

Date Issued: March 6, 2023

THE CITY OF NEW YORK
FINANCIAL INFORMATION SERVICES AGENCY AND
OFFICE OF PAYROLL ADMINISTRATION (FISA-OPA)

REVISED REQUEST FOR PROPOSALS

TITLE: PAYROLL BANKING AND RELATED SERVICES

EPIN: 1312022BNKRFP

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ENCLOSURES:

- APPENDIX A – GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN AND CLIENT SERVICES
- IDENTIFYING INFORMATION RIDER

AUTHORIZED CONTACT PERSON

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

Name: Erika Lerner

Title: Senior Procurement Analyst

Email Address: BankRFP@fisa-opa.nyc.gov



SECTION I - TIMETABLE

A. Release Date of this Revised Request for Proposals: March 6, 2023

This revised RFP replaces the RFP issued on January 6, 2023.

B. Questions / Amendments:

Any communications or questions concerning this RFP must be sent by email to the Authorized Contact Person, at BankRFP@fisa-opa.nyc.gov. No other FISA-OPA or City of New York employee or contractor is authorized to respond to inquiries or otherwise discuss this RFP. FISA-OPA will respond to questions by means of written Addenda to this RFP that will be sent to all organizations that are on record with FISA-OPA as having received a copy of this RFP. FISA-OPA may respond to questions received prior to the Pre-Proposal Conference at the Conference. **All questions must be received no later than January 13, 2023.**

Any amendments to this RFP will be made by means of written Addenda only; no other communication will be binding on FISA-OPA.

C. Pre-Proposal Conference:

A Pre-Proposal Conference will be held on **February 1, 2023 at 11:00 A.M.** via Webex. Attendance at the conference is voluntary, but strongly recommended. The Pre-Proposal Conference call-in number and meeting number (access code) will be provided to vendors who register by email with the Authorized Contact Person identified on the cover page by January 27, 2023. Additional details concerning vendor registration will be provided via email at a later date.

D. Proposal Due Date, Time and Location:

- **Date: March 24, 2023**
- **Time: 1:00 P.M. (ET)**

FISA-OPA will only accept Proposals in physical form (as detailed in Section IV below) submitted by U.S. Mail, by commercial delivery service, or by hand. FISA-OPA will *not* accept Proposals submitted by fax, email, or other form of electronic transmission.

Proposals sent by U.S. Mail must be addressed as follows:

FISA-OPA
Attn: Erika Lerner
Re: Payroll Banking and Related Services
PIN: 1312022BNKRFP
5 Manhattan West (450 West 33rd Street), 4th Floor
New York, NY 10001-2633

Proposals delivered through a commercial delivery service or by hand must be addressed as follows:

FISA-OPA
Attn: Erika Lerner
Re: Payroll Banking and Related Services
PIN: 1312022BNKRFP
459 West 31st Street, Bay B
New York, NY 10001-2633

Proposers must use either of the two addresses shown above, depending upon the delivery method. Proposals are *not* to be delivered to the reception desk at 5 Manhattan West. Hand deliveries are to be made to FISA-OPA's loading Bay

GLOSSARY OF TERMS

The following terms shall apply to this RFP.

ABA: American Bankers Association.

Account Analysis Statement: The Bank's invoice to FISA-OPA for Services provided on a monthly basis, containing information including (but not limited to) balance information, service activity, and cost itemization.

ACH (Automated Clearing House): A facility used by financial institutions to distribute electronic debit and credit entries to bank accounts and settle such entries.

ACH Entry (or Entry): An electronic funds transfer initiated via an ACH system.

Agency: The City of New York Financial Information Services Agency and Office of Payroll Administration.

ANSI: American National Standards Institute.

ARP: Account Reconciliation Processing.

Award: A written determination by the City to a Proposer indicating that the City has accepted the Proposer's Proposal in accordance with this RFP.

ATM: Automated Teller Machine.

Business Day: A day that the proposer is generally open for business in the City of New York, i.e., Monday through Friday, excluding weekends and State or federal holidays.

CCD+: Cash Concentration and Disbursement Plus.

City: The City of New York.

City Account: Any account, maintained by the City at the Bank that is the subject of any Service resulting from this RFP.

Contract: The agreement (if any) resulting from this RFP and the proposal process.

Contractor or the Bank: The entity that is selected to provide Services resulting from this RFP and the proposal process.

Controlled Disbursement Account: A disbursement account arrangement where the total dollar amount of all checks that will be cleared on a given day are made available to the corporate treasury manager early enough to allow same day funding.

DDA: Demand Deposit Account.

DOF: The City of New York Department of Finance or successor.

Earnings Credit Rate: The rate used by the Bank to determine the allowable credit they will provide for the use of the City's balances on deposit with the Bank.

Effective Date or Effective Entry Date: The date specified by the originator on which an ACH entry is to be settled to the receiver's account.

EFT: Electronic Funds Transfer.

FDIC: Federal Deposit Insurance Corporation—a federal agency that insures deposits in member banks and thrifts.

FISA-OPA: The City of New York Financial Information Services Agency and Office of Payroll Administration.

LODI: Line of Duty Injury.

MICR (Magnetic Ink Character Recognition): The MICR line encoded at the bottom of a check that includes the bank identification number (R/T), account number, auxiliary field, and check amount (after encoding).

NACHA: National Automated Clearing House Association or successor.

NACHA Rules. The Service Terms and the Operating Rules and Guidelines of the National Automated Clearing House Association (including any other clearing house rules applicable to automated clearing house transactions), as amended from time to time.

NOC: Notification of Change, a message sent by the RDFI to the ODFI requesting a change in the content of the ACH entry record.

ODFI: Originating Depository Financial Institution.

On-Demand Pay: On-demand-pay allows staff to access income as it is earned (typically up to a certain dollar amount each pay period), rather than waiting until the next payroll cycle

Originator: The party that delivers an ACH entry, debit or credit, to the ODFI for settlement to the Receiver's account at the RDFI.

OTC: The City of New York Office of the Comptroller or successor.

OTI: The City of New York Office of Technology and Innovation or successor.

PA DSS: The Payment Application Data Security Standard.

