff) make available to Contractor’s project teams City management and information technology staff knowledgeable regarding the City’s systems and business practices.

2.5. Participation by Minority Owned and Women Owned Business Enterprises in City Procurement

The contract resulting from this Request for Proposals will be subject to Local Law 129 of 2005, the Minority-Owned and Women-Owned Business Enterprise (M/WBE) program. Please refer to **Attachments**

4 and 5 for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms.

Note: As fully explained in the Notice to Prospective Contractors -- part of Attachment 4 if you are planning to file a waiver of the Target Subcontracting Percentage, the waiver must be submitted to the Agency at least seven days prior to the proposal due date and time in order to be timely considered.

2.6. Compliance with Local Law 34 of 2007 – Doing Business Data Form

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, Proposers are required to complete **Attachment 6: Doing Business Data Form** and return it with this proposal, in a separate envelope. (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a vendor has failed to submit a Data Form or has submitted a Data Form that is not complete, the vendor will be notified by the Department and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the Department. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the vendor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

2.7. Electronic Funds Transfer

a) In accordance with Section 6-107.1 of the New York City Administrative Code, the Vendor agrees to accept payments under this Contract 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 initialed through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Contract, the Vendor shall designate one financial institution or other authorized payment agent and shall complete **Attachment 9: EFT Vendor Payment Enrollment Form** in order to provide the Commissioner of Finance with information necessary for the Vendor 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 Vendor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by the Vendor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

(b) The Department head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting department may waive the requirements here under 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 interest of the City.

2.8. Iran Divestiture Compliance Rider and Certification:

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

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

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

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified **Attachment 7** bidder’s certification.

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

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

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

2.9. Whistleblower Protection Expansion Act Rider

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of \$100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act (“WPEA”), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local Law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

3.0 Tier 1 Submission Instructions

Proposers may submit Proposals for contracts in a single Class or both Classes in this Request for Proposals. Each Class will be evaluated separately; therefore a separate Proposal must be submitted for each Class to which the proposer intends to respond.

Proposers may not be awarded a contract in more than one Class. In the event that a proposer is eligible for award of both Classes of Service, DOITT reserves the right to determine, based on the proposer's demonstrated capability and the best interest of the City, which Class of Service the proposer will be awarded a contract.

3.1. Proposal Format

Proposers should provide all information required in the format and order described below. The Proposal should be typed on both sides of 8 ½" X 11" paper. The City of New York requests that all Proposals be submitted on paper with no less than 30% postconsumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <http://www.epa.gov/cpg/products/printing.htm>). Pages should be paginated. The Proposal will be evaluated on the basis of its content, not length. Failure to comply with any of these instructions will not make the Proposal non-responsive.

The Tier 1 Proposal should be presented in the format and order described below:

- The Proposal should be composed of **four (4) separate sealed sections:**
 - (1) Cover Letter (**Attachment 1**) and Technical Proposal
 - (2) Price Proposal (**Attachment 3**)
 - (3) Doing Business Data Form (**Attachment 6**) and Iran Divestment Certification (**Attachment 7**)
 - (4) Schedule B (**Attachment 5**)

- The Proposer should submit one (1) original (i.e., signed) and three (3) hard-copy duplicates of the Proposal. The Proposal package should consist of **four (4) sealed inner envelopes containing the technical proposal, price proposal, Doing Business Data Form and Iran Divestment Certification.** The originals of the technical proposal and the price proposal should be clearly labeled "Original" on the cover.

- To facilitate the evaluation process, it is requested that the proposer also submit a total of four (4) CD-ROMs – two (2) of the CD-ROMs should contain an electronic copy of the Technical Proposal, and two (2) of the CD-ROMs should contain an electronic copy of the Price Proposal. These electronic copies should be identical to the original paper Proposals, and should be in PDF format.
 - Each CD-ROM and jewel case must clearly indicate the name of the Proposer, name of this Request for Proposals, PIN (project identification number), and whether the CD-ROM contains a technical or price proposal.
 - It is requested that each Proposal be one comprehensive electronic file and not be segmented into multiple files (i.e., we prefer not to have a separate file for each section of the Proposal).

- The City requests that the Proposer also submits the price proposal in either *Word* or *Excel* format, using the format provided by the City, to facilitate the City’s analysis of the numbers provided. The *Word/Excel* files can be included on the two price proposal CD-ROMs.
- The Proposer should submit the original and copies of its Technical Proposal in a sealed envelope or package separate from the sealed envelope or package containing its Price Proposal. The appropriate CD-ROMs should be included in each sealed envelope or package.
- Clearly label each envelope or package with the name of the Name of the Proposer, the title and PIN (project identification number) of this Request for Proposals and indicate which section is contained in each envelope or package (*i.e.*, indicate whether the envelope or package contains the Technical Proposal or the Price Proposal) as well as the Class or Classes of service to which the Proposal pertains.
- No reference to pricing should be made in the cover letter or technical proposal. Disclosing pricing in these sections may be grounds for disqualification.

The place and time for the submission of Proposals are set forth above in the “TIMETABLE” section of this Request for Proposals.

3.2. Acknowledgement of Addenda Form

The Proposer should complete and sign the Acknowledgement of Addenda Form, which is annexed to this Request for Proposals as **Attachment 2**. This should be inserted as an attachment to the Technical Proposal. The City needs this form, even if there are no Addenda to this Request for Proposals.

3.3. Cover Letter

A cover letter must be signed by an officer of the Proposer who is authorized to commit the Proposer to contractual terms. The cover letter should convey the following:

1. Indicate the Class or Classes to which the Proposer is responding.
2. Indicate whether the Proposer is a corporation, limited liability company, joint venture, *etc.* (The name of the Proposer may itself indicate that.)
3. State that the Proposer will not withdraw its Proposal for at least 180 days after the Proposal Due Date. After 180 days, the Proposer may if it wishes withdraw its Proposal in writing; although of course if the Proposer at that time is engaged in negotiations with the City, the City does not expect the Proposal to be withdrawn, and the City may request the Proposer to agree to a time extension of its 180-day commitment.

Refer to **Attachment 1**: Cover Letter Template for the complete contents of the cover letter. For convenience, included with this Request for Proposals is a separate file with a cover-letter template in Word format.

3.4. Technical Proposal

For each Class for which the proposer is submitting a Proposal, the Technical Proposal should clearly indicate the Class being responded to in each section of the Proposal as described below. The technical proposal should:

1. Consist of the following sections, in the order listed below:
 - a. Title Page and Table of Contents
 - b. Executive Summary
 - c. Quality and Quantity of Successful Relevant Experience — as described in Section 4.1 and organized by Class
 - d. Organization Capability — as described in Section 4.2 and organized by Class
 - e. Approach and Methodology — as described in Section 4.3 and organized by Class
 - f. Sample Project Proposals — as described in Section 4.4 for Class 1 and Class 2 (note: the Project Proposals will be evaluated as part of Approach and Methodology).
2. Contain the following appendices (additional appendices may be added at the Contractor’s discretion):
 - a. Resumes for the proposed team members (including job title categories).
 - b. Acknowledgement of Addenda Form
 - c. Minority Owned and Women Owned Business Enterprise Utilization Plan

3.5. Price Proposal

A Price Proposal should be prepared and submitted in a separate, sealed envelope, marked “Price Proposal” and bearing the Proposer’s name. Please refer to Section 5.0 for details on the Price Proposal. As with the Technical Proposal, the Price Proposal should be clearly organized by Class. (See *Attachment 3: Price Proposal Templates*)

3.6. Exceptions or Revisions to Request for Proposals or Appendix A and Appendix A-1

If the Proposer takes exception to any of the terms and conditions set forth in this Request for Proposals or Appendix A and Appendix A-1, the Proposer must list all such exceptions or revisions and attach them to its Technical Proposal. If there are no such exceptions or revisions, the Proposer should indicate that there are no exceptions or revisions.

The Proposer should be aware that exceptions or revisions may place it at a competitive disadvantage with respect to other Proposers, as the City desires to have uniform terms and conditions applicable under each of the contracts awarded from this solicitation.

3.7. Proposal Evaluation and Contractor Selection

All Proposals received will be reviewed to determine whether they are responsive or non-responsive to the requisites of this Request for Proposals. Proposals that are determined by the Agency to be non-responsive will be rejected.

The remaining Proposals will be evaluated by the City’s Evaluation Committee, which will consist of City government employees. The City’s project monitoring contractor may provide consultative services during the evaluation. The committee will evaluate and rate all remaining Proposals as follows:

The Technical Proposal criteria are divided into three key areas, which are weighted as follows:

- Demonstrated Quantity and Quality of Relevant Experience40%
- Demonstrated Level of Organizational Capability30%
- Approach and Methodology (includes sample projects)30%

The proposals will be ranked in order of highest to lowest technical score and the Agency will establish a short list through a natural break in scores of the technically viable proposers. The Agency will open the Price Proposals of those proposers on the short list. The Department reserves the right to conduct site visits and/or interviews and/or to request that proposers make presentations and/or demonstrations, as the Department deems applicable and appropriate. Although discussions may be conducted with proposers submitting acceptable proposals, the Department reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer’s initial proposal should contain its best technical and price terms.

3.8. Basis of Contract Award

A contract will be awarded to responsible proposer(s) whose proposal is determined to be the most advantageous to the City, taking into consideration price and such other factors or criteria which are set forth in the RFP. When considering price, the City will compare the hourly rates of the Core Labor categories (as identified in Appendix D and the Price Proposal and defined in Appendix D) to industry rates for similar services/qualifications. The Contract award shall be subject to the timely completion of contract negotiations between the City and the selected Contractor. The evaluation committee may request a Best and Final Offer, if necessary. The Department reserves the right to award contracts on the basis of initial Proposals received, without discussions.

4.0 Technical Proposal

4.1. Quality and Quantity of Successful Relevant Experience and Expertise

The Proposer should clearly indicate those portions in its response to this Quantity and Quality of Relevant Experience section where the services of sub-contractors have been used, appropriately identifying the sub-contractor(s).

- Provide a description of the Proposer's professional activities over the past three years relevant to Systems Integration Services, particularly in the role of being the primary contractor in such projects. Describe the nature of the projects, the total number of projects and the total number of professional employees/consultants involved in the projects.
- For **each Class** for which the Proposer is submitting a Proposal, list projects in which the Proposer has performed Systems Integration Services that the Proposer believes to be similar in scope and complexity to the projects that the City is likely to assign under this RFP. Although the minimum number of projects that the Proposer should list is two (2), the Proposer is encouraged to list up to five (5) separate projects. These projects should have been completed or substantially completed within the previous three years. If the Proposer is a joint venture, the total for all members of the joint venture should not exceed five projects.

For each project, indicate:

- the nature and scope of the project,
- the year the project was started,
- the duration of the project,
- the nature of the client,
- the nature of target audience (i.e., types of users),
- the number of users, and
- the number and composition of the Proposer's employees and consultants assigned to the project.

For each project, provide the name, title, address and telephone number of at least two (2) references or contact persons, and indicate the role these individuals had in relation to the project. The references/contact persons should be individuals who were key stakeholders or project leaders, who can validate the Proposer's role and responsibilities and who can comment on the quality of the Proposer's performance.

4.2. Organizational Capability

The Proposer should clearly indicate those portions in its response to this Organizational Capability section where the services of sub-contractors would be utilized, identifying which sub-contractor(s) would provide the services.

To demonstrate Organizational Capability, provide the following:

- A description of the Proposer, including when it was established, number of employees, locations of corporate offices, office nearest New York City, and any other information regarding its experience that the Proposer believes relevant.
- Demonstrate the Proposer’s ability to provide the City with an adequate number of appropriately qualified, trained and best available high-level resources in the event of multiple projects or large, long-term projects. Describe the Proposer’s ability to bring in additional resources if required, including the timeframes in which such resources could be provided.
- Discuss your organization’s capacity to buy Information Technology equipment, and how you would be able to purchase equipment on behalf of the City before being paid by the City.
- With reference to fixed-price projects, indicate your organization’s capability to defer substantial payments until the City’s acceptance of deliverables.
- Attach a copy of the Proposer’s latest audit report or certified financial statement, or a statement as to why no report or statement is available, including what information is available regarding your organization’s financial stability.
- A list of corporate partners that are leaders in the relevant IT field for which the prospective Contractor will have ongoing relationships during this engagement. The Contractor should have access to these partners by way of subcontracts during the entire engagement with the City and should be able to negotiate, purchase and deliver hardware, software and services from these partners.
- Identify the resources that will be assigned to managing the Proposer’s performance under the contract resulting from this RFP. In particular, please provide the following information:
 - Resume(s) of proposed key management resources (Key Personnel) to be assigned to supporting the City in relation to this engagement (*i.e.*, in relation to the contract, not only in relation to particular projects that may be assigned under the contract). Such persons may, if a contract is awarded to the Proposer, be inserted in Attachment KP (Key Personnel) of the Proposed Agreement (Attachment BPA). Project-specific key personnel would be listed only in a Task Order under a project assigned under the contract.)
 - Where the proposed resources fit into the Proposer’s organizational structure.
 - A project staffing roster and position descriptions (roles/responsibilities), including the associated job title categories, consisting of individuals that would currently be available for the Proposer to assign to projects, if the contract resulting from this Request for Proposals were in existence as of the Proposal Due Date. It is recommended that 10-20 individuals should be included. Full resumes need not be included, but brief synopses of professional qualifications and experience should be included.
 - The number of your staff supporting projects who would be based in the NY Tri-State Area (NY, NJ, and CT).

4.3. Approach and Methodology

In this section, the Proposer is to provide a description of the methodologies to be used during the life of this contract. Please address the specific areas listed below for each Class for which the Proposer is submitting a Proposal. Response should be limited to five pages for each Class.

- Provide a summary description of the methodologies or solution models that the Proposer would be likely to offer to a Requesting Agency in its proposed Statements of Work for Systems Integration projects. The City prefers an “Iterative” methodology rather than a “Waterfall” methodology. The description should include at minimum the following areas:
 - Project management and governance
 - Application development/system development life cycle (SDLC)
 - Workflow design and business process analysis
 - Technical design: logical and physical
 - Testing – stress, system, security, and user acceptance
 - Training and knowledge transfer
 - Problem mitigation strategies
 - Communication Plan (for communicating with Requesting Agency’s project team)
 - Warranty Services and Maintenance Services
- Describe proposer’s approach to assure that the functionality of the deliverables/systems/applications implemented address the business needs of the client and provide a business benefit.
- Describe proposer’s requirements gathering, design, architecture and “blue printing” processes, specifically address proposer’s ability to provide illustrations and demonstrations of proposed solution as part of the Tier 2 Request for Services response.

4.4. Sample Project Proposals – Classes One and Two

In order to allow the City to better evaluate submitted Proposals, Proposers for Class 1 and Class 2 should respond to the sample projects in this section. These projects are representative of the type of work to be performed in each Class of service. The Proposer must respond to all sample projects, regardless of the Class for which the Proposer is submitting the Proposal.

Each project response should be a maximum of five pages long, and should primarily concentrate on the “response focus” provided in the project description. In general, each project response should include the following:

1. A summary of the overall approach
2. Description of the project team (number of staff, roles and responsibilities)
3. Description of the proposed solution
4. Estimated hours and duration of project
5. Description of the major tasks to be performed, by phase and with associated deliverables.
6. Any assumptions on which the Proposal is based.
7. Identification of known risks, estimated probability of the risk event, impact of the event, and mitigation strategy.

8. In those situations where additional information is required to complete the analysis, a documentation of the questions/issues that if answered/resolved would allow a more accurate estimate.

4.4.1. Sample 1: Application Development Project

The Chief Information Officer (CIO) at Agency C is seeking a systems integrator to rewrite, migrate, and convert the existing application source code of a Citywide Property Information System (CPIS) to a more supportable and maintainable language while maintaining all of the current functionality and having little or no impact on the existing internal and external user community. The current application was developed approximately 15 years ago and can no longer support the increasing volume of system activity in its current configuration and support model. CPIS is capable of providing online users with 24/7 access and the ability to do (1) Search property records and view document images for all NYC boroughs back to the 1960, (2) Compute property transfer taxes and other recording fees and taxes, (3) Create cover pages and tax reports, and (4) Find a property Borough, Block and Lot (BBL) or the Address for a BBL.

In 1995, Agency C started an initiative to streamline the search and retrieval of New York City property record information. The agency then developed the Citywide Property Information System (CPIS), a public facing, online property search and recordation application. The application, which went live in 1997, is based on a mixture of customized Borland Delphi 6, Microsoft code, and a supporting Sun environment. The current technical environment is reaching or has reached end of support life. Key issues with this environment are:

- Backend Servers – The current end of life Sun Enterprise 10000 backend hardware is Unix based.
- Document Management Software – The current FileNet software that stores document images is end of life.
- Database Management System Software – The current database software for the application is Oracle Enterprise 8i.
- Application Source Code Language – The current application was written to run under Microsoft Windows. The software was developed primarily using Borland Delphi 6 which has become increasingly difficult to support. In addition, a significant portion was written using .NET technologies.

The scope of this project is to successfully complete a full rewrite of the CPIS application to a more supportable language, migrate the application to a more maintainable platform/production environment, and convert the legacy information to an updated data standard. In addition to maintaining the current application functionality, Agency C is requesting a set of functionality enhancements to the application. The enhancements include a new electronic lien process, EFT and ACH payment processing, detailed reporting, functionality to auto-calculate interest and late payment penalties, the ability to redact sensitive data (such as SSN#s) and more.

The estimated timeline for this project is 10 months.

Response focus:

1. Describe the initial steps you would take to start this project.
2. How would you address each of the key technical issues described above?
3. How and when will the enhancements be addressed during the implementation? Assume that the enhancements are equally important to the agency at this time.

4. Provide a list of resources you would staff for this project and explain why their skill sets would add value to this project.

4.4.2. Sample 2: Infrastructure Project

The City has determined that the current NYC.gov portal platform needs enhancement to confront increasing challenges in risk, stability, and support for both current agency requests and planned strategic initiatives. This requires upgrading or replacing its eight-year-old hardware and software, much of which is near or past end-of-life; that puts current services at risk and prevents support of the required expansion of capabilities. The portal architecture must also be restructured because the current platform was not designed for the rich, interactive, resource-intensive demands of the new and anticipated Internet applications the City will use for citizen access and service.