PCI DSS: The Payment Card Industry Data Security Standard.

PIN: Personal Identification Number.

PGP Encryption: A digital encryption standard that provides cryptographic privacy and authentication. PGP is based on the public-key method, which uses two keys -- a public key available to anyone, and a private key available only to a single entity. Messages encrypted with one key may only be decrypted with the other.

PNI – Paid/No Issue: A check debiting the City Account but is not a valid check issued by the City or is not a check at all.

PNV: Payee Name Verification.

Positive Pay: An automated fraud detection tool that compares the account number, check number and dollar amount of each check presented for payment against a list of checks previously authorized and issued by the City. All three components of the check must match exactly or the City will not pay.

PPD: Prearranged Payment and Deposit Standard Entry Class Code of the NACHA Operating Regulations.

Proposal: The Bank's Technical Proposal submitted in response to this RFP.

Proposer: An entity submitting a Proposal in response to this RFP.

RDFI: Receiving Depository Financial Institution.

Receiver: The party into whose bank account (checking or savings) the ACH entry (debit or credit) sent by the Originator is settled.

RFP (Request for Proposals): This document setting forth the requirements and specifications of a contract to be awarded by competitive selection, including, without limitation, any Addenda.

Services: All services and deliverables to be provided to the City by the Proposer, as further described in this RFP. Unless the context requires otherwise, “Services” includes the “Optional Services” described herein.

Settlement Date: The date that funds transferred through a private network are deposited in a customer's account and immediately available for use.

ZBA: Zero Balance Account.

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SECTION II - SUMMARY OF THE REQUEST FOR PROPOSALS

A. Purpose of RFP

FISA-OPA seeks a qualified commercial bank (Designated Bank approved by NYC Banking Commission) to provide payroll banking and related services (collectively referred to in this RFP as “Services”) for the City of New York payroll operations.

The Services to be provided fall within the two (2) categories listed below:

- Payroll banking and related services (“Payroll Banking Services”)
 - ACH Processing
 - Paper Check Processing
 - Online Reporting, Account Reconciliation Statements, and Reports
 - Inquiry, Balance, and Transaction Reporting
 - Printing and Mailing Paper Checks
- Potential future payroll-related services (“Optional Services”)
 - Electronic Payments, Forms Preparation and Printing
 - Payroll Card Services
 - On-Demand Pay/earned wage access

Each Proposer must submit a Proposal that describes its abilities to provide the Payroll Banking Services and the Optional Services, including all detailed specifications set forth in Sections II and III of this RFP.

Note: Check cashing services are *not* covered by this RFP.

Proposers are encouraged to familiarize themselves with the following documents, both of which are attached to this RFP:

- APPENDIX A – GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN AND CLIENTS SERVICES.
- Identifying Information Rider

Please be advised that the terms of these documents are **non-negotiable**, and the submission of a Proposal constitutes the Proposer’s agreement to the inclusion of both documents into any Contract without amendment.

B. Proposer Prerequisites

Notwithstanding anything to the contrary contained in this RFP: **Each Proposer must be a single NYC Designated Bank approved by the NYC Banking Commission. FISA-OPA will neither consider a Proposal received from, nor award a Contract to, any entity that does not meet this requirement.**

An eligible Proposer may: (a) propose to provide all services under this RFP itself; or (b) propose that specific, identified services will be performed by identified third-party subcontractors, in which case the Proposal must properly address all requirements of this RFP relating to subcontractors. In either case, the following apply:

- Proposals from partnerships, joint ventures, and other unincorporated entities will *not* be considered even if a member of the Proposer is a NYC Designated Bank.
- Any Contract awarded under this RFP will be awarded to, and in the name of, *only* the selected Proposer, which will be fully liable to the City for performance of all Contract obligations regardless of any subcontracting.
- The selected Contractor may authorize a third party to perform any permitted services contemplated by this RFP *only* by means of a duly executed subcontract meeting all requirements of this RFP and the awarded Contract.

Vendors should disregard any references to joint ventures contained elsewhere in this RFP.

C. Anticipated Contract Term

It is anticipated that the term of any Contract awarded will be five (5) years, with the City having the option, in its sole discretion, to renew for one or more additional periods up to an aggregate of three (3) years on the same terms and conditions, including pricing, as are in effect as of the renewal date FISA-OPA reserves the right, prior to Contract award, to determine the length of the initial contract term and each option to renew. FISA-OPA's decision on whether to renew any Contract will be based in part on FISA-OPA's determination of the Contractor's satisfactory performance. The City may terminate any Contract prior to expiration at the City's sole discretion. The City reserves the right to award no contract, if it is deemed to be in the City's best interest.

D. Anticipated Available Funding

It is anticipated that the available funding for the contract awarded from this RFP will be from the City's expense funds for applicable fiscal years.

E. Anticipated Payment Structure

The City may elect to pay all or any portion of amounts payable for Services via direct fees after the Contractor's submission of an invoice and supporting documentation to both FISA-OPA and DOF in a form approved by FISA-OPA. The City may also elect to pay all or any portion of amounts payable for Services in the form of compensating balances, also known as Earnings Credit. Proposers are to provide the City with the Earnings Credit Rate that is offered to their most favored clients. FISA-OPA will consider Proposals containing one or more different payment structure(s), but reserves the right to select any structure(s) that is in the City's best interest.

Additionally, any Contract will include liquidated damages provisions that address failures to meet key service levels, as further described in Section III, Part B, paragraph 5.6 (Service Level Standards and Associated Compensation Adjustments).

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SECTION III - SCOPE OF SERVICES

A. RFP Overview

FISA-OPA seeks a qualified commercial bank to provide payroll banking and related Services for the City's payroll operations. The Contractor must provide accurate and timely Services, provide automated, efficient and standardized banking and related processes, and provide secure access to bank information. Proposers are encouraged to describe services that will accomplish the objective of this RFP while supporting the City's bank account structure described above. Although not required, Proposers may provide information on any other payroll banking-related services that might be beneficial and cost-effective to the City.

This RFP presents the current overall structure of relevant City banking operations, and Proposals must address each of the Services described in this Section III.

NOTE 1: The Contractor will be responsible for setting up and maintaining the same FISA-OPA Account Structure shown below, in accordance with applicable legal requirements and industry standards with respect to operations, security, reporting and online access capabilities. The funds in the Accounts must not be comingled with any other funds.

NOTE 2: Certain Services must be proposed as described in this RFP; these will be indicated. Where not indicated, Proposals may propose alternatives to the current approach.

This RFP also describes Optional Services that Proposals must also address, though the City may elect to implement some or all of these Optional Services in the future, or not at all, as it sees fit.

B. Current City Payroll and Banking Structure

1. Payroll Processing

FISA-OPA is responsible for coordinating matters of payroll policy and procedure among various City agencies, ensuring City compliance with employment tax laws and regulations, distributing and accounting for the City Accounts and ensuring the integrity, accuracy, and operational effectiveness of the City's payroll systems.

The City runs multiple payroll cycles with varying frequencies, i.e., weekly, biweekly and semimonthly, etc., as well as supplemental payrolls — on average there are 26 payrolls per month. The City issues multiple payroll file transmissions for ACH as well as Positive Pay/PNV during the course of any single day for each City Account.

2. Payroll Volumes

There are currently approximately 375,000 City employees; currently 93% are enrolled in direct deposit and 7% receive paper checks. The annual volume of ACH transactions for direct deposit is approximately 9.6 million with an average annual dollar value of \$22 billion. Any one transmission file may contain between 1 and 185,000 ACH transactions. On an annual basis, the City issues approximately 745,000 paper payroll checks, as well as other paper check payments including Medicare Part B/IRMAA Reimbursements, Social Security and Medicare tax refunds, Beneficiary Services and other similar payments with a total dollar value of approximately \$1.7 billion.

3. Account Structure

FISA-OPA seeks a Contractor that is able to support FISA-OPA's current bank account structure described in this subsection, but with the flexibility to adapt to a new account structure in the future. FISA-OPA maintains 17 DDAs that are used for the disbursement of payroll and related payments. All of these DDAs, with the exceptions of the Water Finance Authority account and pension accounts, are funded by wire transfers from the City's Central Treasury Master Demand account (currently at Citibank), which is an account under the jurisdiction of DOF. The Water Finance Authority account and pension accounts are funded by manual book transfers from the OPA Concentration account. Out of the 17 DDAs, 4 are used as disbursement accounts for the pension employee payroll.

The Imprest Fund Account is a standalone account that is funded by FISA-OPA.

There are also various payroll-related payments that occur during the course of the calendar year. Some Accounts are used for those purposes, and some are used to process Medicare Part B/IRMAA Reimbursements, Social Security and Medicare withholding tax refunds, Beneficiary Services and other similar payments to current and former City employees. For these payroll-related payments, Proposers must demonstrate their capability to receive data from the City to generate and mail paper checks to these payees.

The diagrams on the next page illustrate the current structure of the Accounts that support the City's payroll systems:

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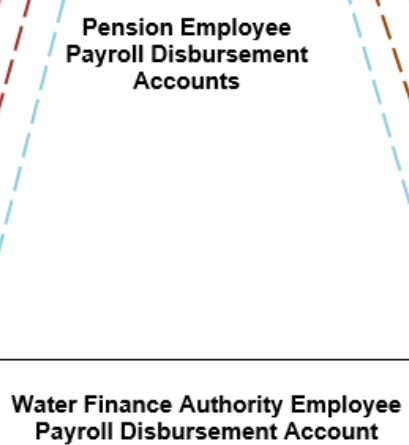
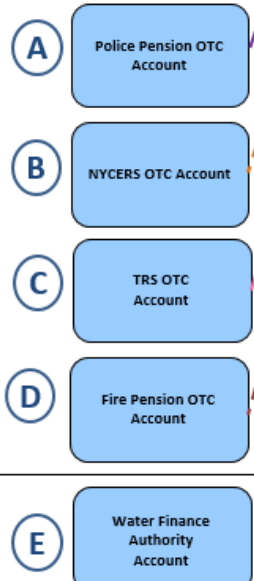
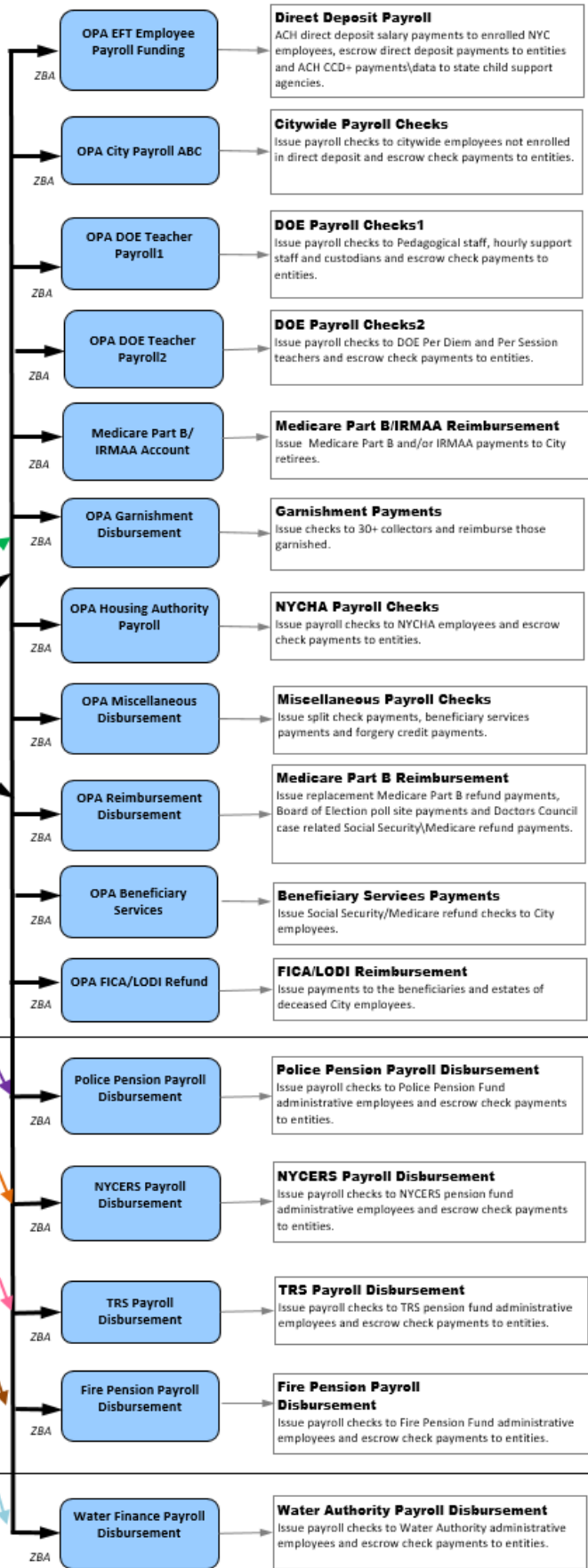
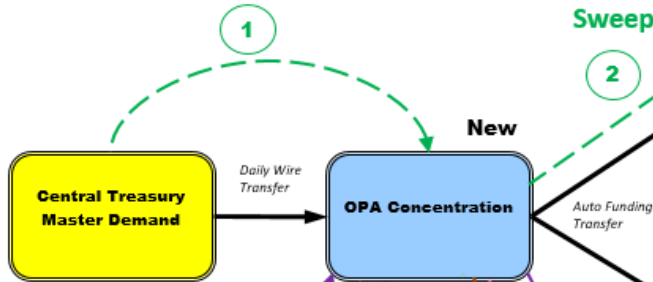
FISA-OPA EFT and Check Payroll Accounts