The goals of this multi-year, multi-phase program are to upgrade or replace the existing portal software, hardware, and architecture so that it can support existing, planned, and future mission-critical and feature-rich Internet initiatives. The new robust, stable and flexible platform will provide expanded capabilities for high quality services for the City of New York for at least five years. The objectives of the project include:

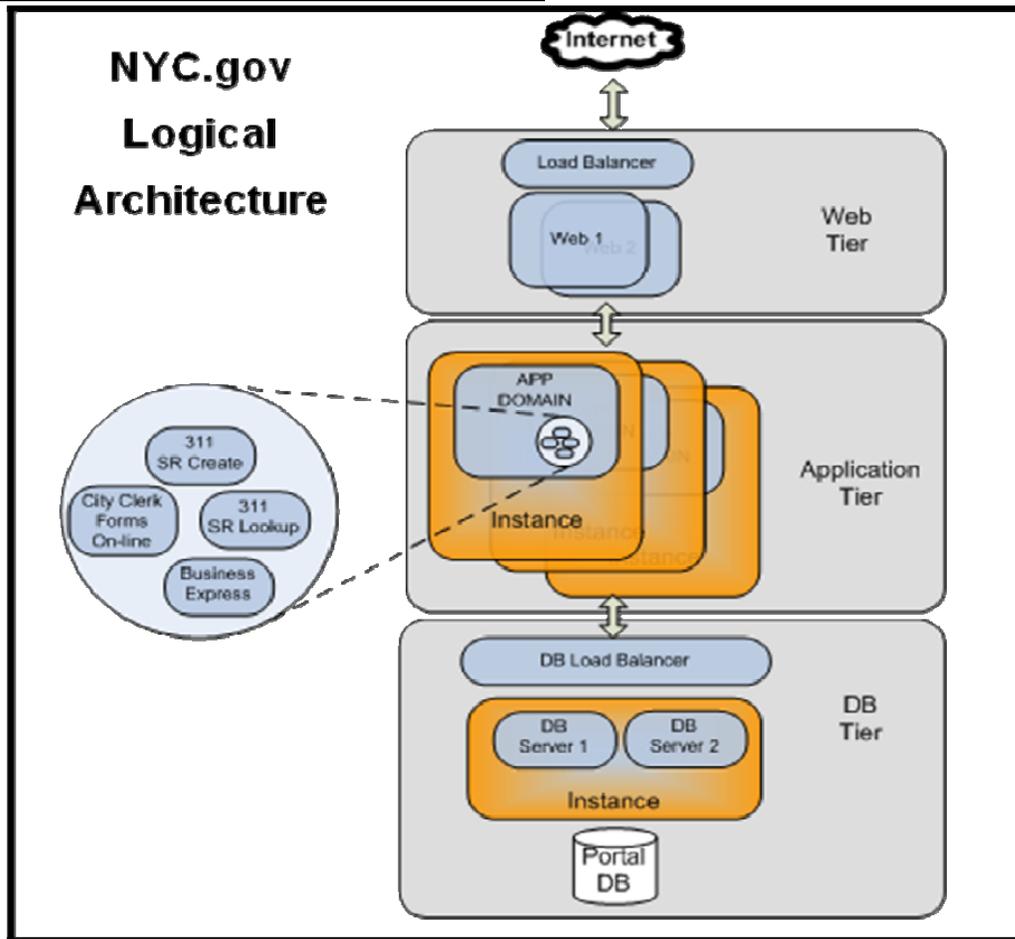
- Increase in capacity for application hosting
- Implementation of a routinely expandable hosting architecture
- Reduction of cross-application impacts
- Improvement of troubleshooting in-production application issues

The current NYC.gov portal architecture hosts multiple applications in one domain across three clustered servers with identical configuration. In this shared structure, each application impacts the others during issues with maintenance, performance, or functional processing, resulting in competition for shared resources. The portal architecture also requires significant time and investment to configure, scale, and introduce strategic capabilities. It currently supports approximately 2,000 users internally and 10,000 users externally. The current software stack is outdated, and much is off support or will be off support in the near term. As part of the migration to the consolidated hardware, the existing application software versions will need to be upgraded or replaced, as shown at a high level in the architecture diagram and table below.

Table 1- Current Components and Proposed Targets

COMPONENT	CURRENT VERSION	TARGET VERSION
Operating System	Solaris 8	TBD
Web Server	Sun Java System Web Server 6.1 (iPlanet)	
Application Server (Enterprise, support for 12 years)	Oracle WLS 8.1	
Portal Software	Vignette Portal 7.2	
Runtime Environment	Java 1.4	
Database Server	Oracle Server 10g	

Diagram 1 – Current NYC.gov Portal Architecture



The scope of this project includes multi-year program with project activities undertaken in multiple phases and spans across approximately 15 major critical applications. The scope is comprised of the following project components:

- Requirements Validation –detailed review and validation of each hosted application
- Server Infrastructure Hardware and Software Implementation – Procuring, installing, configuring, testing, and certifying new hardware and software
- New NYC.gov Foundations –Implementing and documenting core technology components to be leveraged by upcoming applications and services, including account management and identity management capabilities
- Global Load Balancing – Configuring, testing, and certifying a new load balancing implementation
- Applications Migration – Adapting and moving existing suites of 15+ enterprise-wide business applications into the new infrastructure

Response focus:

1. Provide a narrative and network design that includes a summary of your approach and methodology for this project, a proposed project timeline and a detailed description of the new infrastructure environment.

2. Identify the key risks for this project and provide a mitigation strategy for each risk.
3. How would you address the application migration phase while ensuring continual uptime of the City's critical applications?
4. What are the critical success factors for this project?

4.4.3. Sample 3 Application Development Project 2

Agency A is seeking a contractor to develop a replacement system for the current software application called the Agency Information System. The system should be a comprehensive solution that supports the various needs of City of New York (City) staff, the building industry and the public as well as interface with a number of existing City systems. The replacement system will be called the Enterprise Information System (the new system).

The awarded contractor will design and or configure the system to replace, unify, and enhance the processes now provided by the legacy Agency Information System and a wide variety of ancillary systems, data feeds, and manual operations. Due to the breadth of the development, a phased implementation is anticipated.

The awarded contractor shall specify and implement a system that provides a wide range of technology tools to support the business processes of Agency A and other City agencies involved in the development and safety of the buildings in the City. These constituencies require interactive data entry, inquiry, workflow processing and tracking, inbound and outbound batch and real-time data feeds, as well as a variety of innovative technology tools to enhance the delivery of the AGENCY A's services. The software solution might be a commercial-off-the-shelf (COTS) product, or a Rapid Application Development (RAD) tool/methodology, or a custom development approach.

Project Overview and Background

Information Technology Environment

- **Infrastructure:** Agency A and DoITT Infrastructure: WAN data lines, LAN topology, routers, communications protocols, servers, desktops, mainframe, etc.
- **File Descriptions:** ADABAS/Natural data structure/interface design
- **Interfaces:** Range of Systems (e.g.City Planning Geosupport, DOF Property, FDNY Inspections)
- **Ancillary Systems:** Excel, DB2,Access,Oracle

Goals of the Project

Business Goals - Business Process Re-engineering (BPR)

Agency A's current, largely paper-oriented business processes need to change to use the new system effectively. Current business processes have evolved over the years and have not been well documented. Installation of a modern permit system will radically alter existing business processes and will be a major component of the implementation of the new system.

Goals of BPR:

Streamline and standardize application procedures

Decrease application processing time

Establish targeted timeframes

Enhance quality control

BPR should include a review and recommended optimization of the following business processes: Pre-filing; Application Processing; Plan Examination; Permitting; Construction; Inspection for CO; Administrative Process; and Issuance of TCO, CO.

Information Technology Goals

Provide e-Filing

Automate and Streamline Workflow Activities

Capture, Store, Use and Disseminate Documents (Document Management)

Increase Use of Electronic Spatial Navigation and Analysis (GIS)

Improve Field Inspections (Handhelds)

New system to exchange information with key partners in a real or near time environment

Agency A Current Information System:

Legacy Information System and wide assortment of ancillary systems.

Current System: ADABAS Natural for 1,000,000 buildings/properties and associated data (e.g., applications, permits, certificates of occupancy, complaints, inspections, violations, maintenance reports).

AG's EntireX Broker middleware for web-based public interface, On-the-Web.

The system uses BIN numbers for its primary key for property related records. BIN numbers are created and maintained by the Department of City Planning. Current and Projected Volumes

Currently the system handles approximately 190,000 transactions (mainframe process call) per day. Transaction volumes by function or business unit are not currently available.

New System Anticipated utilization increase 25 - 50% due to increased functionality and user base.

Internal Users – Daily average internal client sessions: 500–600. Maximum number of users: 1,000.

External Users – Unknown number of anonymous users of the future web interface. Current system receives 200,000 page views; 11,000 unique visitors per business day. Utilization expected to increase with new functionality.

Current Database Size - ADABAS: 44 million records in 39 files. Average yearly growth of 30%. Volume will increase at a greater rate with new system.

Ancillary Systems - Over 60 ancillary systems support isolated business processes using several software development tools (e.g., Excel, Access, Visual Basic, Oracle). Run on Agency's LAN/WAN. New system to integrate current functionality, ancillary systems, manual processes.

Agency A Network - Internal LANs linked to CityNet; City's WAN maintained by DoITT. The Agency A LAN includes 1,000 nodes in 7 locations. Agency A uses Novell solutions including Novell Network Operating System, Novell Directory Services, (NDS) over IP, Novell GroupWise, Novell Border Manager for a Proxy server to the Internet through DoITT; Cisco networking equipment. ZenWorks for network management. CityNet connects Agency A's 7 sites and DoITT mainframe for access to the system. Inbound/outbound data feeds running over CityNet, to and from other City Agencies will be utilized by the new system.

Agency A Desktops - Windows XP and Windows 7. MS Office 2007, other commercial desktop applications. Attachmate MyExtra terminal emulator is main user interface to the system and other mainframe applications and ancillary systems.

Hosting - Current application and Web system hosted at the DoITT Data Center.

Business Requirements:

- 1) Licensing
- 2) Application Processing and Review
- 3) Professional Certification and Audit Program
- 4) Inspections
- 5) Enforcement
- 6) Materials, Equipment and Device Certification
- 7) Maintenance Permits
- 8) Periodic Inspection Reports and Periodic Testing
- 9) Administrative Functions

Technical Requirements:

- 1) Workflow Processing
- 2) Reporting and Business Intelligence
- 3) GIS Environment
- 4) Content/Document Management
- 5) Electronic Plan Submission
- 6) Data Entry Support and On-line Help
- 7) On-Line Access
- 8) Inter-Agency Access
- 9) Public On-line Access
- 10) Business Community On-line Access
- 11) Systems Operations Support and Error Handling

System Architecture/General Design Requirements:

- 1) Portability
- 2) Scalability
- 3) Security
- 4) Redundancy and Business Continuity/Disaster Recovery
- 5) Good System Performance

Proposals should address the following:

- 1) Indicate your understanding of the City's current situation and how your proposed solution meets the requirements documented in this RFP.
- 2) What do you understand to be the purpose and scope of this project?
- 3) What are the pertinent issues and potential problems related to the project?
- 4) Provide an overview of your Governance Strategy.
- 5) Provide an overview of your Technical Architecture
- 6) Provide an overview of your Project Management and Project Coordination Services
- 7) Provide an overview of your BPR Approach
- 8) Provide an overview of your Analysis and Design Approach

- 9) Provide an overview of your Data and Document Conversion Strategy
- 10) Provide an overview of your testing strategy.
- 11) Provide an overview of your Training Approach
- 12) Provide an overview of your approach for interfacing with GIS and existing external systems.
- 13) Provide an overview of your Implementation Strategy
- 14) Provide an overview of your Documentation C
- 15) Provide an overview of your Risk Assessment/Mitigation Strategy
- 16) Provide a summarized statement of work. Briefly describe project phases and how you will proceed toward the completion of project. Indicate major responsibilities of proposer, subcontractor, the City.
- 17) Provide a list and description of Major Deliverables
- 18) Provide an overview of your proposed project organization and team roles.
- 19) Provide an overview of your testing strategy.

4.4.4. Sample 4: Application Project 3 - Enterprise Content Management (ECM)

Agency B will deploy an ECM solution to automate filing of and access to documents and content. Ultimately, Agency B views this as an opportunity to improve data capture and retention, while automating processes that are performed manually today.

The scope of this project is to meet the content management needs of Division One within Agency B. However, Agency B anticipates this initial implementation will serve as the foundation for an enterprise-wide deployment to address the needs of multiple other business units.

This work for Division 1 includes three primary workstreams. In the first workstream, the System Integrator (SI) will design and deploy the ECM solution for Division One. In the second workstream, the SI will scan Division One's current and historical records, so they can be used by the ECM solution. In the third workstream, the SI will enhance the ECM solution by replacing Division One's paper internal forms with eForms. Where possible, the systems integrator is expected to conduct the work for the three workstreams simultaneously.

The new ECM application will be hosted at the DoITT Data Center, where it can be configured to support growth, backed-up regularly and where it will be integrated into DoITT's disaster recovery.

Metrics:

25,000 current and historical records consisting of approximately 4 million sheets of paper

Approximately 100 distinct types of records

Approximately 150,000 sheets of paper added every 6 months

Response focus:

1. Describe the initial steps you would take to start this project.
2. What ECM solution(s) would you recommend? Why those solution(s)?
3. How would you import the scanned data into the new ECM system?
4. How would you ensure that all current and historical data has been scanned and entered into the new system?
5. How would you integrate the continual collection of new data on the old manual system while current and historical data is scanned and entered into the new system?
6. What are the cultural issues that need to be addressed, and how would you address them?

5.0 Price Proposal

A Price Proposal should be prepared and submitted in a separate, sealed envelope, marked "Price Proposal". The Price Proposal should include each of the following for providing the work described in this RFP, in the format prescribed in the Price Proposal forms in *Attachment 3: Price Proposal Templates*. The Proposer should submit a separate Price Proposal for each Class in which it is proposing.

The Price Proposal should include:

- In Schedule 1 of the Price Proposal Templates, the proposed hourly rate for each job classification, with rate increases, if any, in percentage form for each year of the contract. The form provided contains the job title classifications that are utilized by the City, along with definitions of the classifications. The Proposers should provide hourly rates for each of the job title classifications provided. In addition, the Proposer may provide additional titles and corresponding hourly rates that proposer will make available under the resulting contract.
- All hourly rates must be inclusive of all employee benefits, profit, travel, overhead, administrative costs (e.g. printing, copying, secretarial, typing, program entry, internal timesheets, invoicing, etc.), transportation, meals and all other expenses.
- In Schedule 2 of the Price Proposal Templates, the maximum proposed charges associated with the procurement of equipment that may be provided in connection with a project. All proposed rates and mark-ups shall, if a contract is awarded, be effective for the entire contract term.

The rates proposed will become part of the Contract and will be used as the basis for developing future Task Orders. For specific projects, however, the City reserves the right to require a fixed-fee deliverable based payment structure. The City will consider Proposals to structure payments in a different manner (i.e. time and materials, milestone payments) or other method. The decision to use a fixed-fee, time-and-materials, or any other type of payment agreement will be at the sole discretion of the City.

Contractors are encouraged to propose measures, incentives and disincentives that they believe will support the City's goal of providing the highest quality service in the most cost-effective manner. Contractors may also propose more than one approach.

Although further discussions may be conducted with Proposers submitting acceptable Proposals, the City reserves the right to award contracts on the basis of initial Proposals received, without discussions. Therefore each initial offer should contain the Proposer's best cost and price terms.

The Proposal package should contain the following materials. Proposers should utilize this section as a “checklist” to assure completeness prior to submitting their proposal to the Agency.

A sealed inner envelope labeled “**Program Proposal**,” containing one original set and the stated number (in the parentheses) of duplicate sets of the documents listed below in the following order:

- Proposal Cover Letter Form (Attachment 1: Cover Letter Template)
- Technical Proposal
 - Narrative (3)
 - References for the Proposer and, if applicable, each Sub-Contractor (3)
 - Resumes and/or Description of Qualifications for Key Staff Positions (3)
 - Response to four (4) Sample Projects
 - Organizational Chart (3)
 - Audit Report or Certified Financial Statement or a statement as to why no report or statement is available (3)
- Acknowledgment of Addenda Form (Attachment 2: Acknowledgement of Addenda) (3)

A second separate sealed inner envelope labeled “**Price Proposal**” containing one original set and 3 duplicate sets of the Price Proposal.

- Price Proposal Form (Attachment 3: Price Proposal Templates) (3)

A third sealed inner envelope labeled “Subcontractor Utilization Plan & Iran Divestment Certification” containing:

- “Subcontractor Utilization Plan” (Attachment 5, Schedule B, Part II) or;
 - Approved Waiver of Target Subcontracting Percentage (Attachment 5, Schedule B, Part III) or;
 - “Subcontractor Utilization Plan” (Attachment 5, Schedule B, Part II) and Approved Partial Waiver of Target Subcontracting Percentage (Attachment 5, Schedule B, Part III)

And

- Iran Divestment Certification (Attachment 7)

A fourth sealed inner envelope labeled “Doing Business Data Form” containing an original, completed Doing Business Data Form (see Attachment 6: Doing Business Data Form)

A sealed outer envelope, enclosing the four sealed inner envelopes. The sealed outer envelope should have two labels containing:

- The proposer’s name and address, the title and PIN # of this RFP and the name and telephone number of the Proposer’s contact person.
- The name, title and address of the Authorized Agency Contact Person

6.0 General Information To Proposers

A. Complaints. The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

B. Applicable Laws. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-7820.

C. General Contract Provisions. Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A—General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.

D. Contract Award. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.

E. Proposer Appeal Rights. Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.

F. Multi-Year Contracts. Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor's performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.

G. Prompt Payment Policy. Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.

H. Prices Irrevocable. Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

I. Confidential, Proprietary Information or Trade Secrets. Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade

secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.

J. RFP Postponement/Cancellation. The Agency reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.

K. Proposer Costs. Proposers will not be reimbursed for any costs incurred to prepare proposals.

L. Vendex Fees. Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the Vendex system, including the Vendor Name Check Process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to \$1million) (above \$1million).

M. Charter Section 312(a) Certification. [IF APPLICABLE]

The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not result in the displacement of any New York City employee within this Agency. See attached Displacement Determination Form.

The Agency has determined that the contract(s) to be awarded through this Request for Proposals will result in the displacement of New York City employee(s) within this Agency. See attached Displacement Determination Form.

The contract to be awarded through this Request for Proposals is a task order contract that does not simultaneously result in the award of a first task order; a displacement determination will be made in conjunction with the issuance of each task order pursuant to such task order contract. Determinations for any subsequent task orders will be made in conjunction with such subsequent task orders.