- FISA-OPA Account Structure -

Current FISA-OPA Payroll Funding Process:

1. FISA-OPA requests a wire transfer from the Central Treasury Master Account to the OPA Concentration account.
2. OPA Concentration account will fund disbursement accounts.

Wire Transfer Request



C. Payroll Banking and Related Services

1. ACH Processing

The Contractor will provide ACH origination services that will enable the City to do the following:

- Act as the City’s ODFI for all communications with ACH, and will initiate ACH entries (“Entries”) on behalf of the City, as originator, to or from the designated account of a Receiver maintained at an RDFI.
- Instruct the Contractor to issue or transmit prenotifications, reversals, requests for return, notifications of change or other information pertaining to Entries.

The origination of Entries and the transmission and issuance of transactions and information will be pursuant to the NACHA Rules. The Contractor must agree to comply with and be bound by the NACHA Rules as then in effect and as modified from time to time. The City will provide Entries and instructions to the Contractor with all the necessary information to complete the requested transactions. The City will transmit Entries to the Contractor in the manner, at the times, and in accordance with approved media, content and format as agreed by the City and the Contractor. The Contractor must process and validate all ACH transactions in strict compliance and within the time frame established by the NACHA Rules. ACH transactions must be distributed by the Effective Date.

If an RDFI is unable to post an ACH entry to the intended account, for any reason, including but not limited to an invalid or closed account, or insufficient funds, the Contractor must process the returns or notices regarding such items in accordance with the NACHA Rules.

1.1 Child Support Payments via ACH

The City transmits payment and remittance details for child support payments made to the State Child Support Enforcement agencies throughout the 50 States and territories using the CCD+ format, or another mutually agreed upon format.

As specified earlier, the Contractor will act as the City’s originator for Entries to transfer payments and related remittance information through the ACH network to the various States’ centralized collection sites, also known as State Disbursement Units.

1.2 ACH Transmission

The City will initiate and produce ACH issuance files and transfer needed files using secure methods such as, but not limited to, HTTPS and FTP, to the Contractor. The NACHA Rules govern the formats, specifications and exchange of Entries. The Contractor must follow and abide by the requirements defined in the NACHA Rules. In addition to the aforesaid transmission methods, the Contractor must allow for the following two methods of file transfer that the City currently uses:

- File transmission over a non-internet line using IBM Sterling Connect: Direct with Secure Plus.
- An internet based transmission using FTPS plus encryption of the file itself with PGP.

Proposers must provide secure file transfer solutions and may recommend alternative processes if they would be beneficial to the City. Any alternatives must be described in detail and are subject to the City’s approval. For all proposed methods of transmission, Proposers must provide the technical requirements for establishing each method and processing transactions, a detailed description of security and authorization processes and requirements, including forms, delegation options, encryption or authentication requirements, and devices or digital certificates, alternatives available if a standard transmission method should fail, and disclose any software limitations on file sizes or numbers of records in a batch.

The Contractor must be able to confirm receipt and subsequent processing of ACH files transmitted by the City, and provide a confirmation or “echo-back” file, consisting of the transmission back to the City of a copy of each

file received. The Contractor will return an echo-back file confirmation to the City within fifteen (15) minutes of file receipt from the City.

The ACH confirmation file must reflect the transactions released into the ACH network for the City. This confirmation file can be set up to generate upon presentment of City's file to the Contractor (regardless of the Effective Date of the transactions) or upon the Effective Date of the transactions (regardless of when the transactions are presented to the Contractor). The Contractor must validate the ACH file contents before sending through the NACHA Clearinghouse. The City must be contacted immediately via telephone regarding any differences in file totals or any other edit failures discovered during the confirmation process.

1.3 ACH Debit Blocks

The City uses debit block to prevent unauthorized ACH debits from posting against City Accounts, thereby maintaining the security and integrity of the City Accounts. The Contractor must provide full ACH debit block services to the City. Please describe how your financial institution would handle this feature, and include any other fraud prevention and security measures that your institution can offer to the City.

1.4 Error Handling

Proposers must describe how they handle general and critical errors, whether data or technical in nature. The City requires the ability to escalate matters, particularly when critical errors occur, since these could have a high risk of impacting payroll or other related City operations. Proposers must describe their standard support structure, how issues are prioritized, tracked and resolved and any other services that Proposers offer so that impacts are avoided or minimized when errors do occur. Proposers must include this process as part of their discussion of service level standards and associated compensation addressed elsewhere in this RFP.