Barbara Federman
(Commissioner) (Agency Chief Contracting Officer)

4/23/13
Date

Message from the New York City Vendor Enrollment Center
Get on mailing lists for New York City contract opportunities!
Submit a NYC-FMS Vendor Application - Call 212/857-1680

Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services; and Supplemental Provisions Governing Information Technology Contracts

APPENDIX A

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

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

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

Section 2.02 Conflicts of Interest

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

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

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

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

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

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

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

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

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

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

Section 2.03 Fair Practices

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

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

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

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

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

Section 2.04 VENDEX

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

Section 2.05 Political Activity

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

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

Section 2.06 Religious Activity

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

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

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

Section 2.08 Bankruptcy and Reorganization

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

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

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

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

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

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

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

Section 3.02 Subcontracting

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

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

C. All subcontracts shall contain provisions specifying that:

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

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

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

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

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

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

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

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

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

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

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

Section 4.02 Employees

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

Section 4.03 Removal of Individuals Performing Work

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

Section 4.04 Minimum Wage

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

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

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

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

Section 5.04 Audit

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

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

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

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Definitions

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

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

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

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

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

Section 5.08 Confidentiality

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

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

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

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

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

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

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

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

Section 6.01 Copyrights

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

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

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

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

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

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

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

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

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

Section 7.02 Commercial General Liability Insurance

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

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

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

Section 7.03 Professional Liability Insurance

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

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

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

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

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

Section 7.05 Unemployment Insurance

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

Section 7.06 Business Automobile Liability Insurance

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

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

Section 7.07 General Requirements for Insurance Coverage and Policies

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

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

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

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

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

Section 7.08 Proof of Insurance

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

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

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

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

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

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

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

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

Section 7.09 Miscellaneous

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

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

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

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

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

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

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

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

Section 8.03 Indemnification

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

Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

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

Section 8.06 Actions By or Against Third Parties

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

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

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

Section 8.07 Withholding of Payments

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

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

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

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

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

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

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

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

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

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

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

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

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

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

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

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

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

Section 10.03 Contractor Default

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10.04 Force Majeure

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

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

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

Section 10.05 Procedures for Termination

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

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

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

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

Section 10.06 Miscellaneous Provisions

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

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

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

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

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

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

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

Section 11.02 Electronic Funds Transfer

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

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

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

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

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

Section 12.03 Resolution of Disputes

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

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

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

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

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

D. Presentation of Dispute to Agency Head.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 12.04 Claims and Actions

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

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

Section 12.05 No Claim Against Officers, Agents or Employees

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

Section 12.06 General Release

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

Section 12.07 No Waiver

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

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

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

Section 13.02 All Legal Provisions Deemed Included

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

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

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

Section 13.05 Americans with Disabilities Act (ADA)

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

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

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

Section 13.06 Voter Registration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. display any political preference or party allegiance;

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

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

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

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

Section 13.07 Participation in an International Boycott

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

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

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

Section 13.08 MacBride Principles

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

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

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

Section 13.09 Access to Public Health Insurance Coverage Information

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

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

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

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

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

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

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

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

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

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

Section 13.10 Distribution of Personal Identification Materials

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

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

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

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

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

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

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

Section 14.02 Merger

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

Section 14.03 Headings

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

Section 14.04 Notice

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

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

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

AFFIRMATION

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

Full name of Proposer or Bidder *[below]*

Address _____

City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

- B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

- C - Corporation

EMPLOYER IDENTIFICATION NUMBER _____

By _____
Signature

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

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

CERTIFICATION BY BROKER

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

CERTIFICATION BY BROKER

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

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized officer of broker]

[Name of authorized officer (typewritten)]

[Title of authorized officer (typewritten)]

[Contact Phone Number for Broker (typewritten)]

[Email Address of Broker (typewritten)]

Sworn to before me this
____ day of _____, 201_

NOTARY PUBLIC

APPENDIX A-1

SUPPLEMENTAL PROVISIONS GOVERNING SYSTEMS INTEGRATION CONTRACTS FOR TECHNOLOGY PROJECTS CITYWIDE

Article 1 Definitions

1.1 Defined Terms. Whenever used in the Agreement, except for Appendix A, the words and phrases listed below have the meanings given below. Terms not defined in the Agreement have their plain meaning as commonly interpreted in the industry.

“Agreement” means the document titled “Agreement” and all attachments and appendices thereto, as well as all Task Orders issued under the Agreement.

“Accept” or “Acceptance” means a final determination by the City that a Deliverable, including all of its components, satisfies all applicable Performance Specifications and other requirements of the Agreement and has successfully completed all acceptance testing procedures that are based upon testing criteria agreed to by the Parties.

“Appendix A” means the General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services attached to the Agreement.

“City Confidential Information” has the meaning expressed in section 17.1.

“City Data” has the meaning expressed in section 15.1.

“Confidential Information” has the meaning expressed in section 17.1.

“Contractor Confidential Information” has the meaning expressed in section 17.1.

“Contractor Personnel” has the meaning expressed in section 9.1.

“Custom Products” has the meaning expressed in section 11.1.

“Deliverable” means any Products or Services that Contractor is required by the Agreement to provide to the City.

“Department” means New York City’s Department of Information Technology and Telecommunications.

“Document Deliverable” has the meaning expressed in section 7.1.

“Documentation” has the meaning expressed in section 11.1.

“Effective Date” means the date the Agreement is registered by the Office of the Comptroller of the City of New York. That date will be set forth in the Notice to Proceed that the Department sends to the Contractor.

“Existing Products” has the meaning expressed in section 11.1.

“Final Acceptance” has the meaning expressed in section 7.1.

“Final Acceptance Period” has the meaning expressed in section 7.1.

“Good Working Order” has the meaning expressed in section 7.1.

“Hourly Rate” means the rate prescribed in Attachment PRC for payment for labor that meets the labor category qualifications of a labor category specified therein.

“Invention” has the meaning expressed in section 11.7.

“Key Personnel” has the meaning expressed in section 9.5.

“Licensed Software” has the meaning expressed in section 11.1.

“Milestone” means an event or occurrence that entitles the Contractor to a payment for work completed.

“Notice of Deficiency” has the meaning expressed in section 7.1.

“Object Code” has the meaning expressed in section 11.1.

“Party” means either the City or the Contractor, collectively the “Parties.”

“Performance Specification” means the performance standards and criteria set forth in the Agreement that are associated with a Deliverable.

“Preliminary Acceptance” has the meaning expressed in section 7.1.

“Products” means hardware, software, documentation, data, or other equipment or supplies furnished by or through Contractor under the Agreement, including but not limited to: (i) hardware components; (ii) printed materials, preliminary, final or otherwise, whether printed in hard or on electronic media (including but not limited to, training manuals, Documentation for software, systems or users, reports, designs, and drawings); (iii) software programs and related documentation; (iv) data, databases, and other data compilations; (v) photographs, film, CDs, DVDs, or other pictorial forms of media; (vi) modifications, customizations, custom programs, program listings, programming tools, modules, and components; (vii) System(s); and (viii) any properties embodied therein, whether tangible or intangible (including but not limited to, utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, and Object Code). Products do not include City Data.

“Project Proposal” means a document submitted by a Contractor to a Requesting Agency containing offered services and pricing, in response to a Service Request from such

Requesting Agency. The Project Proposal includes the Contractor's proposed Statement of Services and other information that the City will use to evaluate the Project Proposal.

"Qualified Vendor(s)" means every vendor, including Contractor that has entered into a contract with the City resulting from the City's Request for Proposals.

"Reject," "Rejected" or "Rejection" means the act of denying Acceptance of a Deliverable for failure to meet the requirements associated with the Deliverable.

"Repair" has the meaning expressed in section 21.1.

"Request for Proposals" means the written solicitation for Citywide Systems Integration Services, Procurement Identification Number 85813P0006 and any written addenda thereto.

"Requesting Agency" means a City agency, department or office that requests services under this Agreement. Any City agency, department or office may be a Requesting Agency.

"Respond" or "Response" has the meaning expressed in section 21.1.

"Retainage" means a mutually agreed upon percentage of the charges associated with an otherwise undisputed payment or invoice that the City may withhold pending the occurrence of a pre-defined event or achievement of a mutually agreed upon subsequent Milestone.

"Schedule" means the schedule of due dates required for the provision of Services and/or Products under a Task Order.

"Service Credit" means a credit against undisputed charges otherwise due to the Contractor that the City may be entitled to because of a failure by the Contractor to meet the Service Level Requirements.

"Service Element" has the meaning expressed in section 21.1.

"Service Event" has the meaning expressed in section 21.1.

"Service Level Requirements" or "SLRs" means service criteria that the Contractor must satisfy during the Final Acceptance Period, Warranty Period, or while providing maintenance Services. SLRs may be mutually agreed upon and set forth in a Task Order, but at a minimum must meet the performance standards set forth in Article 21.

"Service Request" means a solicitation for services sent to all Qualified Vendors by DoITT on behalf of a Requesting Agency containing a description of services desired by such Requesting Agency and soliciting a Project Proposal from each of the Qualified Vendors.

"Source Code" has the meaning expressed in section 11.1

“Subject Invention” has the meaning expressed in section 11.7.

“Statement of Services” means the agreed-upon description of services and pricing included in the Agreement and/or a Task Order.

“System” means fully integrated and functional hardware and software components as well as the complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, that are necessary to enable the City to properly test, install, operate and enjoy full use of the System.

“System Deliverables” means all Deliverables and components constituting a System, either individually or as integrated, or an enhancement, release or update of a System.

“Systems Integration Services” or “Services” means designing, installing and fully integrating projects into live operating environments. Systems Integration Services include but are not limited to: analysis of existing technological environments, including hardware, software, live operations and transaction volumes; design and development of new systems; add-ons or modifications to existing architecture, including single platform computer systems and distributed systems; development of functional and/or design specifications and requirements, technical writing and documentation; provision of operating system and/or applications programming recommendations, including acquisition of off-the-shelf products, or integration of custom programming products; acquisition of hardware/software products and services; coordination and supervision of multiple service or product providers; installing, testing, auditing and integration of new systems within existing environments; maintenance and support services; and providing cultural transitioning of workforces to new environments, including training of employees and other end users.

“Task Order” means a document agreed upon by the Contractor, the Requesting Agency and the Department describing the Statement of Services the Contractor is required to provide to the Requesting Agency.

“Third-party Products” means any Products procured by the Contractor from a third-party. Third-party Products do not include City Data or Custom Products.

“Warranty Period” has the meaning expressed in subsection 8.2(a).

1.2 Other Definitions.

The terms defined in section 1.1 include the plural as well as the singular. Unless otherwise expressly stated, the words “herein,” “hereof,” and “hereunder” and other words of similar import refer to the Agreement as a whole and not to any particular section, subsection, or other subdivision. Section and subsection references in the Agreement or an Attachment refer to sections and subsections of, respectively, the Agreement or the Attachment, unless stated otherwise. References to “Attachments” mean the Attachments to the Agreement unless provided otherwise. The words “include” and “including” are not terms of limitation. The word “or” means “and/or” unless the context requires otherwise.

The words “writing” or “written” mean preserved or presented in retrievable or reproducible written form, whether electronic (including e-mail, but excluding voice-mail) or hard copy, unless otherwise stated.

1.3 References to time.

The words “day,” “month,” and “year” mean, respectively, calendar day, calendar month and calendar year. “Business hours” or “business day” means 9:00 a.m. through 5:00 p.m. (EST) Monday through Friday, excluding the following City holidays: New Year’s Day, Martin Luther King, Jr. Birthday, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.

Article 2 Term; Survival

2.1 Term

- (a) The term of the Agreement is three (3) years, commencing on the Effective Date. The City may renew the Agreement for up to one (1) additional three (3)-year period.
- (b) Notwithstanding the expiration of the Agreement, individual Task Orders in effect before the expiration date may require the Contractor to work beyond the expiration date to completion of a specific project, in which event the terms and conditions of the Agreement shall survive expiration of the Agreement and apply through completion of such project and Acceptance by the City.

2.2 Survival

- (a) Every provision of the Agreement that by its nature is intended to survive will survive the expiration or termination of the Agreement or part thereof.
- (b) The foregoing does not limit or impair any claim of a party with respect to alleged breach of this Agreement that occurred prior to expiration or termination.

Article 3 Contractor’s Services

3.1 Scope of Work

- (a) The Contractor shall provide Systems Integration Services in accordance with the requirements of the Agreement and any Task Order for a project entered into by the Contractor and a Requesting Agency.

- (b) The Contractor shall acquire any Products necessary to complete the Agreement. The cost of the Products so acquired will be calculated in accordance with the requirements of Attachment PRC.
- (c) Except as may otherwise expressly be set forth in the Agreement, the Contractor shall provide all the services and comply with all of the requirements and obligations of the Contractor set forth in the Request for Proposals.
- (d) Contractor shall provide the Requesting Agency an annotated outline of each major Deliverable (as determined by the Requesting Agency) before beginning development of the Deliverable. This outline will be reviewed by the Requesting Agency and approved by the Requesting Agency program manager pursuant to section 7.2.
- (e) If the Scope of Services for a Task Order requires the Contractor to perform maintenance and support services for Licensed Software, such maintenance and support must include, but not be limited to:
 - (i) Promptly notifying the Requesting Agency of any defects or malfunctions in the Licensed Software or Documentation of which the Contractor is or becomes aware and using best efforts to correct any such defects or malfunctions;
 - (ii) Providing to the Requesting Agency, without additional charge during the maintenance and support term, all corrections, enhancements, upgrades, updates, revisions, fixes, and new releases of the Licensed Software which Contractor generally makes available to its customers;
 - (iii) Providing help desk assistance by toll free or local telephone service and on-line accessibility (via email or internet) to diagnose and correct defects arising with the use of the Licensed Software; and
 - (iv) Replacing the Licensed Software at no charge if the media becomes destroyed or damaged to such an extent that the Licensed Software becomes unusable.

To the extent that the Contractor developed Custom Products in which Licensed Software is integrated, the maintenance and support obligations applicable to Licensed Software under this section 3.1(e) are deemed to apply to such Custom Products.

3.2 Details of Work Performance. The Contractor shall provide the services set forth in a Statement of Services to a Task Order. If the Parties decide it is necessary or appropriate to amend the Task Order, they must do so by agreeing to a Task Order amendment.

3.3 Deliverables and Reports. The Contractor shall provide the Deliverables and reports described in a Task Order, Attachment BI (Billing and Invoicing), and Attachment R (Reports) in the format and frequency required or set forth in the Task Order or each respective Attachment. The City, in its sole discretion, may modify the content of Attachment BI.

3.4 Service Requests

- (a) The Department, on behalf of a Requesting Agency, will submit Service Requests to the Qualified Vendors.
- (b) A Service Request will include all information the City believes to be necessary and appropriate, including but not limited to:
 - (i) any additional security clearances and/or confidentiality/non-disclosure requirements with which the Contractor Personnel assigned to this project must comply;
 - (ii) the Contractor's procurement role for the project;
 - (iii) the due date for the receipt of Project Proposals; and
 - (iv) the evaluation criteria and their respective weights to be used by the Requesting Agency in selecting one of the Qualified Vendors for the project. The evaluation criteria will be developed by the Requesting Agency, in consultation with the Department, and will be based on both technical and price criteria.
- (c) The Department and/or Requesting Agency may conduct a pre-selection meeting and answer any questions that are received by the City during or after the meeting as necessary.
- (d) Qualified Vendors shall respond to Service Requests with Project Proposals. If selected by the City, Contractor shall provide Systems Integration Services under resulting Task Orders for projects entered into by the Contractor and a Requesting Agency.
- (e) If the Contractor submits a "no bid" response to at least seventy-five percent (75%) of the Service Requests issued in a single contract year, the City may declare the Contractor in default and terminate the Agreement pursuant to Section 10.03 of Appendix A. If the Contractor fails to submit a Project Proposal for a Service Request, such failure will be considered a "no bid" response.

3.5 Task Orders

- (a) All work under the Agreement must be set forth in a Task Order between the Requesting Agency and the Contractor for the duration of that project. The Task Order will incorporate the terms and conditions of the Agreement and will set forth a Statement of Services for the project including the elements described below. A Task Order may not change the terms and conditions of the Agreement; such changes may only be made in a duly executed change order. A Task Order template is included as Attachment TO. Depending upon the particular requirements that are set forth in a Service Request, the Contractor may need to modify the format or content of a Task Order that it prepares to correspond to such Service Request, but in general the Task Order will include the following:
- (i) Project objectives;
 - (ii) Project plans;
 - (iii) Approach and methodology;
 - (iv) Project resources (City and Contractor); key personnel and an organization chart for the project;
 - (v) Work products, high level and specific deliverables, and other responsibilities, such as required reports, invoicing, etc.;
 - (vi) Performance specifications;
 - (vii) Testing and acceptance criteria generally and as applicable to specific deliverables;
 - (viii) Detailed listing of hardware and software to be provided, and applicable warranty services and warranty periods;
 - (ix) Period of performance (projected start and end dates and overall assignment duration) and detailed timelines;
 - (x) Status reports and meetings (form, content and frequency);
 - (xi) Hourly Rates by job title and total cost and payment structure (time and material, fixed price, payment milestones);
 - (xii) Delay credits/service credits, if any; and
 - (xiii) Potential risks and proposed mitigation strategies.

- (b) The Task Order will be reviewed by the Requesting Agency, the Department, and any oversight agencies as necessary to ensure that the Task Order: meets the best interests of the City; is an appropriate use of, and is in accordance with the terms and conditions of the Agreement; and the Statement of Services comprehensively addresses the Requesting Agency's needs. The City may employ a project monitoring/quality assurance contractor to review Project Proposals and Task Orders to ensure that proposed solutions will meet the City's needs and best interests and will be performed according to generally accepted industry practices.
- (c) The Contractor shall prepare Project Proposals and Task Orders at no charge to the City.
- (d) All Contractor Personnel assigned to the Task Order are subject to the provisions of Article 9.
- (e) Contractor shall submit to the Requesting Agency regular status reports (providing updated project plans, status of Milestones and Deliverables, costs to date and estimated cost to complete) during the duration of the Task Order. The detailed content, format, and schedule for status reports (weekly, bi-weekly, monthly) will be agreed upon by the Parties and included within the Task Order.
- (f) A Requesting Agency may request the Qualified Vendors to propose pricing on a time and materials, fixed-price or other payment structure, as appropriate for the project. A Requesting Agency may request that Project Proposals include more than one possible payment structure, so that the Requesting Agency can choose which offered payment structure to use in the awarded Task Order.

Article 4 Liquidated Damages

- 4.1 The Contractor acknowledges and agrees that: (a) performance of the Services within the time frames agreed to by the Parties (as may be set forth in a Schedule) is a material obligation of the Contractor; (b) Contractor's failure to timely meet its obligations, including failure to deliver or install individual project Deliverables and failure to complete the project or a Milestone or phase of the project within the time frames agreed to by the Parties (as may be set forth in a Schedule), will have a material adverse impact on the City and cause it to suffer damages; and (c) in view of the difficulty of accurately calculating the amount of such damages, the Parties agree that the amounts set forth in section 4.2 below constitute liquidated damages and are not a penalty for such failure to perform Services within the time frames agreed to by the Parties (as may be set forth in a Schedule).

- 4.2 In the event of Contractor's failure to perform Services within the time frames agreed to by the Parties (as may be set forth in a Schedule), the Contractor shall pay to the City liquidated damages in the amount of one percent (1.0%) of the contract value of the late Deliverable per day, up to the value of the contracted price for the Deliverable, for each day or part of a day of delay until the services are completed.
- 4.3 Liquidated damages assessed hereunder are not intended to be, and do not constitute, either a partial or full waiver or discharge of the City's right to indemnification, or the Contractor's obligation to indemnify the City pursuant to the indemnification provisions of the Agreement, nor do the liquidated damages assessed hereunder constitute a waiver of any other remedy available to the City under the Agreement or applicable law.
- 4.4 The City may deduct and retain out of monies which may become due under the Agreement the amount of any such liquidated damages, and in case the amount which may become due hereunder is less than the amount of liquidated damages suffered by the City, the Contractor shall pay the difference within thirty (30) days of receipt of notification from the City of the amount owed by the Contractor.
- 4.5 The Contractor acknowledges and agrees that the City's failure to assess liquidated damages hereunder does not constitute a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.

Article 5 New Technologies

- 5.1 Contractor acknowledges the City's substantial interest in state-of-the-art technology that offers improved performance and more efficient and cost-effective ways to meet the Requesting Agency's requirements. The City is aware that technology is evolving rapidly and that Contractor may be in the process of improving its existing products or services, or making available new technologies to its commercial and governmental customers. In this regard, the Contractor shall have the following obligations:
- (a) promptly inform the Requesting Agency of all improvements to Contractor's existing technologies relevant to a Statement of Services and the expected or actual availability of such technologies;
 - (b) Except as may be agreed to by the Parties in writing, at the time when Contractor is required to furnish the Products, the Contractor shall furnish the most recent, up-to-date version of the technology; and
 - (c) At the Requesting Agency's request and at no additional charge, the Contractor shall provide the Requesting Agency with any new features,

functions, revisions, enhancements, modifications or improvements that Contractor makes available to other customers without charge.