1.5 Security and Data Protection

Sound industry practices reflect the understanding that certain financial data must be protected at all times whether before, during or after transmission, and regardless of the form of the transmission (e.g. internet or otherwise). The Contractor must comply with all applicable security procedures including the City's Information Security Policies and Procedures: <https://www.nyc.gov/content/oti/pages/vendor-resources/cybersecurity-requirements-for-vendors-contractors> .

When data is received or transmitted, the Contractor must utilize commercially reasonable procedures and systems that provide security and encryption techniques adequate to ensure reliable protection of the data during transit and storage. The Contractor must have alternate and secure method of accommodating these file transmissions in case of an emergency. All instructions received by the Contractor in the City's name must be authenticated and/or encrypted using commercially reasonable security technologies meeting standards acceptable to the City and the Contractor.

1.6 Settlement and Exposure Limits

On the Settlement Date, the Contractor will credit City Account with the Bank that City specifies for the total of:

- City's Debit Entries that Contractor processed for settlement that day;
- Drafts issued for deposit to City Account on that day; and
- Any returned or reversed Credit Entries.

The Contractor will debit City Account with the Bank that the City specifies for the total of Credit Entries processed in City's name and for any returned Debit Entries and Drafts.

1.7 Reversals and Recalls

The City may transmit reversing Entries, batches or files, in case of an error or change in the recipient's status. Proposer must describe the process required for the City to submit reversals, including communication methods, deadlines, required authorizations, and acknowledgements. Also describe the process the City would use to request the reversal of a specific transaction after the NACHA time frame allowed for reversals has expired (Return per ODFI, for example). Indicate whether the City may request to delete a submitted file, batch or transaction within a published processing deadline. If authorized individuals at the City are allowed to delete a specific transaction(s) from a previously transmitted file before Settlement Date, Proposers must describe how this process will work and clearly specify the published deadlines in Eastern Time.

Proposers must also describe their procedures for recalling a file transfer after it has been sent by the City, and explain the timeframes for when reversals can be received and processed.

1.8 Returns and Notifications of Change (NOC)

An ACH transaction may fail or generate a NOC due to a number of reasons, e.g. account closed or frozen, incorrect account number, incorrect bank ABA number, etc. Information for all returned Entries and NOCs must immediately be made available to the FISA-OPA, preferably via web-based system or report process. Proposers must provide a list of the information included in a return or NOC transaction and indicate when the return and NOC information will be available to the City (same day received, time of day, etc.) and how it will be delivered. Proposers must clearly specify when returns of ACH credits will be posted to the City Account(s). ACH debit returns or dishonored ACH credit returns may cause a negative collected balance in the City Account(s). For most ACH origination accounts today, the City has a Zero Balance Account (ZBA) arrangement in place to offset these shortages with general fund deposit balances (refer to Account Structure).

1.9 Standard Entry Class (SEC) Codes

The list of SEC codes that the City currently uses to transmit includes PPD and CCD+. The City reserves the right to use additional SEC codes during the term of the contract. For example, the City is not currently generating any International ACH Transaction or Represented Check Entry entries, but a business need could arise in the future.

Proposers must describe the SEC codes it can offer and specify any limitations that may exist.

1.10 NACHA Rules

Proposers must at all times be compliant with the NACHA Rules and further describe their process for implementing NACHA Rule changes and assisting customers with implementing those changes. The Contractor shall notify the City of relevant changes in the NACHA Rules at least three months prior to the change's effective date of the change.

1.11 ABA Number Updates

Proposers must describe their process for providing the City with any Federal Reserve Bank ABA changes.

2. Paper Check Processing

2.1 Depositing Funds

- The City funds its Accounts by wire transfer from City's Central Treasury Master Demand account currently at Citibank and manual book transfers to the OPA Concentration account to fund outgoing disbursements for all FISA-OPA Accounts (See Current Account Structure). FISA-OPA seeks a Contractor that is able to provide this bank account structure.
- The City operates its Accounts as zero-balance accounts, with the exception of two of its Accounts (Imprest Fund Account and Concentration Account). Funds are transferred from the OPA Concentration account to the Accounts in an amount equal to the total dollar amount of funds debited against the Accounts during the day.

The Contractor must establish and maintain DDAs for certain Accounts in accordance with FISA-OPA's written instructions.

- The Contractor shall provide automatic overdraft protection in the event that an overdraft occurs and shall not charge or penalize FISA-OPA. FISA-OPA will make every effort to assure that funds in the bank are equal to the amount of payroll issued, however, in the event of an overdraft, all valid checks presented for payment and direct deposit transactions shall be paid by the Contractor. Proposers must describe their policy on daylight overdrafts for individual accounts if the total balances of the City Account in aggregate are positive.

2.2 Payroll Check Data Transmission

- The City, via FISA-OPA, will initiate and produce payroll check issue ARP files. Proposers must explain how the commercially reasonable security procedure(s) protect the City's and its employees' private, sensitive data from unauthorized access. These files will be transmitted to the Contractor using mutually agreed upon and commercially reasonable security procedures that may include, but not be limited to, HTTPS and FTPS. File layout specifications will be provided during Contract negotiations.
- Proposers must fully explain how the security procedure(s) protect private, sensitive data from unauthorized access. Additionally, Proposers must include a description of alternate secure methods of accommodating these file transmissions in case of an emergency.
- Proposers must describe how the transmissions will be verified and what quality controls are in place including for example, providing counts and dollar amounts by transmission, to ensure that information FISA-OPA sent is accurately and timely received by the Contractor. Verification must be made for all sub-category types of transmissions including issuances, cancellations and stop payments.
- Proposers must describe their systems for reporting any discrepancies or deviations from the information contained in the payroll issuance file to what is being presented at the Bank and the timeframes for resolution. Describe how the Proposer prevents acceptance and/or processing of duplicate files. The Contractor must not accept, and the City will not pay, any check that is presented for payment when the check number and amount have not been submitted by the City to the Contractor through payroll issuance files.