Article 6 Third-Party Products

- 6.1 Where the Services consist of or include the delivery of Products, the Contractor shall coordinate delivery and installation (if applicable) with suppliers, and the Contractor is liable for any cost(s) of reinstating standard manufacturers' warranties or Acceptance periods which have lapsed due to untimely coordination by the Contractor.
- 6.2 In procuring Third-party Products, the Contractor shall obtain the best value for the City and comply with all procedures and requirements of the Agreement. To the extent possible, Contractor shall purchase Third-party Products directly from the manufacturer or at prices that do not include a mark-up attributable to a secondary source.
- 6.3 The Contractor shall deliver, or arrange for delivery of, all Third-party Products to the City's site and notify a designated City representative that the Third-party Products are ready for inspection.
- 6.4 Title and risk of loss to Products pass from the Contractor to the City when the Products have been received, inspected and Accepted by the City. Mere acknowledgement by City personnel of the delivery or receipt of the Products (as in a signed bill of lading) is not deemed or construed as Acceptance of the Products delivered or received. Upon transfer of title, the Contractor shall provide the City with all associated documentation, including warranty information.
- 6.5 Third-party Products provided by the Contractor are governed exclusively by the terms and conditions of the Agreement. To the extent that any quotation, purchase order, or any other document provided by the Contractor or a third-party supplier contains any provisions that conflict with the Agreement, the Agreement will take precedence.
- 6.6 The Contractor shall ensure that Products meet all applicable Performance Specifications and other requirements of the Agreement. Unless otherwise provided in the Agreement, Performance Specifications for Third-party Products shall be deemed to include a third-party supplier's published product specifications. If the Products do not meet the Performance Specifications, the Contractor is responsible for securing satisfactory performance at its own expense.
- 6.7 The Contractor shall grant, transfer, convey or assign, or cause to be granted, transferred, conveyed or assigned, to the City all rights to any Contractor-supplied Products, including Licensed Software, necessary for the City to use the Products

for the intended purpose. Contractor warrants and represents that it has the right or will obtain the right to grant, transfer, convey or assign, or to cause to be granted, transferred, conveyed or assigned, the rights for the City to use any Contractor-supplied Products, including Licensed Software, for the intended purpose.

- 6.8 Contractor is not authorized to purchase on behalf of the City any Products subject to a license or use agreement without the prior written approval of the Department's or the Requesting Agency's General Counsel or designee. Prior to execution of a purchase of such Products, Contractor shall present the proposed license, use agreement or other document setting forth the terms and conditions of the purchase to the Department's or Requesting Agency's General Counsel or designee for review and the opportunity to object to any terms or conditions set forth therein.

Article 7 Review and Acceptance of Deliverables; Inspection of Deliverables

7.1 Definitions

- (a) "Document Deliverables" means all documentation required to be provided by the Contractor under the Agreement, including but not limited to, requirements documents, design documents, software documentation, Acceptance criteria, and test plans.
- (b) "Final Acceptance" means a final determination by the City, in its sole discretion, that a System Deliverable satisfies all applicable Performance Specifications and other requirements of the Agreement, including successful completion of the Final Acceptance Period. Final Acceptance marks the point in time when the City takes ownership of the System Deliverable (and all previously Accepted components, if any) and the Warranty Period commences.
- (c) "Final Acceptance Period" means the time period between Preliminary Acceptance and Final Acceptance of a System Deliverable, during which time period a System Deliverable must operate in Good Working Order in its intended live production environment for thirty (30) consecutive days without the occurrence of a Severity Level 1 or Severity Level 2 defect.
- (d) "Good Working Order" means the uninterrupted, trouble-free operation of the Product or System Deliverable, and all components thereof, in conformity with all applicable Performance Specifications and other requirements of the Agreement.
- (e) "Notice of Deficiency" means a notice to the Contractor that contains the reasons for Rejection of the Deliverable, including a reasonably detailed description of the deficiencies that must be remedied and a description of

the Acceptance criteria that have not been satisfied. Such notice may be in soft- or hard-copy, including email, and does not need to be referenced as such.

- (f) “Preliminary Acceptance” means a determination of the City that a System Deliverable satisfies all applicable Performance Specifications and other requirements of the Agreement, including all Acceptance testing criteria that are agreed to by the Parties in writing, has no known Severity Level 1 or 2 defects, and has completed the City’s security accreditation requirements. Preliminary Acceptance constitutes authorization for the Contractor to commence operation of the System Deliverable in its intended live production environment, and marks the commencement of the Final Acceptance Period.
- (g) “Severity Level(s)” means the Severity Levels described in Article 21 of the Agreement. The City shall make the determination of Severity Level for all purposes in accordance with such descriptions.

7.2 Document Deliverables

- (a) All Document Deliverables are subject to the City’s review and Acceptance. Except as otherwise agreed to by the Parties in writing, the City shall use reasonable efforts to complete its review within seven (7) business days following receipt of the Document Deliverable, following which the City shall advise the Contractor in writing that:
 - (i) the Document Deliverable is Accepted. Acceptance must be evidenced by a Notice of Acceptance that is signed by a duly authorized representative of the City. Such Notice of Acceptance is effective on the date of receipt by the Contractor;
 - (ii) the Document Deliverable is Rejected, in which case the City will provide a Notice of Deficiency; or
 - (iii) the City needs to extend the review period by an additional five (5) business days to complete its review.

Failure by the City to Reject a Document Deliverable or provide a Notice of Deficiency will not be deemed Acceptance by the City. Regardless of the City’s Acceptance of a Document Deliverable containing technical or functional requirements, designs, drawings or plans for a Deliverable, the Contractor shall provide the Deliverable with the proper technical and/or functional features, designs, and qualities to efficiently perform the work and carry out the requirements and intent of the Service Request. Such Acceptance does not relieve the Contractor from responsibility for design or other errors of any sort in the technical or functional requirements,

designs, drawings or plans. If the Contractor's technical or functional requirements, designs, drawings or plans deviate, or are intended to deviate from the Service Request, the Contractor shall so advise the Requesting Agency, in writing, at the time of Project Proposal, stating the difference in value between the Service Request requirements and that denoted by said technical or functional requirements, designs, drawings or plans.

- (b) Following receipt of a Notice of Deficiency, the Contractor shall remedy the described deficiencies at no additional costs to the City within five (5) business days, unless a Task Order sets forth a shorter period or the Notice of Deficiency sets forth a longer period, or as otherwise agreed to by the Parties in writing. Upon receipt of a revised Document Deliverable from the Contractor, the review period recommences, during which the City will review the corrected Document Deliverable to determine whether it is suitable for Acceptance. Except as otherwise agreed to by the Parties in writing, this process of correcting deficiencies will continue at no additional charge to the City until all deficiencies have been corrected. If the Contractor fails to remedy all deficiencies in a Document Deliverable within five (5) business days after receipt of a third Notice of Deficiency for a Deliverable, then the City may at any time thereafter declare the Contractor in default and terminate the Agreement, in whole or in part, pursuant to section 10.03 of Appendix A.

7.3 Preliminary Acceptance of System Deliverables

- (a) When the Contractor has determined that the conditions for Preliminary Acceptance of the System Deliverable have been satisfied, it shall notify the City in writing and shall submit all testing results and other documentation upon which such determination is based. Except as otherwise agreed to by the Parties in writing, the City shall have up to seven (7) business days following receipt of such notification to review such Deliverables to determine whether the conditions for Preliminary Acceptance have been satisfied, following which the City shall:
 - (i) Issue to the Contractor a Notice of Preliminary Acceptance that is signed by a duly authorized representative of the City. Such Notice of Preliminary Acceptance is effective on the date of receipt by the Contractor;
 - (ii) Issue to the Contractor a Notice of Deficiency, which includes but is not limited to a description of the Preliminary Acceptance criteria that have not been satisfied; or

- (iii) Advise the Contractor in writing that the City needs to extend the review period by an additional five (5) business days to complete its review.
- (b) Failure by the City to provide a Notice of Deficiency will not be deemed Acceptance by the City.
- (c) Following receipt of a Notice of Deficiency, the Contractor shall remedy the described deficiencies at no additional cost to the City within five (5) business days, unless a Task Order sets forth a shorter period or the Notice of Deficiency sets forth a longer period, or as otherwise agreed to by the Parties in writing. Upon receipt of a notification from the Contractor that the deficiencies have been corrected, the City shall review the corrected System Deliverable to determine whether the conditions for Preliminary Acceptance have been satisfied. This process of correcting deficiencies will continue at no additional charge to the City until all deficiencies have been corrected and the Preliminary Acceptance criteria have been satisfied. If the Contractor fails to remedy all deficiencies in a Deliverable within five (5) business days after receipt of a second Notice of Deficiency for a Deliverable, then the City may at any time thereafter declare the Contractor in default and terminate the Agreement, in whole or in part, pursuant to section 10.03 of Appendix A.

7.4 Final Acceptance of System Deliverables

- (a) Final Acceptance of a System Deliverable is conditioned upon the successful completion of the Final Acceptance Period, Contractor's provision of an acceptable Resolution Plan as required by subsection 7.4(b), and issuance by the City of a Notice of Final Acceptance. Fulfillment of all required conditions is determined solely by the City. Upon the issuance of the Notice of Final Acceptance, Final Acceptance is deemed to occur retroactively on the date of completion of the Final Acceptance Period. If the Contractor has not received either a Notice of Deficiency or a Notice of Final Acceptance, the Contractor shall send a written inquiry as to the status of the Deliverable to the Requesting Agency's program manager. If the City does not issue a Notice of Deficiency or Notice of Final Acceptance within ten (10) business days of receipt of such inquiry, the Contractor shall send a written inquiry as to the status of the Deliverable to the Requesting Agency's Agency Chief Contracting Officer. Failure by the City to provide a Notice of Deficiency will not be deemed Final Acceptance by the City under any circumstances.
- (b) Contractor shall provide a plan acceptable to the Requesting Agency for resolution of all Severity Level 3 defects necessary to achieve Final Acceptance of a System Deliverable ("Resolution Plan"). The Resolution Plan must include a list of all Severity Level 3 defects in existence as of

the end of the Final Acceptance Period and dates by which the Contractor shall correct such defects.

- (c) During the Final Acceptance Period, if the City provides notice to the Contractor of any Severity Level defects, the Contractor shall Respond to and Repair such defects in accordance with the Service Level Requirements.

7.5 Procedure if Acceptance Not Attained

- (a) The Contractor shall not proceed with any activity under the Agreement that is conditioned upon the City's Acceptance of a Deliverable in the absence of such Acceptance, except as expressly authorized by the City in writing. Such authorization to proceed does not constitute Acceptance of the Deliverable and does not obligate the City to pay for such Deliverable.
- (b) In addition to the City's right to terminate the Agreement, in whole or in part, for cause, if the Contractor cannot successfully complete the Final Acceptance Period within thirty (30) days or such longer time period as permitted by the City in writing, the City may notify the Contractor that it intends to:
 - (i) Accept the System Deliverable as substantially completed and make payment in full;
 - (ii) Accept the System Deliverable as incomplete at a proposed reduced rate reflecting the reduced value to the City, in which case the City will commence negotiations with the Contractor to reach agreement on the reduced value of such Deliverable; or
 - (iii) Reject the System Deliverable in whole or in part and terminate all or part of the Agreement for cause. To the extent that a System Deliverable is Rejected pursuant to this subsection 7.5(b)(iii), the City is not obligated to pay for the Rejected System Deliverable, or any component within the Rejected System Deliverable that has not been Accepted or subject to the Acceptance procedures under this Section 7, and the Contractor shall refund to the City all prior Milestone payments associated with such component, if any. For the avoidance of doubt, the City is only obligated to pay the Contractor for Accepted Deliverables.

7.6 Inspection of Deliverables

- (a) The Contractor shall provide and maintain an inspection system acceptable to the City for inspection and/or testing of all Deliverables in accordance with this section 7.6. Complete records of all inspection work performed by the

Contractor must be maintained and made available to the City during the term of the Agreement and for six (6) years thereafter.

- (b) The City may inspect and test all Deliverables at all times and places during the term of the Agreement.
- (c) If the City performs inspections and/or tests of Deliverables on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no cost to the City and at all times, all facilities and assistance necessary for the safe and convenient performance of such inspections and/or tests. For routine or scheduled inspections and/or tests of Deliverables, the City shall provide the Contractor with reasonable advance notice thereof. For urgent or emergency situations that require inspections and/or tests of Deliverables, as determined by the City, the City shall attempt to provide the Contractor with such advance notice as is possible under the circumstances, but in any event the Contractor shall grant the City immediate access to the Deliverable. Further, Contractor shall reimburse the City for all costs for travel, meals and lodging for up to two (2) City resources for each visit to any such facility.
- (d) If any of the Deliverables do not conform to all applicable Performance Specification and other requirements of the Agreement, the City may require the Contractor to provide the Deliverables again in conformity with such specifications and requirements, at no increase in contract amount. When the deficiencies in the Deliverables cannot be corrected by reperformance, the City may:
 - (iv) Require the Contractor to take necessary action to ensure that future performance conforms to all applicable Performance Specification and other requirements of the Agreement; and
 - (v) Reduce the cost of the Deliverables to reflect the reduced value of the Deliverables provided.
- (e) If the Contractor fails to promptly provide the Deliverables again or to take the necessary action to ensure future performance in conformity with all applicable Performance Specification and other requirements of the Agreement, the City may:
 - (i) By contract or otherwise, obtain or procure the Deliverables and charge to the Contractor any cost incurred by the City that is related to the performance of such Deliverable; or
 - (ii) Terminate the Agreement, in whole or in part, for cause.

- (f) At any point in the development of the System, the City may require an inspection and/or test of the System to determine whether or not the System is of the appropriate quality, contains bugs or security issues, and satisfies all applicable Performance Specifications and other requirements of the Agreement, including the Statement of Services, appropriate to the phase of the project in which the inspection and/or test is performed. Such inspection and/or test may include reviewing any code included within the System, other than the Third-party Products. The code review may consist of a systematic examination of computer source code intended to identify mistakes, evaluate overall quality and efficiency of the software, ensure all system components have the latest software patches, ensure compliance with the security requirements, and search for other common vulnerabilities. The review may include a combination of vulnerability scanning, penetration testing, static analysis of the source code, and expert code review by experts with intimate knowledge of “best practices” coding techniques.
 - (i) At the discretion of the City, such inspection and/or test may be conducted by the City, or an independent third-party of its choosing.
 - (ii) If the City elects to undertake a code review, the System must pass such code review as part of the criteria for Final Acceptance of the System.
 - (iii) The City shall bear the costs of engaging a third-party to conduct the inspection and/or test of the System; provided, however, that if the System fails to satisfy all applicable Performance Standards and other requirements of the Agreement, Contractor shall reimburse the City for all costs associated with such inspection and/or test.

Article 8 Covenants, Representations and Warranties

- 8.1 **Warranty of Products/Workmanship.** The Contractor warrants that all Products furnished by or through Contractor pursuant to the Agreement will perform in accordance with all applicable Performance Specifications and other requirements of the Agreement, that the Documentation fully describes the proper procedure for using the Products, and that the Services will be provided in a workmanlike manner in accordance with industry standards.
- 8.2 **Warranty of Products and System Deliverables**
 - (a) The Contractor warrants that all Products and System Deliverables, and all components thereof, furnished by or through Contractor pursuant to the Agreement will operate in Good Working Order for a minimum of three (3) months (or longer as set forth in a particular Task Order) from the date of

Final Acceptance (“Warranty Period”). Contractor shall Repair all deficiencies in such Products and System Deliverables, and all components thereof, that are identified prior to or during the Warranty Period, including but not limited to those deficiencies listed in the Resolution Plan, at no cost or expense to the City in accordance with the Service Level Requirements. Such Repair obligation shall be completed even if it extends beyond the Warranty Period.

- (b) When there is a phased roll-out of Products and System Deliverables, the Warranty Period commences on Final Acceptance of the first phase and ends three (3) months after Final Acceptance of the last phase, unless a longer period of time is set forth in a particular Task Order.
- (c) The Warranty Period for Products and System Deliverables, and all components thereof, will be extended by the cumulative period(s) of time during which such Products and System Deliverables experiences a Severity 1 or Severity 2 defect.
- (d) If the Contractor provides maintenance services during the course of the Warranty Period, such maintenance services will be supplemental to the warranty provided under this Section 8.2. Additionally, the Contractor shall reduce the cost of the maintenance services to reflect the value of the warranty.

8.3 Warranty of New Products. The Contractor warrants that, unless otherwise provided in the applicable Performance Specifications or other requirements of the Agreement, any Product specified and furnished by or through the Contractor will be new and the most current model or most recent release of regular stock product with all parts regularly used with the type of Product offered, with no attachment or part substituted or applied contrary to the manufacturer’s recommendations and standard commercial practice in the industry.

8.4 Manufacturer’s Warranties. Where a Product furnished by or through the Contractor is otherwise subject to a standard commercial warranty:

- (a) The Contractor shall notify the City and pass through the manufacturer’s standard commercial warranty to the City at no additional charge.
- (b) Such standard warranty is in addition to, and does not relieve the Contractor from, any warranty obligations of the Contractor under the Agreement.
- (c) The Contractor shall ensure that manufacturers’ warranties commence at the same time as any warranty obligations of the Contractor under the Agreement, and shall bear any additional costs associated with having the

manufacturers' warranty periods begin at the same time as the Contractor's warranties.

- (d) During the period of any warranty obligations of the Contractor, the Contractor shall also submit and coordinate all manufacturers' warranty claims on behalf of the City for the Products furnished by the Contractor under the Agreement.

8.5 Software Virus Warranty. The Contractor warrants that the Products provided pursuant to the Agreement contain no viruses, worms, spyware or malware.

8.6 Software Disabling Mechanisms

- (a) Induced Inhibiting Code. The Contractor warrants that the Licensed Software and any reports and data provided to the City under the Agreement do not contain any Induced Inhibiting Code ("IIC") or any other inhibitor data or coding. "IIC" means any deliberately included application or coding that may degrade performance, result in inaccurate data, deny accessibility, or in any manner adversely affect programs or data or use of the Licensed Software or its operating environment.
- (b) Hardstop/Passive License Monitoring. The Contractor warrants that the Licensed Software provided pursuant to the Agreement does not contain any coding that may disable the Licensed Software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numerals, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit the Contractor to access the Licensed Software to cause such disablement or impairment (sometimes referred to as a "trap door" device).
- (c) Other Destructive Mechanisms. The Contractor warrants that the Licensed Software contains no destructive programming that (i) is designed to permit Contractor or third parties unauthorized access to, or use of, the City's systems or networks; or (ii) would have the effect of disabling or otherwise shutting down all or any portion of the Licensed Software.
- (d) Remedies. The Contractor agrees that in the event of a breach or alleged breach of this section 8.6, the City may not have an adequate remedy at law, including monetary damages, and that the City is consequently entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which the City may be entitled.

8.7 Covenant of Right to Use. To the extent that the Contractor is procuring any Products for the City, the Contractor shall obtain on behalf of the City the necessary rights for the City to use and possess the Product, by, at the City's sole discretion, lease, license, ownership or otherwise, provided that if ownership is specified, Contractor shall ensure that the City acquires clear title free of all liens.