2.3 Remote Deposit Services

FISA-OPA currently uses the Remote Deposit capabilities to deposit the checks. The Contractor must provide FISA-OPA the capability to scan checks at FISA-OPA location(s) and send digital images of the checks to the Bank for processing. This service must be compatible with FISA-OPA's existing Windows-based personal computers, or future mutually agreed upon upgrades. The technology for these services must capture all of the key check information, including MICR line data and allow FISA-OPA to make electronic deposits by, for example, using the Internet for processing (with appropriate security features). The remote deposit services must be processed in-house by the Contractor. This function cannot be delivered through a third-party subcontractor.

Proposers must describe available related functionality including the ability to automatically consolidate multiple deposit accounts and sites, and prepare and upload daily receivables into any accounts receivables program. The Contractor must also provide a web-based system providing access to receivables information including (but not limited to) downloadable scanned check images and related reports. The Contractor must retain scanned check images for 7 years.

The Proposer will provide a full description of this Remote Deposit service including:

- Hardware and software requirements for the service;
- Implementation and training requirements and time schedule;
- Deposited check image storage and retrieval capabilities;
- Individual check and batch processing procedures.

The Proposer should plan to demonstrate its Remote Deposit product.

Note: The Contractor must provide scanners.

2.4 Controlled Disbursement

The City's labor agreements prohibit any arrangement which will delay availability of payroll funds to employees. The Contractor must ensure that no aspect of the controlled disbursement process, or any other process, will delay the availability of payroll funds to City employees. The Contractor must provide controlled disbursement services and must notify the City of 100% of daily clearings against Accounts, except for the Imprest Fund Account. The Contractor must report the amount of disbursements for Accounts Payable Checks that will be charged to the City Account.

2.5 Positive Pay

The City uses positive pay on all of its Accounts to improve internal controls and prevention of check fraud. On a daily basis, the City requires the Bank to provide FISA-OPA with information regarding check status (paid, stopped, or canceled). The Bank must provide the ability for the City to upload check issue files that include the check number, issue date, payee name and address, and check amount for validation before the check is redeemed.

Provide a brief description of each positive pay service that your financial institution offers. Please provide sample reports.

2.6 Payee Name Verification

The City uses PNV to help prevent a check with an altered payee name from clearing the City Account. The Contractor must not accept, and the City will not pay, any check presented for payment when the payee name on the check does not match the payee name on the payroll issuance file, even if the check number and amount of the check match the issuance file.

Proposers must describe how their financial institution would handle this feature.

2.7 Stale-Date Control

Most City checks that are outstanding for 180 days are stale-dated, with the exception of checks for Beneficiary Services, which are stale-dated after 90 days. Proposers must explain how they will perform stale-date control on each check presented for payment against FISA-OPA's Accounts, to eliminate/reduce the likelihood of a fraudulent check with alterations or a check that has passed the legal stale date timeline under the Uniform Commercial Code from improperly paying against the Accounts.

2.8 Exception Processing

The Contractor must explain its procedures, in accordance with the Uniform Commercial Code, for addressing checks that the City flags, or that otherwise must be rejected or cannot be negotiated properly, including, but not limited to, forged checks, checks bearing forged or fraudulent endorsements, altered checks, counterfeit checks, checks presented more than once (including via different means of deposit), stale-dated checks, misprinted checks, cancelled checks and checks that are reported as lost or stolen.

Proposers must also detail how they will comply with the fraud prevention measures listed below:

- Credit the appropriate Account as soon as possible, but no later than five (5) business days after a claim or demand by FISA-OPA.
- Provide notification of credit for stale-dated or forged/altered check claims on the monthly reconciliation reports.
- Provide credit advices for stale-dated or forged/altered check claims with the daily bank statement.

- Provide detailed information when a claim of forgery is denied, including but not limited to the Bank of First Deposit.
- Credit the City Account pending the resolution of a disputed claim, and/or pay all interest including any back interest once the claim is resolved in the City's favor. Proposers must explain how the interest will tie back to the individual claim in reports that the City receives.
- FISA-OPA requires a minimum of 12 months from statement date to allow for the review of forgery cases.
- Pay attorneys' fees, and any other fees, costs, or expenses incurred, should the City be required to initiate legal action to recover funds paid out by the Bank on an improperly negotiated check.

2.9 Check Imaging System Requirements

The Contractor will be responsible for the creation of check images for archival storage and electronic or other technological means of access. The Contractor must provide this in a manner that ensures the integrity of image production, storage, and access.

The Contractor must store images of all checks processed and be able to transmit or otherwise make available, reconciliation reports on a schedule (to be provided at Contract negotiation). In the event that the City's check images are not available for viewing through the normal process, the Contractor must make images available in a timely manner via an alternate process.

The Contractor must be able to archive and store images for up to ten (10) years. FISA-OPA must be able to retrieve images securely through the Contractor's online software or other technological means during the prescribed timeframe. These archiving and storage provisions shall survive the expiration or termination of the Contract.

In addition, the imaging system must meet the below technical requirements:

- be capable of processing at least 65,000 checks monthly,
- have check image resolution that is a minimum of 200 dots per inch in black and white,
- provide City with the ability to search, sort and retrieve check images by check number, dollar amount, account number ABA number, payee and check date,
- allow for viewing the front and back of the check image simultaneously or in two associated frames and magnify portions of the check,
- provide City with the ability to print the front and back image on one page,
- provide City with the ability to download the check image,
- allow for copying and pasting check images into other documents, such as MS Word or Excel, and
- capture signatures, rubber stamp endorsements and checks with Lundy strips.

Below is the breakdown of paper check count for calendar year 2021 by pay cycle.

Calendar year 2021 Counts: 714,000 paper checks

Cycle A – Weekly 27,000 checks

Cycle D – Bi-weekly 260,000 checks

Cycle E – Department of Education bi-weekly 28,000 checks

Cycle H – NYC Housing Authority bi-weekly 41,000 checks

Cycle Q – Department of Education Pedagogical semi-monthly 45,000 checks

Cycle R – Department of Education Custodial bi-weekly 1,000 checks

Cycle T – Department of Education Per Diem/Per Session semi-monthly 277,000 checks

Cycle W – Bi-weekly 200 checks

Cycle X – Supplemental 8,500 checks

Cycle Y – Department of Education supplemental 26,000 checks

The total ACH count for calendar year 2021 is 9,200,000.