8.8 Non-Infringement

- (a) Contractor represents and warrants that the Custom Products, Existing Products (excluding Existing Products licensed from third parties), and any enhancements thereto: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright, patent, trademark or trade secrets law; (iii) are not an infringement of any kind of any rights of any third party; and (iv) do not constitute defamation or invasion of the right of privacy or publicity.
- (b) To the extent that the Custom Products or Existing Products incorporate any non-original material, the Contractor represents and warrants that it has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under the Agreement, copies of which shall be provided to the City upon execution of the Agreement.
- (c) To the extent that the Contractor is procuring Existing Products from a third party for the City's benefit, the Contractor represents and warrants that it has obtained all necessary permissions and clearances, in writing, to provide such Existing Products, copies of which shall be provided to the City upon execution of the Agreement.

8.9 The Contractor warrants that all Source Code in Custom Products, and if applicable, Licensed Software, will be written according to the City's programming standards, which will be available upon request by the Contractor, or Contractor-proposed standards that have been approved by the City. The Contractor further warrants that it will follow a software development lifecycle (SDLC) approved by the City.

Article 9 Contractor Personnel

9.1 Generally

- (a) "Contractor Personnel" means all individuals furnished by, through, or on behalf of, the Contractor including through its agents and subcontractors, to perform the Contractor's obligations under the Agreement.
- (b) The Contractor shall ensure that (i) all Contractor Personnel throughout the duration of each individual's performance under the Agreement have all of the skills, knowledge, training, and experience necessary to perform

the Services in a competent and professional manner and in accordance with the requirements of the Agreement, including the Statement of Services of any relevant Task Order, and (ii) an adequate number of such appropriately qualified Contractor Personnel will be available to timely perform the Contractor's obligations under the Agreement.

- (c) The Contractor is fully responsible to the City for the acts and omissions of all Contractor Personnel.
- (d) The Contractor shall provide a quarterly report on the performance of, and any risks and/or issues associated with, each of the Contractor Personnel.

9.2 Approval

- (a) Upon the City's request, Contractor shall submit resumes and references of all proposed Contractor Personnel. The Requesting Agency is entitled to interview all proposed Contractor Personnel at no charge to the City. Where the Contractor has provided resumes to the Requesting Agency, the Contractor shall update information on the resume to the extent of a material change.
- (b) The Contractor shall comply with all security requirements of the City, including the requirement to conduct an individual background check. At the City's request, the Contractor shall provide the City with the results of a particular individual's background check. The Contractor shall require that all Contractor Personnel comply with all security requirements of the City.
- (c) The Requesting Agency may reject any proposed Contractor Personnel for any reason, including but not limited to failure to meet the requirements of the relevant labor category, lack of technical competency, and/or performance-related or security concerns.
- (d) Contractor Personnel shall execute non-disclosure/confidentiality agreements prior to providing services to the City.

9.3 Employment Eligibility

- (a) The Contractor shall ensure and require that all Services performed under the Agreement are performed in the United States unless another location is specifically approved in writing by the City.
- (b) The Contractor shall take all necessary and appropriate steps to determine that each of the Contractor Personnel is legally eligible to work in the United States and that such eligibility is maintained at all times that any such personnel perform Services under the Agreement.

The requirements of this subsection 9.3(b) do not apply to individuals who are solely performing Services outside of the United States.

- (c) Contractor Personnel shall be available to meet or conference with City resources during all business hours regardless of the location where Contractor Personnel are performing Services.

9.4 Removal and Replacement

- (a) At any time during the Agreement, the Requesting Agency may require the Contractor to remove Contractor Personnel for any reason, including but not limited to, failure to meet the requirements of the relevant labor category, lack of technical competency, performance-related or security concerns, and/or the violation of a law or City rule, policy or practice. The Requesting Agency shall provide notice to the Contractor of the effective date of such removal and whether such Contractor Personnel requires replacement, and the Contractor shall cause such individual to cease work on such effective date.
- (b) Whenever there has been removal, turnover, or reassignment of Contractor Personnel permitted hereunder, within ten (10) business days of such removal, turnover or reassignment, the Contractor shall provide a replacement individual of comparable or better skills, knowledge, training and experience to perform for compensation that is equal to or less than the rate of the individual being replaced, which appointment is subject to approval of the Requesting Agency.
- (c) Without limiting any other right of the City, the City may, at any time, without notice, deny access to its premises, facilities, networks or computer equipment to any individual for any reason.

9.5 Key Personnel

- (a) The Contractor acknowledges that the Contractor Personnel identified in a Proposal have unique skills, knowledge, training, and experience such that the Contractor's representation that it would engage or employ such individuals on the project was a material consideration in the selection of Contractor for the project ("Key Personnel"). Except as otherwise agreed to by the Parties in writing, Contractor's engagement or employment on the project of Key Personnel or their replacements made in accordance with this section 9.5 is a material obligation of the Contractor.
- (b) Except as otherwise agreed to by the Parties in writing, it is the intent of the Parties that Key Personnel initially assigned to perform work under the Agreement continue through completion of the Services or such time as the Parties mutually agree that an individual's responsibilities have been

fulfilled under the Agreement. Key Personnel shall not be removed by the Contractor or reassigned by the Contractor to other duties while performing Services, except for the following reasons: termination; serious illness; family leave; personal hardship; or other similar material change in the employment circumstances of the individual that is beyond the Contractor's control, as permitted by the Requesting Agency.

- (c) Within five (5) business days of the departure of Key Personnel, the Contractor shall provide a replacement individual of comparable skills, knowledge, training and experience to perform the work for compensation that is equal to or less than the rate of the individual being replaced, which appointment is subject to approval by the Requesting Agency. The Contractor shall ensure a smooth transition between the departing and newly-assigned individuals at no additional cost to the City, which transition must include the provision of knowledge transfer documentation, cooperation between the former and newly-assigned individuals, and an overlap in the assignment of the former and newly-assigned individual for a duration of at least ten (10) business days, unless the Requesting Agency consents to a shorter period.

Article 10 Subcontracting

- 10.1 In addition to complying with the provisions of Section 3.02 of Appendix A, all subcontracts entered into by the Contractor for the performance of its obligations, in whole or in part, under the Agreement must contain provisions specifying that:
- (a) The subcontractor shall comply with the confidentiality provisions set forth in Article 17 of the agreement between the City and the Contractor, and the subcontractor agrees that the City may enforce such confidentiality provisions directly against the subcontractor as if the City were a party to the subcontract;
 - (b) The subcontractor agrees to comply with the insurance requirements applicable to the Contractor under the agreement between the City and the Contractor;
 - (c) The subcontractor shall comply with defense and indemnification obligations applicable to the Contractor under the agreement between the City and the Contractor, and subcontractor agrees that all of its obligations to provide defense and indemnification to the Contractor are extended to the City; and
 - (d) The City is deemed a third-party beneficiary of the subcontract to the extent of those subcontract provisions requiring the subcontractor to: (i) perform specified obligations under the subcontract which are obligations of the Contractor under the agreement between the City and the

Contractor; (ii) comply with all applicable laws; (iii) not infringe upon the intellectual property rights of third-parties in performing under the subcontract; and (iv) provide defense and indemnification to the City.

- 10.2 The Contractor shall secure the best value for the City in its selection of subcontractors and vendors. At the City's request, the Contractor shall provide documentation evidencing its efforts to secure best value. Such efforts may include:
- (a) seeking competitive bids from five (5) vendors for the provision of goods and/or services, unless otherwise agreed to by the Parties, or unless the City agrees that a sole source award is necessary and notice is provided to the City prior to the award;
 - (b) releasing a request for proposal(s);
 - (c) requiring volume purchasing discounts; and/or
 - (d) requiring most favored customer terms, if available.
- 10.3 Pursuant to Procurement Policy Board Rule 2-08(f)(2), the Contractor will be charged a fee for the administration of the VENDEX system, including the vendor name check process, if a vendor name check review is required to be conducted by the Department of Investigation. The Contractor shall also pay the applicable required fees for any of its subcontractors for which vendor name check reviews are required. The fee(s) will be deducted from payments made to the Contractor under the Agreement. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350.

Article 11 Ownership of Deliverables

Sections 11.1 through 11.6 of this Article 11 supersede Section 6.01 (Copyrights) of Appendix A.

11.1 Definitions

For purposes of this Article 11, the following terms shall have the following meanings:

- (a) "Custom Products" means Products, preliminary, final or otherwise, that are created or developed by Contractor, its employees, agents, subcontractors or partners for the City under and particular to the Agreement. Where such a Product is software, the Custom Product includes both the Source Code and the Object Code.

- (b) “Existing Products” means Products, Licensed Software, and other licensed products that exist prior to the commencement of the Services under the Agreement or are not developed at the City’s expense. The Contractor bears the burden of proving that a particular Product was in existence prior to the commencement of Services under the Agreement.
- (c) “Documentation” means the complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, that are necessary to enable the City to properly test, install, operate and enjoy full use of the Product.
- (d) “Licensed Software” means individually and collectively all of the software provided under the Agreement. “Licensed Software” includes error corrections, upgrades, updates, enhancements or new releases required under the license terms, and any deliverables due under maintenance and support requirements (e.g., patches, fixes, program temporary fixes, programs, code or data conversion, and custom programming).
- (e) “Object Code” means the machine executable code that can be directly executed by a computer’s central processing unit(s).
- (f) “Source Code” means the programming statements or instructions written or expressed in any language understandable by a human being skilled in the art, which are translated by a language compiler to produce executable machine Object Code.

11.2 City Ownership of Custom Products

- (a) Custom Products are considered “works-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C §101, and upon creation the City is hereby deemed the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Custom Products do not qualify as “work-made-for-hire,” effective upon creation the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright and patent ownership in and to the Custom Products to the City, free and clear of any liens, claims, or other encumbrances. The Contractor retains no intellectual property right or interest in the Custom Products. The Custom Products may be used by the Contractor for no purpose other than in the performance of its responsibilities under the Agreement without the prior written permission of the City.
- (b) The Contractor acknowledges that the City may, in its sole discretion, register copyright, trademark, patent and patent designs in the Custom Products with the United States Copyright Office, the United States Patent

and Trademark Office, respectively, or any other government agency authorized to grant copyright, trademark and patent registrations. The Contractor shall fully cooperate in this effort, and shall provide any and all documentation necessary to accomplish this.

- (c) The Contractor shall ensure that the City has at all times immediate access to the most current version of the Custom Products and work in process, such that the City, independent of the Contractor or a third party, may utilize the Custom Products in whatever manner it determines appropriate.
- (d) The City may, in its sole discretion, grant to the Contractor a non-exclusive license to use the Custom Products in return for such compensation (e.g. lump sum payment(s), royalties, cost reductions or credits) and subject to such terms as are mutually agreed upon by the Parties and set forth in a license agreement or an amendment to the Agreement.

11.3 Ownership of Existing Products

- (a) Title and ownership of Existing Products, including Licensed Software, that are owned by Contractor or a third-party, whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, remain with Contractor or such third-party, as applicable.
- (b) Existing Products, including Licensed Software, that are licensed to the City are licensed in accordance with the standard license agreement of Contractor or such third-party, as applicable, except as modified by mutual agreement of the City and the Contractor or such third-party. Notwithstanding the foregoing, the Contractor hereby grants to the City a paid-up, royalty-free, worldwide, non-exclusive, perpetual, and irrevocable license to use, execute, reproduce, distribute to authorized users, make, modify, adapt, display, perform, create derivative works of, and copy for backup and disaster recovery purposes, Existing Products (including Licensed Software), with all license rights necessary to fully effectuate the purposes of the Agreement and the business purposes of the City.
- (c) Title and ownership of tangible Existing Products such as hardware or other equipment shall pass to the City upon Acceptance.

11.4 Use of General Knowledge

Nothing contained herein precludes either Party from otherwise using any general knowledge, skills, ideas, concepts, know-how, techniques, and experience learned by such Party during the performance of its obligations under the Agreement.

11.5 License to Federal/New York State Government

If the services under the Agreement are supported by a federal grant of funds, the federal and New York State government reserves a paid-up, royalty-free, worldwide, non-exclusive, perpetual and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright, trademark and patent in any Custom Products developed under the Agreement.

11.6 Publication

If the Contractor publishes a work dealing with any aspect of performance under the Agreement, or with the results of such performance, the City shall have a paid-up, royalty-free, non-exclusive, perpetual and irrevocable license to reproduce, publish, or otherwise use such work.

11.7 Patents and Inventions

This Section supersedes Section 6.02 (Patents and Inventions) of Appendix A.

- (a) For purposes of this Section, the following terms shall have the following meanings:
 - (i) “Invention” means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code.
 - (ii) “Made,” when used in relation to an Invention, means the conception or first actual reduction to practice of the Invention.
 - (iii) “Subject Invention” means any Invention of the Contractor (or its employee or subcontractor) Made in the course of performing services under the Agreement, other than Custom Products.
- (b) The Contractor shall promptly and fully report to the City any Invention Made in the course of performing its obligations under the Agreement. Except as provided in paragraph (c) below, the Contractor hereby grants to the City a paid-up, royalty-free, worldwide, non-exclusive, perpetual and irrevocable license to use each Subject Invention, including a license in each patent application filed in any country on such Subject Invention and any resulting patent in which the Contractor obtains title, or to the extent that the Contractor does not own the rights to such Subject Invention, such patent application and such resulting patent, the Contractor shall make best efforts to obtain by assignment sufficient rights in such Subject Invention, such patent application and such resulting patent to grant to the City the foregoing license.

- (c) If the services under the Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on any Invention Made in the course of performing services under the Agreement shall be sought and how the rights in such Invention, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

Article 12 Software License Terms

12.1 License Grant

The Contractor hereby grants to the City a paid-up, royalty-free, worldwide, non-exclusive, perpetual, and irrevocable license to use, execute, reproduce, distribute to authorized users, make, modify, adapt, display, perform, create derivative works of, and copy for back-up and disaster recovery purposes, the Licensed Software, with all rights necessary to fully effectuate the purposes of the Agreement and the business purposes of the City.

12.2 License Documentation

The Contractor, at its expense, shall deliver one (1) hard copy and one (1) master electronic copy, of the Documentation in a mutually agreeable format. The Contractor hereby grants to the City a paid-up, royalty-free, worldwide, non-exclusive, perpetual, and irrevocable license to use, reproduce (including downloading electronic copies of the Documentation), make, modify, adapt, display, perform, create derivative works of, and copy for back-up purposes, the Documentation, and distribute the Documentation either electronically or otherwise to authorized users, with all rights necessary to fully effectuate the purposes of the Agreement and the business purposes of the City.

12.3 License Transfers

The City may transfer or combine the Licensed Software for use: (a) with different hardware or other equipment, regardless of capacity; (b) at an alternative or consolidated site; (c) to a different operating system platform; or (d) for use by any other City agency. The City is not required to obtain the approval of the Contractor for such license transfers.

12.4 City Contractor/Agent Use of the Licensed Software

Notwithstanding any inconsistent provision of the Agreement, the City may permit its contractors, subcontractors, or other agents to access and/or use the Licensed Software for the City's internal purposes and for the purposes of

providing services to the City, including but not limited to, maintaining the City's business operations, archival back-up and disaster recovery services.

Article 13 Source Code Escrow

13.1 To the extent that the Agreement includes Licensed Software owned by the Contractor and licensed to the City (excluding "off-the-shelf" software), the Contractor represents that:

- (a) it has entered into, and that it shall maintain in full force and effect, a Source Code escrow agreement ("Escrow Agreement") with an escrow agent ("Escrow Agent");
- (b) the Escrow Agreement provides substantially the same terms and conditions as specified in section 13.2 below; and
- (c) all Source Code and related documentation for the Licensed Software is under escrow deposit pursuant to said Escrow Agreement.

The Contractor shall provide to the City all information necessary for the City to comply with registration requirements, if any, of the Escrow Agent. The Contractor shall provide thirty (30) days prior written notice of a change of Contractor's Escrow Agent.

13.2 The Escrow Agreement terms and conditions are as follows:

- (a) Source Code must be held by the Escrow Agent in trust for the City, and/or the City named as a beneficiary;
- (b) All updates of the Licensed Software must be escrowed as they are issued;
- (c) The Escrow Agent must verify deposit of the Licensed Software and all updates thereof and so notify the City;
- (d) The City may require periodic testing of all Source Code held in escrow; and
- (e) If the Contractor, its assignee or successor (i) becomes insolvent or ceases to exist as a business entity, or (ii) fails to perform its obligations under the Agreement and fails to cure said failure within thirty (30) days following receipt of written notification of said failure, the City shall have the right to so certify to the Escrow Agent and to direct the Escrow Agent to provide the City with a copy of the Source Code and commentary for the installed release level of the Licensed Software used by the City. All Source Code materials granted under this paragraph (e) will be maintained subject to the confidentiality provisions of the Agreement and will be used

solely for the business purposes of the City. Title to any Source Code released to the City remains the property of the Contractor.

- 13.3 The Contractor shall certify in writing that it has deposited, and thereafter will maintain, a current copy of all Source Code related to the Licensed Software, including current commentary, with the Escrow Agent and agrees to comply with the obligations set forth in the Escrow Agreement as required hereby.
- 13.4 Source Code related to the Licensed Software, as well as any corrections or enhancements to such Source Code, must be updated for each new release, patch, service pack or upgrade of the Licensed Software and placed in escrow as required by this Article 13.
- 13.5 The Contractor shall certify in writing annually that the Source Code escrow remains in effect with the Escrow Agent in compliance with the terms of this Article 13 and that the Source Code is up to date.
- 13.6 To the extent that the Agreement requires the Contractor to procure software for the City that is developed or licensed by a third-party, the Contractor shall undertake reasonable efforts to include the provisions set forth in this Article 13 in any resulting software license agreement.

Article 14 Payment

- 14.1 Estimated Contract Amount. The total payments to the Contractor under the Agreement will be based upon the actual work satisfactorily performed or provided pursuant to Task Orders and cannot exceed \$_____. In no event may a change order be issued to compensate the Contractor for a delay on the part of any party, including, but not limited to, the City or a third party.
- 14.2 Provisions Applicable to All Task Orders
 - (a) Contractor shall price Task Orders on the basis of a fixed-price, time and materials pricing, or other payment structure, as directed by the City. Contractor shall base all payments, regardless of pricing method, upon the applicable Hourly Rates.
 - (b) The City is not liable to pay for a Deliverable, or any component thereof, until it has been received, inspected and Accepted by the City. Mere acknowledgement by City Personnel of the delivery or receipt of the Deliverable is not deemed or construed as Acceptance of the Deliverable, or any component thereof delivered or received.
 - (c) The Contractor shall not invoice the City for any additional services it performs to remedy deficiencies in work performed by the Contractor under the Agreement or a Task Order.

- (d) The Contractor shall not, unless the City expressly consents in writing, use an individual whom it assigns to work full-time under the Agreement or a Task Order to work under any other engagement, either for the City or another customer.
- (e) Neither the payment of hourly fees on a monthly basis, nor the payment of progress payments before the final delivery date of a Deliverable, constitutes a waiver by the City of its right of Acceptance of such Deliverable(s).

14.3 Billing and Invoicing Procedures

- (a) The Contractor shall bill the City monthly for Services provided under the Agreement. Invoices must be submitted to and paid by the Requesting Agency that issued the Task Order. Each invoice must include the information and be in the format required by the City. The City's current requirements are set forth in Attachment BI (Billing and Invoices) and the City reserves the right to modify the content, format and submission instructions for invoices. Invoices shall be accompanied by any report that Attachment BI or a Task Order requires to accompany an invoice.
- (b) Payments will be made to the Contractor in accordance with the Prompt Payment provisions of the New York City Procurement Policy Board Rules.
- (c) Upon the direction of Requesting Agency, the Contractor shall require its resources, including subcontractors, to utilize an automated time-keeping system provided by the City for such purpose.
- (d) Notwithstanding any amount invoiced by Contractor, the City shall pay ninety percent (90%) of the undisputed amounts of each invoice and the remainder constitutes Retainage. The City shall pay to the Contractor half of the Retainage, five percent (5%) of the total undisputed invoice amount, no sooner than Final Acceptance; the City shall pay to Contractor the other half of the Retainage upon Contractor's resolution of eighty percent (80%) of the Severity Level 3 defects set forth in the Resolution Plan created under Section 7.4(b).
- (e) Submission of an invoice and payment thereof by the City does not preclude the City from demanding from the Contractor a refund or price adjustment in any case where a Deliverable is found to deviate from the terms and conditions of the Agreement. Any Deliverable that does not meet such terms and conditions may be Rejected, or may be Accepted on an adjusted price basis in accordance with subsection 7.6(d), as may be determined by the City.

14.4 Most Favored Customer

- (a) The Contractor shall offer to the City prices, terms, warranties, and other benefits that are comparable to or better than terms offered by the Contractor to any other similarly-situated domestic or international commercial or governmental customer. If during the term of the Agreement, the Contractor enters into arrangements with any other such customer providing more favorable prices, terms, warranties, or other benefits, the Contractor shall notify the Requesting Agency and the Agreement is deemed amended to provide the same to the Requesting Agency. The Contractor shall certify in writing to the Requesting Agency's Agency Chief Contracting Officer that it is in compliance with this provision within the first thirty (30) days of the term of the Agreement, and shall recertify no later than December 31 of each calendar year during the term of the Agreement. If requested by the Requesting Agency, the Contractor shall provide relevant documentation to support its certification.
- (b) This Section 14.4 applies to all Services and Products, including support and maintenance of Licensed Software and other Products.
- (c) With respect to support and maintenance of Licensed Software and other Products, if such support or maintenance is provided after the termination or expiration of this Agreement, including any renewal term, Section 14.4 survives termination or expiration of this Agreement, including any renewal term, for a period of six (6) years.

14.5 Time and Materials Work

- (a) Services provided on a time and materials basis must be billed in accordance with the rates set forth in Schedule A of Attachment PRC, entitled "Hourly Rate Schedules." The Hourly Rates are the maximum allowable rates applicable to all resources engaged by the Contractor to perform Services pursuant to the Agreement. The City and the Contractor may mutually agree that the Hourly Rate(s) applicable to one or more resource(s) may be reduced with respect to the provision of particular Services or a particular Task Order.
- (b) Unless otherwise approved in writing by the Requesting Agency's project manager, the Contractor shall not invoice the City for more than forty (40) hours per week of work performed by any individual under the Agreement.
- (c) The City reserves the right to direct the Contractor to reduce the level of staffing provided by the Contractor.

- (d) Notwithstanding the provisions of this Section 14.5, where the City has authorized the Contractor to perform Services at a location outside of the United States, the Hourly Rates must be based upon the Hourly Rates with an additional discount applied (“Discounted Hourly Rate”). The Discounted Hourly Rate will be mutually agreed upon by the Parties on a case-by-case basis.

14.6 Fixed-Price Work

- (a) If some or all of the work for a project is to be provided on a no-cost or fixed-price basis, that will be indicated in the Task Order. In such case, the Contractor shall complete all of the work, which is indicated therein to be performed on a no-cost or fixed-price basis, on schedule even if the Contractor resources required to complete such work are more than the Contractor had estimated in agreeing to such Task Order and/or the cost to the Contractor exceeds the fixed price.
- (b) Unless otherwise provided in a Task Order, the payment Milestones of no-cost or fixed-price work indicated in a Task Order shall be conditioned upon the City’s Acceptance of designated Deliverables.

14.7 Auxiliary Fees

All fees to be paid to the Contractor (including fees based on fixed price, time and materials and other payment methods) include all auxiliary and incidental support costs such as printing, copying, secretarial, typing, program entry, internal timesheets, invoicing, etc., and further include all expenses for travel, meals and lodging. Any fees that the Contractor is required to pay in order to deliver the Services and Products under the Agreement, such as the Industrial Funding Fee (IFF) for GSA Schedule Items, are also deemed to be included in all fees to be paid by the City to the Contractor.

14.8 Product Procurement

- (a) The City shall pay a mark-up for the procurement of Third-party Products under the Agreement of _____ percent (_%) over the actually-paid, discounted cost of the Third-party Products (“Third-party Products Mark-up”). No mark-up of any kind applies to the purchase of maintenance or support services. The Contractor shall purchase Third-party Products at the lesser of: Contractor’s discounted prices; New York State Office of General Services (OGS) commercial list price; or General Services Administration (GSA) Schedule commercial list price.

- (b) Such Third party Products Mark-up includes any administrative fees that the Contractor must pay for Products purchased under the GSA or other schedule.
- (c) If Third-party Products include any goods or services available for purchase under a contract between a vendor and the OGS or the GSA, Contractor's net pricing for the City (including any Third-party Products Mark-up) may not exceed the lowest purchase price available for such goods or services set forth in either the OGS or GSA contract, as applicable.
- (d) The Contractor shall pass-through to the City Contractor's corporate discounts and rebates on Products.

14.9 Labor Laws

- (a) The Contractor shall ensure that all Services are performed in strict compliance with all applicable labor laws, including but not limited to, Section 220 and 230 of the New York State Labor Law, and other prevailing wage laws and regulations ("Prevailing Wage Laws").
- (b) The Contractor shall require strict compliance with all applicable labor laws, including but not limited to Prevailing Wage Laws, in the performance of all of its subcontracts, and shall require its subcontractors and consultants to provide such documentation to the City as may be required by law.
- (c) Hourly Rates for labor subject to Prevailing Wage Laws ("prevailing wage labor") must be billed in accordance with the following:
 - (i) The mark-up on the prevailing wage labor rate will be agreed to by the Parties on a Task Order-by-Task Order basis and will be added to the applicable hourly prevailing wage labor rate (including benefits and wage supplements) derived from the then current prevailing wage schedules published annually by the New York City Comptroller or other governmental authority, as applicable; and
 - (ii) The Hourly Rates shall include any and all costs incurred by the Contractor or its subcontractor(s) attributable to the engagement of prevailing wage labor, including but not limited to overhead, profit and administrative charges.
 - (iii) At the discretion of the City, prevailing wage labor will be billed to the City on a fixed price or time and materials basis.

Article 15 Ownership and Return of Data

- 15.1 The City retains sole ownership and intellectual property rights in and to all data, databases, data compilations, reports, charts, graphs, diagrams, or other information created, generated or maintained by the Contractor on behalf of the City pursuant to the Agreement or provided or made accessible by the City to the Contractor pursuant to the Agreement (“City Data”). The Contractor does not have the right to retain any City Data.
- 15.2 Within thirty (30) days of the City’s request at any time during the Agreement term or after expiration or early termination of the Agreement, the Contractor shall, at no cost to the City, perform the following actions as instructed by the City:
- (a) transmit the City Data to the City or its designee in a format that is easily usable by the City or its designee and does not contain any proprietary software or other materials of the Contractor or third parties; or
 - (b) destroy the City Data and any copies, extracts, descriptions, and summaries thereof contained in the Contractor’s records or systems, and provide the City with a written certification of such destruction.
- 15.3 If the Contractor is required to create, generate, or maintain City Data pursuant to the Agreement and the City Data is held by the Contractor outside of the City’s information technology infrastructure, the Contractor shall provide the City or its designee with regular, automated delivery of the City Data in the manner, format and at the frequency prescribed by the City.

Article 16 Infringement Indemnification

This Article supersedes Section 8.04 (Infringement Indemnification) of Appendix A.

- 16.1 The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses (including reasonable attorneys’ fees) to which the City may be subject or which it may suffer or incur allegedly arising out of or in connection with any claim that the Contractor and/or its subcontractors in the performance of the Agreement has infringed or violated, or a Product or use or possession thereof has infringed or violated, any copyright, patent, trademark, trade secrets, or any other proprietary or personal right of any third-party. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement’s scope of services/scope of work. Insofar as the facts or law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by such law. Furthermore, the Contractor shall defend and settle at its sole expense all suits or proceedings brought against the

Contractor arising out of the foregoing. In cases involving a Product used by the City, no settlement may be entered into that prevents the City from continuing to use the Product without the City's prior written consent. In all events, the City may participate, through its own counsel and at its own expense, in the defense of any suit or proceeding for which the Contractor has the obligation to defend.

- 16.2 In the event that an injunction or order is obtained against the City's use of the Product, or if in the Contractor's reasonable opinion the Product is likely to become the subject of a claim of infringement or violation of a copyright, patent, trademark, trade secrets, or any other proprietary or personal right of any third-party, or if the City's ability to enjoy use of the Product has become materially disrupted by a claim of a third-party, at the City's option and the Contractor's expense, the Contractor shall: (a) procure for the City the right to continue using the Product; or (b) replace or modify the Product so that it becomes non-infringing, but only if the replacement or modification does not adversely affect the Performance Specifications for the Product or its use by the City.
- 16.3 If the options set forth in section 16.2 are not available, the Contractor shall accept return of the Product from the City and shall refund the City the amount paid for the Product.

Article 17 Confidentiality

- 17.1 For purposes of this Article, the following terms have the following meanings:
- (a) "City Confidential Information" means, except as provided in paragraph (c) below, all tangible and intangible information and materials belonging to the City or in the City's possession or control that are of a confidential or proprietary nature, whether or not marked or identified as such, and are disclosed or made accessible to the Contractor, including but not limited to:
 - (i) all non-public information concerning the programs, processes, statistics, research, development, strategic plans, or the like with respect to the operations and activities of the City;
 - (ii) all information concerning the City's computer systems and technology, including information concerning current and future hardware, software, configurations, operations, networks, computing facilities and locations, processes, research, projects, designs, and specifications;
 - (iii) all computer programs (including code, software output, screen displays, file hierarchies, algorithms, graphics, and user interfaces), data, databases, and data compilations that may be used with such

computer programs, and related designs, documentation, technical data, research, formulas, techniques, processes and technology;

- (iv) all non-public information concerning current and/or former City employees, contractors and/or vendors, and members of the public;
 - (v) all information that the City receives from third parties if the City is subject to a duty to keep such information confidential;
 - (vi) all original and copied notes, memoranda, or other records and documentation of Contractor to the extent relating to, derived from, and/or incorporating any City Confidential Information;
 - (vii) any other confidential or proprietary information and/or materials relating to the City's business or operations (including trade secrets, processes, and/or financial information); and
 - (viii) all information marked or identified as "confidential" or "proprietary" in written or electronic form when disclosed and/or made accessible to the Contractor or its designee.
- (b) "Contractor Confidential Information" means, except as provided in paragraph (c) below, all tangible and intangible information and materials belonging to the Contractor or in the Contractor's possession or control that is of a confidential, proprietary, or trade secret nature and is marked or identified as "confidential," "proprietary," or "trade secret" in written or electronic form when disclosed or made accessible to the City or its designee.
- (c) "Confidential Information" means City Confidential Information and/or Contractor Confidential Information, as the context requires. "Confidential Information" of either party does not include information that:
- (i) is known to the Receiving Party prior to its receipt hereunder without any obligation of confidentiality, as can be shown by documentation of the Receiving Party;
 - (ii) is generally available to the public, or which thereafter becomes generally available to the public, through no wrongful act of the Receiving Party or any entity acting on its behalf;
 - (iii) is rightfully obtained by the Receiving Party from any third party without restriction and without violating any duty of confidentiality;

- (iv) is independently developed by or on behalf of the Receiving Party without use of or reference to any Confidential Information of the Disclosing Party and without breach of this Agreement, as can be shown by documentation of the Receiving Party; or
 - (v) is approved in writing by the Disclosing Party for use and/or disclosure.
- (d) “Disclosing Party” means the party disclosing or providing access to its own Confidential Information to the Receiving Party.
- (e) “Receiving Party” means the party receiving disclosure of or access to Confidential Information of the Disclosing Party.

17.2 The Contractor shall maintain, use, and disclose all City Confidential Information in a manner consistent with the following:

- (a) The Contractor shall maintain all City Confidential Information in strict confidence and cause its employees, agents, and subcontractors to maintain City Confidential Information in strict confidence. Such efforts shall include affording City Confidential Information at least the same degree of care that the Contractor uses to preserve the confidentiality of its own information of similar character, but in any event, at least a reasonable degree of care.
- (b) The Contractor shall not, without obtaining the prior written consent of the City, use or disclose, or permit the use or disclosure of, City Confidential Information for any purpose other than for performance of its duties and obligations under this Agreement, or for furthering the purposes and intent of this Agreement.
- (c) The Contractor shall restrict disclosure of City Confidential Information to its employees, and to agents, subcontractors, professional advisors, and their employees, who have a *bona fide* need to know such City Confidential Information in furtherance of the purposes of this Agreement. The Contractor shall require that its subcontractors execute agreements containing nondisclosure obligations that are as least as stringent as those of Contractor’s obligations under this Agreement. The Contractor shall instruct its employees, agents, professional advisors, and their employees, to maintain the confidentiality of City Confidential Information in accordance with the requirements of this Agreement. Upon request of the City, the Contractor shall require its employees, agents, and/or professional advisors to be bound by a written agreement requiring confidential treatment of City Confidential Information that is consistent with and no less strict than the requirements of this Agreement.

- (d) The Contractor shall not store, process, transmit, or maintain any City Confidential Information that is in electronic form on or through:
 - (i) any laptop or other portable computing or electronic device (including cellular telephones, personal information managers, and other hand-held computing devices), or any data communications medium, unless access to City Confidential Information is protected by secure encryption;
 - (ii) any computing device not located at a Contractor facility, or not owned by (or authorized for use in connection with the business of) Contractor; or
 - (iii) any portable storage medium, except where use of such storage medium is part of Contractor's established and secure backup and recovery processes.
- (e) Except as specifically agreed in writing by the Commissioner of the Requesting Agency, the Contractor shall not disclose any City Confidential Information to any entity outside the United States, or store or transmit any City Confidential Information outside the United States, other than City Confidential Information that is in electronic form and is transmitted or stored on a momentary basis as may be inherent in electronic transmission between locations within the United States.

17.3 The City shall maintain, use, and disclose all Contractor Confidential Information in a manner consistent with the following:

- (a) The City shall use commercially reasonable efforts to maintain all Contractor Confidential Information in strict confidence and cause its employees, agents, and contractors to maintain Contractor Confidential Information in strict confidence. Such efforts shall include affording Contractor Confidential Information at least the same degree of care that the City uses to preserve the confidentiality of its own information of similar character, but in any event, at least a reasonable degree of care.
- (b) The City shall not, without obtaining the prior written consent of the Contractor, use or disclose, or permit the use or disclosure of, Contractor Confidential Information for any purpose other than for performance of its duties and obligations under this Agreement, or for furthering the purposes and intent of this Agreement.
- (c) The City shall restrict disclosure of Contractor Confidential Information to its employees, and to its agents, contractors, and their employees, that have a *bona fide* need to know such Contractor Confidential Information in furtherance of the purposes of this Agreement.

- 17.4 Notwithstanding any inconsistent provision of this Agreement, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent necessary to comply with a request for such Confidential Information pursuant to a court order, subpoena, or other validly issued order or notice of a court or administrative body of competent jurisdiction, or other request pursuant to applicable law, rule or regulation. The Receiving Party shall notify the Disclosing Party of the receipt of such court order, subpoena, other validly issued order or notice, or other request in order to enable the Disclosing Party to seek protection of its Confidential Information from disclosure. Nothing herein shall prohibit the City from disclosing Contractor Confidential Information where required to do so by the New York State Freedom of Information Law.
- 17.5 When continued use of any Confidential Information is no longer necessary for performance of this Agreement and such Confidential Information is not the subject of a valid license, the Disclosing Party may request that the Receiving Party return to the Disclosing Party Confidential Information that is capable of being returned and/or destroy Confidential Information (including any copies, extracts, descriptions, and summaries thereof); provided however, that if City Confidential Information is integrated into documents or materials containing proprietary information of the Contractor or any third party, the City may request destruction, rather than return, of the portions of the documents or materials containing such City Confidential Information. The Receiving Party shall promptly comply with any such request to return and/or destroy Confidential Information and shall provide the Disclosing Party with written certification of the same within ten (10) business days. If a Receiving Party is legally required to retain any Confidential Information of the Disclosing Party, the Receiving Party shall notify the Disclosing Party in writing and set forth the Confidential Information it intends to retain and the reasons why it is legally required to retain such Confidential Information. The parties shall make good faith efforts to resolve any issues arising out of the Receiving Party's intention to retain such Confidential Information.
- 17.6 Notwithstanding any inconsistent provision of this Agreement, neither party is required to maintain as confidential or is prevented from using in their respective businesses any general knowledge, skills, ideas, concepts, know-how, techniques, and experience possessed by such party prior to, or developed or learned by such party during, the performance of its obligations under this Agreement.
- 17.7 The parties' obligations under this Article 17 are in effect during the term of this Agreement, and unless a longer period of time is required by applicable law, continue for six (6) years from the expiration or earlier termination of this Agreement; provided, however, that the expiration of such obligations do not invalidate or impair any continuing obligations of confidentiality under any license as to the Product provided under such license.

- 17.8 The Contractor acknowledges that any disclosure or misappropriation of City Confidential Information in violation of this Agreement could cause irreparable harm for which there may be no adequate remedy at law. The Contractor therefore agrees that if the City claims it is aggrieved by the Contractor's violation of this Article, the City may apply to any court of competent jurisdiction for injunctive or other equitable relief restraining any breach or threatened breach of this Article and for any other relief at law or otherwise as the City deems appropriate. This right is in addition to any other right or remedy available in law or equity.
- 17.9 The provisions of this Article 17 will be construed as additional to and not in substitution of the provisions of Section 5.08 of Appendix A, and any conflicts between the provisions of this Article and the provisions of such Section 5.08 shall be resolved in favor of the provisions of this Article.

Article 18 Security and Architecture Requirements

- 18.1 The Contractor shall comply with all Citywide and agency-specific policies and procedures relating to local and remote network access and connectivity.
- 18.2 The Contractor shall comply with all requirements of Attachment SCY (Security Requirements), which is attached hereto and made a part of the Agreement.
- 18.3 The Contractor shall ensure the successful completion of any security accreditation tasks and processes relevant to the Services and/or Deliverables it provides.
- 18.4 The Contractor shall ensure that all coding follows a City-approved, secure coding framework.
- 18.5 If the Contractor proposes that any Services be performed at a facility outside of the United States, then the Contractor shall provide external security audit information for review and approval by the City's Chief Information Security Officer.
- 18.6 The Contractor shall adhere to the reference technical architecture standards prescribed by the City, as such standards may be modified from time to time. Such standards will be provided to the Contractor upon request.

Article 19 Stop-Work Order

- 19.1 The City may, in its sole discretion, at any time issue a written order to the Contractor, requiring the Contractor to stop performing all, or any part, of the work required by the Agreement ("Stop-Work Order") for a period of up to ninety (90) days from the date specified in the Stop-Work Order, and for any further period to which the Parties may agree ("Stop-Work Period").