3. Online Reporting, Account Reconciliation Statements, and Reports

- The City requires automated full account reconciliation services. As indicated previously, the City may run multiple pay cycles and may electronically transmit to the Contractor multiple payroll issuance files during the course of any one day.
- The Contractor must compare the issuance information provided by FISA-OPA with ACH transactions and checks presented for payment during the reconciliation period. In order to do so, the Contractor must have the ability to scan checks with at least eight digit MICR encoded check numbers.
- The Contractor must provide FISA-OPA with an electronic paid file transmission (ACH transactions and checks) on a daily basis, and provide access to FISA-OPA and DOF of on-line totals of checks paid. Credit and debit adjustments due to the Accounts must be settled by the next reconciliation.
- The Contractor must deliver to FISA-OPA and DOF every month, not later than ten (10) business days after the end of each month during the term of the Contract, an electronic account analysis statement (consolidated for the group of Accounts and an individual statement for each Account) in the American National Standards Institute (ANSI) 822 record format or other format acceptable to FISA-OPA.
- The account analyses must include at a minimum the following: average daily ledger, collected balance, volume of services rendered, transaction charge, total charges per category of services and total charges for all services rendered. FISA-OPA and DOF will use the data to analyze and verify the volumes and charges, and all Proposals must include a description of the available data fields and the ability for FISA-OPA to use that data to create ad-hoc reports. The unit prices of the items on the account analyses must correspond exactly to the unit prices in the final Contract. The account analyses must conform to the Association of Financial Professionals Service codes.
- The Contractor must have the ability to track aggregated account information without identifying information and report back to FISA-OPA (e.g., number of accounts opened, number of accounts with zero balance/closed, average balances). In addition to online data inquiry systems previously discussed in this RFP, FISA-OPA requires the following full reconciliation support reports, and all Proposals must include samples of each required report. The Contractor is encouraged to recommend additional reports that will be beneficial to FISA-OPA.

3.1 Daily Reports

The following Daily statements must be made available online (to view and download) to FISA-OPA no later than the next business day. These statements must be in a report format or any other format that is acceptable to FISA-OPA.

- Daily charged versus daily paid checks reconciliation, showing differences in details
- Daily paid check listing
- Daily outstanding check listing
- Daily bank statements (all credits and debits must be reported)
- Detailed report of presented forged checks (dollar amount and check numbers), including credit advices
- Report showing any "attempted and failed" ACH debits
- ACH credit returns
- Notifications of Change

Prior day summary reports that supply:

- Start of day outstanding ledger balance (prior day end of day ledger balance – unpaid checks)
- Total checks issued
- Total checks paid
- Total checks cancelled
- Total checks stopped
- End of day balance

3.2 Monthly Reports

The following Monthly reports must be made available online (to view and download) to FISA-OPA no later than ten (10) business days following the last business day of the month. These statements must be in a report format or any other format that is acceptable to FISA-OPA.

- Consolidated report
- Paid check report
- Outstanding check report
- Stop pay report
- Miscellaneous debit report
- Miscellaneous credit report
- Stale dated voids
- Cancelled check report (all checks cancelled during the month)
- List of forged checks with detailed information, including notification of credit
- Outstanding settlement report (reconciliation of outstanding checks only)
- Bank account reconciliation
- Purged check report/Aged issue purge report

4. Inquiry, Balance, and Transaction Reporting

Inquiry System

Proposers must have available for the City's use a secure online inquiry system that can be accessed through the internet. The City should be able to monitor account balances, detail activity, view returns and NOCs, and access stored checks images, monthly bank statements and account analyses. The system used must provide the City the ability to limit a user's access to a designated bank account without impacting the grouping or summarizing of bank accounts on the analysis.

Proposers shall address the following:

- All ACH reporting features included,
- The number of business days available for inquiry,
- Any intraday report capabilities,
- The hardware and software requirements,
- The system security options available, including delegation options,
- The process for changing users or their security options while keeping each agency independent from the other participating agencies,
- Training and technical assistance provided.

As part of this payment and inquiry system, the Contractor must provide FISA-OPA with a simple, electronic way to initiate stop payments against outstanding checks that cannot be properly negotiated and timely access to acknowledgment of these stop payments, the ability to make check status inquiries, request copies of checks and receive reports. The Proposer must also have the ability to process stop payments individually and in bulk.

Proposers must disclose how long the current system has been in operation, any plans to implement a new system and provide sample reports. With respect to check status information, FISA-OPA requires that the Contractor provide 24/7 Online, real time access to this information i.e., paid and outstanding checks issued, stopped and cancelled checks, etc.

The Contractor must provide FISA-OPA with the technical specifications of the software, if applicable, that FISA-OPA will use in connection with the electronic access services and imaging system. Please note that the information must be accessible with appropriate security levels (e.g., e-Security) and without the need for the City to use the Contractor's hardware.

The Contractor must provide user training for FISA-OPA personnel responsible for the use and operation of the payment and inquiry system and check imaging system, as well as ongoing technical support during the term of the Contract, and any successor term. Copies of training programs must be included with all Proposals.

5. Printing and Mailing Payroll Checks

The Proposer shall explain their capabilities to print and mail the City's payroll checks, which are currently printed at FISA-OPA. At this time, the financial institution prints and mails the payroll checks for one of the payroll accounts, the Department of Education Per Diem\Per Session semi-monthly. This service must be continued by the new financial institution. FISA-OPA plans to expand the aforementioned check printing Services to additional payroll accounts.

Proposers must describe how their financial institution will deliver these Services. The Contractor will be required to participate in a test pilot for any Services and the results of the pilot must be satisfactory to FISA-OPA prior to a full roll out of these Services. The determination to expand the check printing and whether the testing is satisfactory is solely at the discretion of FISA-OPA.

5.1 Replacement Check Processing

FISA-OPA issues approximately 8,000 replacement checks in-house annually. FISA-OPA plans to expand the check replacement process. Proposers must describe if they are able to issue replacement checks to individuals who have lost or allowed original checks to become damaged or stale-dated. The Proposer must describe any tracking or linking of the original check with its replacement, and how that data will be produced to FISA-OPA.