- 19.2 Upon receipt of a Stop-Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs during the Stop-Work Period allocable to the work covered by the Stop-Work Order. Within the Stop-Work Period, the City shall either:
- (a) by written order cancel the Stop-Work Order and instruct the Contractor to resume work on the date specified in the order;
 - (b) by written order instruct the Contractor to resume work at the expiration of the Stop-Work Period; or
 - (c) terminate the work covered by the Stop-Work Order in accordance with the termination provisions of the Agreement.
- 19.3 If the City takes action under either paragraph (a) or (b) of section 19.2, the Contractor shall resume work as ordered by the City; provided, however, that Contractor's obligation to resume work is subject to the Contractor's reasonable ability to re-establish the project team previously approved by the City or present the City with a project team of equivalent experience and skill subject to requirements of Article 9. In the event that the Contractor resumes work as ordered by the City, the City shall grant the Contractor an extension of time for the completion of the work required by the Agreement, which extension will be at least as long as the period during which work was stopped, but may at the City's discretion be longer if the Contractor can demonstrate that the Stop-Work Order resulted in the need for an increase in time to complete any work required by the Agreement.

Article 20 Limitation of Liability

- 20.1 Except with respect to Contractor's obligations to provide indemnification pursuant to Article 16 of this Appendix A-1 and Article 8 of Appendix A, neither the City nor the Contractor are liable to the other for indirect, incidental, special, exemplary, punitive, or consequential damages, damages for loss of goodwill or profits, loss or destruction or inaccuracy of data, or other business loss, arising out of or resulting from the performance of their respective obligations under the Agreement, whether liability is under contract, tort, strict liability, or other legal or equitable theory, even if previously advised of the possibility of such damages.
- 20.2 Termination and/or cancellation of the Agreement will not give rise to any cause of action against the City for damages, loss or profits, expenses or future remuneration of any kind.

Article 21 Service Level Requirements

- 21.1 Definitions

- (a) "Repair" means completion of all efforts, such as adjusting, replacing, correcting, or fixing, necessary to restore a Service Element to Good Working Order.
 - (b) "Respond" or "Response" means the commencement of active remedial measures onsite (unless otherwise agreed to in a Task Order) by a skilled technician or other qualified professional. Responding does not consist merely of actions such as acknowledging receipt of a reported Service Event or recording the existence of a Service Event.
 - (c) "Service Element" means any part, several parts, or the entirety of a Deliverable or System, and related features and services, required to be maintained pursuant to this Agreement.
 - (d) "Service Event" means a condition when a Service Element fails, degrades, or is not in Good Working Order, or causes or results in other Service Element(s) failing, degrading, or not performing in Good Working Order. A Service Event is not limited to a total loss or discontinuance of service. For the purpose of measuring Response and Repair time, a Service Event begins when Contractor first becomes aware or should have become aware, or is informed, of the Service Event, whichever first occurs.
- 21.2 The Contractor's obligation to comply with Service Level Requirement for Service Elements begins upon Preliminary Acceptance and continues until the end of the Warranty Period or any maintenance and support period, whichever is later.
- 21.3 Service Events will be classified by Severity Level by the City in accordance with the definitions on Schedule 1 of this Article 21 and the Contractor shall Respond to Severity Level 1, 2, 3 and 4 Service Events in accordance with the requirements set forth in this Article ("Service Level Requirements" or "SLR"). In the event that the Contractor does not agree with the City's classification, the Contractor shall immediately comply with the Service Level classification's required response, and the Contractor may subsequently dispute the classification pursuant to the City's dispute resolution procedures as provided in Section 12.03 of Appendix A.
- 21.4 While the System is operating in its intended live production environment, the City's designee shall promptly provide notice to the Contractor of Service Events and the Contractor shall respond pursuant to Schedule 1 of this Article 21. In the case of Severity Level 1 and 2 Service Events discovered by the Contractor, the Contractor shall immediately provide notice of the existence of such Service Event to the City's designee. Notice required by this section 21.4 and Contractor response must be in person or by electronic mail or telephone. The Contractor shall summarize oral communication by electronic mail as soon as practicable following such communication.

- 21.5 The Contractor's failure to meet the Service Level Requirements set forth in this Article 21 will result in the Contractor's liability to provide the City with a Service Credit. Such Service Credits will be set forth in the relevant Task Order.
- 21.6 The City may either withhold Service Credits from amounts payable to the Contractor under invoices submitted by the Contractor, or the City may submit an invoice to Contractor for Service Credits owed by the Contractor, in which event Contractor shall be required to remit payment to the City within thirty (30) days of receipt of the invoice. Payment of Service Credits by the Contractor or credit against monies owed by the City to the Contractor is deemed to be separate from payment of any fees for Deliverables.
- 21.7 The Contractor acknowledges and agrees that Service Credits constitute a price adjustment for the Contractor's failure to meet the Service Level Requirements. Payment of any Service Credit is without prejudice to any right the City may have to any remedy at law or in equity from the Contractor resulting from, or otherwise arising out of, Contractor's breach of the Agreement, or to any right of the City to terminate the Agreement. The City's failure to enforce Service Credits hereunder will not operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages. The Service Credits offered to the City pursuant to this Agreement are not intended to be, and do not constitute, either a partial or full waiver or discharge of the City's right to indemnification, or the Contractor's obligation to indemnify the City pursuant to the indemnification provisions of this Agreement; nor do the Service Credits offered to the City hereunder constitute a waiver of any other remedy available to the City under this Agreement or applicable law.
- 21.8 The Contractor shall maintain a minimum level of System availability of 99.9% (equal to 11 hours and 8 minutes of unplanned downtime per annum), unless a higher percentage is agreed to in a Task Order. Contractor may not have more than fifty (50) hours of planned downtime per annum, unless a lower amount of planned downtime is agreed to in a Task Order. The Contractor shall provide the City with prior written notice at least forty-eight (48) hours in advance of any planned downtime.
- 21.9 The Contractor shall provide a point of contact for all Service Events and service requests. Such point of contact must be available via phone, email and web on a 24x7x365 basis.
- 21.10 The Contractor shall maintain records of and report to the City compliance with SLRs on a monthly basis in such form and manner as is prescribed by the City, including the use of electronic tools for recordkeeping and reporting. The Contractor's records and reports must include the identification and root causes of every Service Event that occurred, proposed solutions, and improvements to Service Level Requirements. If the Parties desire to improve the Service Level

Requirements, the Contractor shall also provide assistance to the City in implementing and monitoring the effectiveness of any improvement to Service Level Requirements.

Schedule 1 – Service Level Requirements

Severity Level	Description	Priority/Service Level Requirement (“SLR”)	Failure to Meet Service Level Requirements / Service Credits
1	<p>Serious Service Event that does not have a reasonably acceptable workaround, such as:</p> <ul style="list-style-type: none"> • a defect causing a major system error • fatal error, serious database corruption • serious degradation in performance • major feature malfunction, or preventing a major business/stakeholder goal from being obtained 	<p>Urgent</p> <p>SLR of 96% Repaired within 2 hours</p>	<p>To be set forth in a Task Order</p>
2	<p>Service Event that is causing significant loss of feature functionality, but the</p>	<p>High</p> <p>SLR of 90% Repaired within 8 hours</p>	<p>To be set forth in a Task Order</p>

	<p>defect has a reasonably acceptable workaround that can be implemented while the defect is corrected.</p> <p>This includes, but is not limited to:</p> <ul style="list-style-type: none"> • the system does not meet business goal or portion of business goal • performance degradation is minor or minor database issues may exist 		
3	<p>Service Event that is causing minor loss of feature functionality. A reasonably acceptable workaround(s) can be implemented until correction of the defect.</p>	<p>Medium</p> <p>SLR of Repaired within 10 days</p>	<p>To be set forth in a Task Order</p>
4	<p>Minor issues, misspellings, cosmetic changes, etc.</p>	<p>Low</p> <p>SLR of Repaired within 30 days</p>	<p>To be set forth in a Task Order</p>

**Article 22 Documents Part of the Agreement, Conflicts and Inconsistencies;
Construction**

- 22.1 Documents Part of the Agreement, Conflicts and Inconsistencies. The Agreement shall be construed wherever appropriate to avoid conflict between the provisions of the Agreement and the documents that are attached (Attachments and Appendices). Where a conflict or inconsistency exists between the documents that comprise the Agreement, provisions shall govern in the following descending order of precedence:
- (a) The document titled “Agreement;”
 - (b) Attachments to the Agreement (excluding any documents incorporated by reference);
 - (c) Appendix A-1 Supplemental Provisions Governing Systems Integration Contracts for Technology Projects Citywide;
 - (d) Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services;
 - (e) Appendix B: The City’s Request for Proposal;
 - (f) Appendix C: Contractor’s Proposal.
- 22.2 Construction. Each Party acknowledges that it has participated in negotiating and drafting the Agreement, and agrees that if an ambiguity or a question of intent or interpretation arises, the Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement

Article 23 Notices

This Article supersedes Section 14.04 (Notice) of Appendix A.

- 23.1 Unless otherwise stated in the Agreement, any notices required or permitted to be given or delivered under the Agreement must be in hard-copy writing. Notice of any circumstance with respect to a material breach or event of default is sufficiently given if delivered personally or by certified mail, return receipt requested. In all other circumstances, notice may also be delivered by facsimile (with e-mail acknowledgement of receipt) or e-mail (with e-mail acknowledgement of receipt) or by prepaid same-day or overnight express service to the following:

In the case of the City:

Barbara Lederman
Agency Chief Contracting Officer
255 Greenwich Street, 9th Floor
New York, NY 10007
Phone: (212) 788-6485
Facsimile: (347) 788-4086

With a copy to:

In the case of the Contractor:

- 23.2 Any party may from time to time designate another address or other addressees by notice to the other party in compliance with this Section.
- 23.3 Any notice shall be deemed given when received.
- 23.4 Nothing in this Article 23 is 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 (as such term is defined in Section 1.01 of Appendix A), including the New York Civil Practice Law and Rules.

Article 24 Taxpayer's Affirmation

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

Appendix B: Security

System Integration Services for Technology Projects

Appendix B: Security

1. Definitions

- (a) “*City*” means The City of New York and/or a county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from The City of New York’s treasury.
- (b) “*City Information Assets*” means all City computer systems, electronic data stored, processed, transmitted, or printed by City computer systems, and such systems’ peripheral equipment, networks, or magnetic data, as well as any cloud computing system maintained by the City or any non-City entity for the City’s use, and any electronic data stored, processed, transmitted, or printed by such system.
- (c) “*City Information*” means all public and non-public information concerning or embodying the scientific, statistical, or technical data, including designs, drawings, processes, statistics, software, components, data, databases, know-how, prototypes, samples, research and developments, meeting reports, systems, programs, research, development, strategic plans, or the like with respect to the operations and activities of the City or its agents, officers, employees or subcontractors, regardless of whether such disclosure is in oral, written, or electronic form.
- (d) “*Contractor*” means a person or entity engaged by the City of New York to perform tasks pursuant to the Agreement.
- (e) “*Facility(ies)*” means a physical structure operated by the City of New York.
- (f) “*Person*” means an officer, agent or employee of the Contractor or a subcontractor of the Contractor.
- (g) “*Project*” means any type of work to be performed pursuant to the Agreement.
- (h) “*Security Investigation*” means a criminal history and background investigation in accordance with the requirements set forth herein. The City reserves the right to modify the scope of requisite investigations upon provision of reasonable notice to the Contractor.

2. Citywide Information Security Policy

All Persons, who may have access to any City Information or City Information Assets, in the course of carrying out their responsibilities or job function must comply with the Citywide Information Security Policies and Standards (“Policies and Standards”) established by DoITT as it may be modified from time to time, which are available on CityShare at <<http://cityshare.nycnet/infosec>> and will also be provided upon request.

3. DoITT User Responsibility Policy

The Contractor shall require that all Persons in the Contractor’s or subcontractors’ organizations who may have access to any City Information Assets in the course

of performing work pursuant to the Agreement will be provided a copy of DoITT's "User Responsibility Policy" ("URP"); and shall be required to sign the acknowledgement of same, prior to performing work. The Contractor shall provide a signed copy of the URP for each such Person to the DoITT Project Manager or a person designated by DoITT within fifteen days (15) days after a Person is assigned to a Project.

4. Security Investigation

The City may, prior to or during the course of a Project, request that the Contractor require a Person, or Persons, associated with a Project to undergo a Security Investigation before being granted access, or continued access, to Facilities, City Information or City Information Assets.

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

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

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

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

5. Compliance with Other Security Policies and Procedures

The Contractor shall require that all Persons working on the Project comply with all applicable Facility, data processing and other security policies and procedures of the City in effect for the duration of the Project, including but not limited to Internet usage, office equipment usage and timekeeping procedures. This may include being required to sign in and out and enter time worked into a timekeeping system provided by the City.

6. Notification of Termination, Reassignment or Cessation of Access

The Contractor shall promptly notify the City liaison assigned to the Project, in writing, when any Person previously engaged by the Contractor to gain access to

any Facilities, City Information or City Information Assets is no longer authorized by the Contractor to do so, and the Contractor shall make reasonable efforts to prevent any such Person from accessing any Facilities, City Information or City Information Assets from the point in time that such individual's authorization ceases.

7. Non-Disclosure Agreement

If reasonably requested by the City, the Contractor shall require its officers, agents, employees and subcontractors who either work in direct support of the Project or who may reasonably be anticipated to unintentionally receive City Information to execute a Non-Disclosure Agreement in an appropriate form.

8. Contractor-Provided Equipment

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

9. No Introduction of Viruses

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

10. Cooperation with Accreditation

The Contractor shall cooperate with and facilitate the successful completion of any security accreditation tasks and processes relevant to the services and/or deliverables it provides.

11. Contractor's Policies

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

12. City Audit(s)

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

13. Independent Review(s)/Audit(s)

Upon request, the Contractor shall provide evidence of an independent IT security review or audit commensurate with the security requirements of the Project within a time specified by the City. The scope of the review/audit and the time by which the Contractor must provide evidence of the review/audit shall be determined in the City's sole discretion.

14. Suggestions

The Contractor may surface issues, suggest options, and make recommendations

to the City with regard to the Policies and Standards where appropriate.

15. Liaison

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

16. No Exporting of City Data Outside United States

The Contractor may not export City Information outside the United States except with the express written permission of the Commissioner of DoITT and then only for the City Information specified in that permission.

17. Remote Access Methods

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

18. What to Do in Case of a Breach

Should the Contractor learn or suspect that there has been a breach of its obligations under this Attachment, it shall immediately notify its DoITT liaison and the DoITT Service Desk. The Contractor shall then cooperate fully in any government investigation into any such possible breach.

19. Material Breach

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

20. Headings

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

Appendix C: Intentionally Left Blank

Appendix D: Labor Categories

Core labor categories are denoted with an asterisk.

Project Managers:

Project Manager (Entry Level) - Less than 2 years experience in overseeing small scaled, non-complex projects, comprised of a small number of deliverables and/or a small number of phases; typically coordinates and delegates the assignments for the consultant project staff numbering up to 5; focal point of contact for Requesting Agency regarding project status, meetings, reporting requirements, scope changes, and issues and concerns raised by consultant staff or Requesting Agency.

Project Manager I - Minimum of 2 years experience in overseeing small scaled, non-complex projects, comprised of a small number of deliverables and/or a small number of phases; typically coordinates and delegates the assignments for the consultant project staff numbering up to 10; focal point of contact for Requesting Agency regarding project status, meetings, reporting requirements, scope changes, and issues and concerns raised by consultant staff or Requesting Agency.

***Project Manager II - Minimum 4 years** experience in overseeing medium scaled projects comprised of sub-projects and distinct deliverables; typically coordinates and delegates the assignments for the consultant project staff numbering over 10; focal point of contact for Requesting Agency regarding project status, meetings, reporting requirements; scope changes, and financial, administrative, and technical issues and concerns raised by consultant staff or Requesting Agency.

***Project Manager III - Minimum 8 years** experience in overseeing medium to large scaled projects comprised of sub-projects and distinct deliverables, often comprising a program with multiple work streams; typically coordinates and delegates the assignments for the consultant project staff numbering over 20; focal point of contact for Requesting Agency regarding project status, meetings, reporting requirements, scope changes, and financial, administrative, and technical issues and concerns raised by consultant staff or Requesting Agency.

***Project Manager IV - Minimum 12 years** experience in overseeing medium to large scaled projects comprised of sub-projects and distinct deliverables, often comprising a program with multiple work streams; typically coordinates and delegates the assignments for the consultant project staff numbering over 30; focal point of contact for Requesting Agency regarding project status, meetings, reporting requirements, scope changes, and financial, administrative, and technical issues and concerns raised by consultant staff or Requesting Agency.

Project Manager V - Minimum 16 years experience in overseeing medium to large scaled projects comprised of sub-projects and distinct deliverables, often comprising a program with multiple work streams; typically coordinates and delegates the assignments for the consultant project staff numbering over 40; focal point of contact for Requesting Agency regarding project

status, meetings, reporting requirements, scope changes, and financial, administrative, and technical issues and concerns raised by consultant staff or Requesting Agency.

Programmer

Programmer (Entry Level) - Less than 2 years experience with writing application software, data analysis, data access, data structures, data manipulation, databases, design, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid range, personal computers, laptops.

Programmer I - Minimum of 2 years experience with writing application software, data analysis, data access, data structures, data manipulation, databases, design, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid range, personal computers, laptops.

***Programmer II - Minimum of 4 years** experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

***Programmer III - Minimum of 8 years** experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

***Programmer IV - Minimum of 12 years** experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

Programmer V - Minimum of 16 years experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

Specialists

Specialist (Entry Level) - Less than 2 years experience in a particular technical and/or business application that is beyond the requirements addressed in the Programmer (Entry level) labor category.

Specialist I - Minimum of 2 years experience in a particular technical and/or business application that is beyond the requirements addressed in the Programmer I labor category.

***Specialist II - Minimum of 4 years** experience in a particular technical and/or business application that is beyond the requirements addressed in the Programmer II labor category.

***Specialist III - Minimum of 8 years** experience in a particular technical and/or business application that is beyond the requirements addressed in the Programmer III labor category.

***Specialist IV - Minimum of 12 years** experience in a particular technical and/or business application that is beyond the requirements addressed in the Programmer III labor category.

Specialist V - Minimum of 16 years experience in a particular technical and/or business application that is beyond the requirements addressed in the Programmer III labor category.

Examples of Specialists include but are not limited to:

- a) Certified Instructor (e.g. Sybase, PowerBuilder, Novell)
- b) Certified Network Engineer (CNE)
- c) Certified Systems Administrator
- d) Data Administrator
- e) Microsoft Certified Systems Engineer (MCSE)
- f) Microsoft Solutions Developer (MSD)
- g) Network Administrator
- h) PC Computer Designer
- i) Systems Administrator
- j) Web Master

Analytical Staff

Analyst (Entry Level) - Less than 2 years experience providing specialized knowledge of system requirements and programming specifications. Designs solutions based on customer needs and technical considerations. Analyzes job tasks, organizational structure and user requirements to provide system-wide solutions. Applies analytical expertise to assist in defining, analyzing, validating and documenting complex operating environments, states of technology and current processes.

Analyst I - Minimum of 2 years experience providing specialized knowledge of system requirements and programming specifications. Designs solutions based on customer needs and technical considerations. Analyzes job tasks, organizational structure and user requirements to provide system-wide solutions. Applies analytical expertise to assist in defining, analyzing, validating and documenting complex operating environments, states of technology and current processes.

***Analyst II - Minimum of 4 years** experience providing specialized knowledge of system requirements and programming specifications. Designs solutions based on customer needs and technical considerations. Analyzes job tasks, organizational structure and user requirements to provide system-wide solutions. Applies analytical expertise to assist in defining, analyzing, validating and documenting complex operating environments, states of technology and current processes.

***Analyst III - Minimum of 8 years** experience providing specialized knowledge of system requirements and programming specifications. Designs solutions based on customer needs and technical considerations. Analyzes job tasks, organizational structure and user requirements to provide system-wide solutions. Applies analytical expertise to assist in defining, analyzing, validating and documenting complex operating environments, states of technology and current processes.

***Analyst IV - Minimum of 12 years** experience providing specialized knowledge of system requirements and programming specifications. Designs solutions based on customer needs and technical considerations. Analyzes job tasks, organizational structure and user requirements to provide system-wide solutions. Applies analytical expertise to assist in defining, analyzing, validating and documenting complex operating environments, states of technology and current processes.

Analyst V - Minimum of 16 years experience providing specialized knowledge of system requirements and programming specifications. Designs solutions based on customer needs and technical considerations. Analyzes job tasks, organizational structure and user requirements to provide system-wide solutions. Applies analytical expertise to assist in defining, analyzing, validating and documenting complex operating environments, states of technology and current processes.

Analysts must possess professional training or equivalent experience in one of the following types of disciplines: computer science; computer systems; decision support; computer security; electronic commerce; business process reengineering; business process analyses; information architecture planning and design; engineering; operations research; modeling and simulation; math; physics; quality assurance; systems analysis; business or management.

Technical Staff

Technician (Entry Level) - Less than 2 years experience providing specialized knowledge of complex customer processes and requirements. Applies technical expertise to assist in defining, analyzing, validating, and documenting complex operating environments, states of technology and current engineering processes. Conducts complex technical investigations through advanced research techniques, analysis or development phases of engineering projects.

Technician I - Minimum of 2 years experience providing specialized knowledge of complex customer processes and requirements. Applies technical expertise to assist in defining, analyzing, validating, and documenting complex operating environments, states of technology and current

engineering processes. Conducts complex technical investigations through advanced research techniques, analysis or development phases of engineering projects.

***Technician II - Minimum of 4 years** experience providing specialized knowledge of complex customer processes and requirements. Applies technical expertise to assist in defining, analyzing, validating, and documenting complex operating environments, states of technology and current engineering processes. Conducts complex technical investigations through advanced research techniques, analysis or development phases of engineering projects.

***Technician III - Minimum of 8 years** experience providing specialized knowledge of complex customer processes and requirements. Applies technical expertise to assist in defining, analyzing, validating, and documenting complex operating environments, states of technology and current engineering processes. Conducts complex technical investigations through advanced research techniques, analysis or development phases of engineering projects.

***Technician IV - Minimum of 12 years** experience providing specialized knowledge of complex customer processes and requirements. Applies technical expertise to assist in defining, analyzing, validating, and documenting complex operating environments, states of technology and current engineering processes. Conducts complex technical investigations through advanced research techniques, analysis or development phases of engineering projects.

Technician V - Minimum of 16 years experience providing specialized knowledge of complex customer processes and requirements. Applies technical expertise to assist in defining, analyzing, validating, and documenting complex operating environments, states of technology and current engineering processes. Conducts complex technical investigations through advanced research techniques, analysis or development phases of engineering projects.

Technicians must possess technical training or equivalent experience in one of the following types of disciplines: computer science; computer systems; decision support; computer security; electronic commerce; business process reengineering; business process analyses; information architecture planning and design; engineering; operations research; modeling and simulation; math; physics; quality assurance; systems analysis; business or management.

Attachment 1: Cover Letter Template

Prepared on Contractor's Letterhead

< Date >

NYC Department of Information Technology
and Telecommunications (DoITT) Contract Unit
Attention:
255 Greenwich Street, 9th Floor
New York, NY 10007

Contractor Name: _____

Address: _____

Tax Identification #: _____

Authorized Contract Person: (name): _____

Title: _____

Telephone #: _____ email address: _____

This letter is in response to the **Request for Proposals for Systems Integration Services for Technology Projects, PIN: 85813P0006 [Contractor]** is responding to the following Classes: *[check all that apply]*

- Class 1: Projects up to \$5,000,000
- Class 2: Projects between \$5,000,000 and \$25,000,000

Authorized Representative:

Name: (print): _____ Title: _____

Signature: _____ Date: _____

Attachment 2: Acknowledgement of Addenda

Instructions: The Proposer is to complete either Part I or Part II of this form, whichever is applicable, and include the signed and dated form with their Technical Proposal submission. This form serves as the Proposer’s acknowledgment of the receipt of the Addenda to this Request for Proposals which may have been issued by the City prior to the Proposal Due Date and Time.

Part I: Check Here if Applicable: _____

Listed below are the dates of issue for each Addendum received concerning this Solicitation Document:

Addendum # 1, dated: ____/____/____ Addendum # 2, dated: ____/____/____

Addendum # 3, dated: ____/____/____ Addendum # 4, dated: ____/____/____

Addendum # 5, dated: ____/____/____ Addendum # 6, dated: ____/____/____

Addendum # 7, dated: ____/____/____ Addendum # 8, dated: ____/____/____

Addendum # 9, dated: ____/____/____ Addendum # 10, dated: ____/____/____

Addendum # 11, dated: ____/____/____ Addendum # 12, dated: ____/____/____

Part II: Check Here if Applicable: _____

No addendum was received in connection with this Request for Proposals.

Company Name: _____

Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

Attachment 3: Price Proposal Templates

Price Proposal Templates, which must be submitted with the Proposal, are provided with this RFP as an Excel spreadsheet.

Attachment 4: M/WBE Contract Provisions

The following provisions will be included in the contract that results from this RFP:

NOTICE TO ALL PROSPECTIVE CONTRACTORS **PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS** **ENTERPRISES IN CITY PROCUREMENT**

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the Minority-Owned and Women-Owned Business Enterprise ("M/WBE") program created by Local Law 129, the specific requirements of M/WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "Subcontractor Utilization Plan"), and are detailed below.

The Contractor must comply with all applicable M/WBE requirements for this Contract.

Article I, Part A, below, sets forth provisions related to the participation goals for construction and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE program.

PART A **PARTICIPATION GOALS FOR CONSTRUCTION AND** **PROFESSIONAL SERVICES CONTRACTS**

1. The **Target Subcontracting Percentage** applicable to this Contract is set forth on Schedule B, Part I to this Contract (see Page 1, line (1)).

The "**Target Subcontracting Percentage**" is the percentage of the total Contract which Agency anticipates that the prime contractor for this Contract would in the normal course of business award to one or more subcontractors for amounts under \$1 million for construction and professional services.

A prospective contractor may seek a full or partial pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below. To apply for the a full or partial waiver of the **Target Subcontracting Percentage**, a prospective contractor must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at acco@doitt.nyc.gov or via facsimile at (347)788-4080.

Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The **Subcontractor Participation Goals** established for this Contract are set forth on Schedule B, Part I to this Contract (see Page 1, line (2) and/or line (3)).

The **Subcontractor Participation Goals** represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under \$1 million.

3. If **Subcontractor Participation Goals** have been established for this Contract, Contractor agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to subcontracts for amounts under \$1 million, Contractor shall be subject to the **Subcontractor Participation Goals**, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 11 below.

4. If **Subcontractor Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, Part II Subcontractor Utilization Plan (see Page 2-3) indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under \$1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the general time frames in which such work by MBEs and/or WBEs is scheduled to occur. In the event that this Subcontractor Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to award the **Target Subcontracting Percentage**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below.

THE BIDDER/PROPOSER MUST COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN INCLUDED HEREIN (SCHEDULE B, PART II). SUBCONTRACTOR UTILIZATION PLANS WHICH DO NOT INCLUDE THE REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE IS GRANTED

(SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT VENDOR HAS SUBMITTED A SUBCONTRACTOR UTILIZATION PLAN WHERE THE REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE PLAN ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE AFFIRMATION, THE VENDOR WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED PLAN TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE VENDOR HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Subcontractor Participation Goals established for this Contract by proposing one or more subcontractors that are M/WBEs for any portion of the Wicks trade work if the amount to be awarded to such M/WBE subcontractor is under \$1 million.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. M/WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the M/WBE participation goals. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311.

7. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); the names, addresses and contact numbers of each MBE or WBE hired as a

subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE hired pursuant to such plan, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's Subcontractor Utilization Plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Contractor has obtained a modification of its Subcontractor Utilization Plan in accordance with Local Law 129 and Part A, Section 11 below.

9. Where a Subcontractor Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.

10. Pre-award waiver of **Target Subcontracting Percentage**. Agency may grant a full or partial waiver of the **Target Subcontracting Percentage** to a bidder or proposer, as applicable, who demonstrates—before submission of the bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its Subcontractor Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts for under one million dollars represented by the **Target Subcontracting Percentage**. In making such determination, Agency may consider whether the Subcontractor Utilization Plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the Contract that it intends to subcontract.

11. Modification of Subcontractor Utilization Plan. A Contractor may request a modification of its Subcontractor Utilization Plan (**Subcontractor Participation Goals**) after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its Subcontractor Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's Subcontractor Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Subcontractor Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(a) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(b) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(c) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the Contract was solicited;

(d) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the Subcontractor Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

(e) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(f) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;

(g) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;

(h) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

12. If this Contract is for an indefinite quantity of construction or professional services or is a requirements type contract and the Contractor has submitted a Subcontractor Utilization Plan and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Subcontractor Participation Goals**, the Contractor will not be deemed in violation of the M/WBE requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If **Subcontractor Participation Goals** have been established for this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals,

and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B

MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of a Subcontractor Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See 6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the Subcontractor Utilization Plan.
2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.
3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts.
4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.
5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of M/WBE's to meet the required **Subcontractor Participation Goals**.

ARTICLE II

ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.
2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any Subcontractor Utilization Plan, Agency shall send a written notice to the Contractor

describing the alleged noncompliance and offering an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements this Section 6-129, including, but not limited any Subcontractor Utilization Plan, Agency may determine that one of the following actions should be taken:

(a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;

(b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;

(c) making a finding that the Contractor is in default of the Contract;

(d) terminating the Contract;

(e) declaring the Contractor to be in breach of

Contract; (f) withholding payment or reimbursement;

(g) determining not to renew the Contract;

(h) assessing actual and consequential damages;

(i) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;

(j) exercise rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or

(k) take any other appropriate remedy.

4. Whenever Agency has reason to believe that an MBE or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129), or has violated any provision of Section 6-129, Agency shall notify the commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

5. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission

shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

6. The Contractor's record in implementing its Subcontractor Utilization Plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a Subcontractor Utilization Plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.
form for inclusion in VENDEX as caution data.

Attachment 5: M/WBE Participation Goals for Subcontracts (Schedule B)



THE CITY OF NEW YORK

SCHEDULE B – Subcontractor Utilization Plan – Part I: Agency’s Target

This page to be completed by contracting agency

Contract Overview

E-PIN 85813P0006 **Project/Program** Citywide IT Services
Procurement Description System Integration Services for Technology Projects
Contracting Agency DOITT
Agency Address 255 Greenwich St, 9th Floor **City** New York **State** NY **Zip Code** 10007
Contact Person Margaret Budzinska **Title** IT Contract Specialist
Telephone # 212-788-6510 **Email** acco@doitt.nyc.gov

Project Description *(attach additional pages if necessary)*

Department of Information Technology and Telecommunications (DoITT) is seeking proposals from appropriately qualified contractors to provide System Integration Services for Technology Projects Citywide.

- (1) ✓ **Target Subcontracting Percentage**
 Percentage of total contract dollar value that agency estimates will be awarded to subcontractors in amounts under \$1 million for construction and professional services. 10%

Subcontractor Participation Goals

Complete and enter total for each Construction or Professional Services, or both (if applicable)

Group	Construction	Professional Services
Black American	%	%
Hispanic American	%	%
Asian American	%	No Goal
Caucasian Female	No Goal	%
Total Participation Goals	(2) N/A	(3) 30.5 %

SCHEDULE B – Subcontractor Utilization Plan – Part II: Bidder/Proposer Subcontracting Plan

This page and the next (Part II herein) are to be completed by the bidder/proposer. AFFIRMATIONS; Bidder/proposer must check the applicable boxes below, affirming compliance with M/WBE requirements.

Bidder/proposer AFFIRMS or DOES NOT AFFIRM [statement below]

It is a material term of the contract to be awarded that, with respect to the total amount of the contract to be awarded, bidder/proposer will award one or more subcontracts for amounts under one million dollars, sufficient to meet or exceed the Target Subcontracting Percentage (as set forth in Part I) unless it obtains a full or partial waiver thereof, and it will award subcontracts sufficient to meet or exceed the Total Participation Goals (as set forth in Part I) unless such goals are modified by the Agency.

Bidder/proposer AFFIRMS that it intends to meet or exceed the Target Subcontracting Percentage (as set forth in Part I); or

AFFIRMS that it has obtained a full/partial pre-award waiver of the Target Subcontracting Percentage (as set forth in Part I) and intends to award the modified Target Subcontracting Percentage, if any; or

DOES NOT AFFIRM

Section I: Prime Contractor Contact Information

Tax ID # _____ FMS Vendor ID # _____
 Business Name _____ Contact Person _____
 Address _____
 Telephone # _____ Email _____

Section II: General Contract Information

1. Define the industry in which work is to be performed.

- **Construction** includes all contracts for the construction, rehabilitation, and/or renovation of physical structures. This category does include CM Build as well as other construction related services such as: demolition, asbestos and lead abatement, and painting services, carpentry services, carpet installation and removal, where related to new construction and not maintenance.

This category does not include standard services which may be associated with construction projects but which do not constitute construction, such as trucking, site protection, site security, site surveying, soil testing, extermination, and maintenance/operations.

- **Professional Services** are a class of services that typically require the provider to have some specialized field or advanced degree. Services of this type include: legal, management consulting, information technology, accounting, auditing, actuarial, advertising, health services, pure construction management, environmental analysis, scientific testing, architecture and engineering, and traffic studies, and similar services.

a. Type of work on Prime Contract (Check one): **b. Type of work on Subcontract (Check all that apply):**

Construction Professional Services Construction Professional Services Other

2. What is the expected percentage of the total contract dollar value that you expect to award to all subcontracts? _____ %

3. Will you award subcontract(s) in amounts below \$ 1 million for construction and/or professional services contracts within the first 12 months of the notice to proceed on the contract? Yes No

Section III: Subcontractor Utilization Summary

IMPORTANT: If you do not anticipate that you will subcontract at the target level the agency has specified, because you will perform more of the work yourself, you must seek a waiver of the Target Subcontracting Percentage by completing p. 4).

Step 1: Calculate the percentage (of your total bid) that will go towards subcontracts under \$1M for construction and/or professional services	Subcontracts under \$1M (4) (construction/professional services)	Total Bid/Proposal Value	Calculated Target Subcontracting Percentage
	\$ _____	÷ \$ _____	x 100 = _____ %
<ul style="list-style-type: none"> • Subcontracts under \$1M (construction/professional services): Enter the value you expect to award to subcontractors in dollars for amounts under \$1 million for construction and/or professional services. This value defines the amount that participation goals apply to, and will be entered into the first line of Step 2. • Total Bid/Proposal Value: Provide the dollar amount of the bid/proposal. • Calculated Target Subcontracting Percentage: The percentage of the total contract dollar value that will be awarded to one or more subcontractors for amounts under \$1 million for construction and/or professional services. This percentage must equal or exceed the percentage listed by the agency on page 1, at line (1). 			

SCHEDULE B – PART III – REQUEST FOR WAIVER OF TARGET SUBCONTRACTING PERCENTAGE

Contract Overview

Tax ID # _____ FMS Vendor ID # _____
 Business Name _____
 Contact Name _____ Telephone # _____ Email _____
 Type of Procurement Competitive Sealed Bids Other Bid/Response Due Date _____
 E-PIN (for this procurement) 85811P0001
 Type of work on Prime Contract (Check one):
 Construction Professional Services
 Type of work on Subcontract (Check all that apply):
 Construction Professional Services Other

SUBCONTRACTING as described in bid/solicitation documents (Copy this % figure from the solicitation)

_____ % of the total contract value anticipated by the agency to be subcontracted for construction/professional services subcontracts valued below \$1 million (each)

ACTUAL SUBCONTRACTING as anticipated by vendor seeking waiver

_____ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for construction/ professional services subcontracts valued below \$1 million (each)

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

- Vendor does not subcontract construction/professional services, and has the capacity and good faith intention to perform all such work itself.
- Vendor subcontracts some of this type of work but at lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract.
- Other _____

References

List 3 most recent contacts/subcontracts performed for NYC agencies (if any)

CONTRACT NO.	AGENCY	DATE COMPLETED
_____	_____	_____
_____	_____	_____
_____	_____	_____

List 3 most recent contracts/subcontracts performed for other agencies/entities

(complete ONLY if vendor has performed fewer than 3 NYC contracts)

TYPE OF WORK	AGENCY/ENTITY	DATE COMPLETED
_____	_____	_____
Manager at agency/entity that hired vendor (Name/Phone No.)	_____	_____
_____	_____	_____
Manager at agency/entity that hired vendor (Name/Phone No.)	_____	_____
_____	_____	_____
Manager at agency/entity that hired vendor (Name/Phone No.)	_____	_____

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

Signature: _____ Date: _____
 Print Name: _____ Title: _____

Shaded area below is for agency completion only

AGENCY CHIEF CONTRACTING OFFICER APPROVAL
 Signature: _____ Date: _____
CITY CHIEF PROCUREMENT OFFICER APPROVAL
 Signature: _____ Date: _____

Attachment 6: Doing Business Data Form

(Attached as a separate PDF file)

Attachment 7: Iran Divestment Rider and Certification

Iran Divestment Rider and Certification
IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR
NEW YORK CITY CONTRACTORS

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

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

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

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

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section

165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

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

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

RFP for Systems Integration Services for Technology
Projects Citywide EPIN: 85813P0006

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

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

[Please Check One]

PROPOSER'S CERTIFICATION

By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, New York
_____, 20__

SIGNATURE

PRINTED NAME

Sworn to before me this
_____ day of _____, 20__

TITLE: _____

Notary Public

Dated: _____

Attachment 8: Whistleblower Provisions

Whistleblower Protection Expansion Act Rider

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
 - (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
 - (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
 - (i) 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 Contract; and
 - (ii) the rights and remedies afforded to its employees under New York City 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 Contract.
 - (d) For the purposes of this rider, "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.
-

(e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.
-

Attachment 9: EFT

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

GENERAL INSTRUCTIONS

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to:

NYC Department of Finance
Treasury Division
66 John Street
12th Floor
New York, NY 10038
Attention: EFT

or Fax to: EFT at 212-361-7058.

SECTION I - VENDOR INFORMATION

1. Enter the vendor's social security number or taxpayer ID, the 9-digit number reported on the W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's E-mail address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person.)

SECTION II - FINANCIAL INSTITUTION INFORMATION

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Bank name.
4. Bank address.
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account. Account must be designated as either checking or savings. (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

SECTION III - VENDOR SIGNATURE

Sign and date where indicated.