5.2 Signatures

There are different and multiple signatures required on the various bank accounts/check stocks. Proposers must advise how they propose to ensure that the correct signatures are affixed to the correct bank accounts/check stocks and the process employed when such signatures must change.

5.3 Data

FISA-OPA will provide data for the check printing to the Contractor via separate electronic transmission to facilitate efficient processing. FISA-OPA will provide a file layout or, at FISA-OPA's option, use the Contractor's layout specifications. Proposers shall explain how payee name verification will be handled based on the data received in the file from FISA-OPA.

The transmission of the data for the check must use the transmission protocols as described in the Transmission and Communication section of this document, as they may be updated from time to time by the City.

5.4 Security

- **Physical Security**

The Proposer must describe how it will ensure the physical security of all checks throughout all steps of the entire check generation and distribution process, including any portion where any subcontractors are involved in that process.

- **Data Security**

The Proposer must explain their processes to protect the data sent by the City for purposes of printing the check. Proposers must also explain how they plan to receive the signatures from the City and how they are stored and protected.

5.5 Quality Controls

The Proposer must explain their checks and controls for verifying receipt of the data files from the City to be used to print the checks, how they verify that what was on the data file was printed on the right stock with the right signatures and with the correct check counts and dollar amounts, and how they verify the check counts through each step of the process through distribution.

5.6 Service Level Standards and Associated Compensation Adjustments

Proposers must explain their service level standards covering the requirements set forth in this RFP, including meeting all applicable industry standards for such services, how the Proposer assigns degrees of severity to each service level deliverable, its internal reporting and management of variances against service level categories, and its process(es) for corrective action for frequent and/or recurring variances. Liquidated damages will be incorporated in any Contract award, based on the degrees of severity for each deliverable.

The selected Contractor must at a minimum:

- Provide a report monthly to FISA-OPA of any service level categories with variances of 10% or more.
- For any service category with variances of 10% or more in two (2) or more months in a five (5) month period, provide FISA-OPA with a detailed explanation of how the selected Contractor will correct the variance and communicate such corrective action to FISA-OPA.
- Supply a Proposal for how FISA-OPA will be compensated for individual and/or multiple severe incidents and/or recurring service level variances during the term of the Contract.

5.7 Liability

The Proposer shall explain how checks printed by the Proposer but never distributed to or accepted by the City will be handled and replacement checks issued. The City will not accept liability for checks stolen or fraudulently created / used which are lost or stolen before being distributed to and accepted by the City.

The City may include in the Contract a schedule for delivery of checks to FISA-OPA, which may be subject to service level standards as described in Section 5.6.

5.8 Disaster Recovery

In addition to requirements elsewhere in this document, Proposers must explain what Disaster Recovery plans and agreements are in place to ensure no interruption of their ability to receive the check printing information from FISA-OPA and that there will be no interruption in their check printing and distribution capabilities if there is a disaster affecting their primary check printing facility.

5.9 Pricing

Proposers must provide the costs for the services and also explain mail discounts available for various features such as bulk mail, sorting by zip code, etc. that the City can benefit from if the City elects to exercise this printing option.

5.10 Printed Check Distribution

Proposers must address in its Proposal two scenarios for check distribution: one that includes delivery to a FISA-OPA-designated location within the five boroughs of the City, and one that includes mailing directly to payees.

5.11 Check Stock

The Contractor must provide FISA-OPA with some check stock and check formats according to the specifications to be provided by the City, and in conformance with industry standards as needed to fulfill the Contract requirements. At a minimum, FISA-OPA requires that each check have two payee lines with each line capable of accommodating up to thirty (30) characters per line or a total of sixty (60) characters.

The Contractor will be required to periodically conduct MICR and PNV testing, which will be conducted under the guidance of the City. Additionally, the Contractor must be able to incorporate such check printing and related equipment as is in use at FISA-OPA, including but not limited to the Formax® FD 676 Continuous Form Industrial Burster and Lasermate® LM-20 Pressure Seal Mailing System.

Information about the quality of the check stock that the Contractor would be required to utilize for printing the City's checks and the current number of pay cycles is provided elsewhere in this document. When there is a transition from FISA-OPA to the Contractor for check printing the check formats may need to be modified.

D. Optional Services

If your institution does not provide any of these Optional Services, please indicate in your proposal and indicate N/A in the price proposal sheet, where applicable. If there are additional Optional Services, not previously listed please describe those services and populate the relevant section in the price proposal.

For any Optional Service(s) that FISA-OPA notifies the Contractor is to be implemented, FISA-OPA may initially require the Contractor to participate in a pilot program that FISA-OPA will structure. FISA-OPA shall have sole discretion to determine the nature, duration, and all other aspects of each such pilot program, and to determine whether the results are satisfactory and whether FISA-OPA wishes to proceed with the implementation of the applicable Optional Service(s).

1. Electronic Payments, Forms Preparation and Printing

Currently, DOF has contracts for services with one or more financial institution(s) to execute payments for Federal, state and/or local withholding taxes, excise taxes, etc. on behalf of the City. These payments may be made by ACH Debit, ACH Credit, EFTPS same-day ACH and/or Fedwire. FISA-OPA and OTC file Federal, state, and/or local tax forms on behalf of the City. This RFP solicits responses from Proposers as to which of these services they are able to perform and to demonstrate how they would perform these services.

2. Payroll Card Services

The City is considering the implementation of a payroll card program ("Payroll Card Services") that will allow the City employees who are not enrolled in the direct deposit payroll option to receive free access to full net pay on a contactless bank card engraved with a logo that is widely accepted and recognized for purchases. The free access to net pay needs to be made available through multiple sources including financial institution customer service desks, ATM networks, and cash back from debit transactions.

The primary objective of the payroll card is to eliminate the costs of printing and distributing physical checks and simplify the payroll process while minimizing activities that add to the cost of distributing wages and salaries to the City employees. The City also wants to have another option for employees that may be deemed un-bankable and not qualify for a checking account. These activities include: reissuing lost checks, inadvertent double payments, and the labor costs of administering these activities. Simplification also requires a comprehensive ease-of-use and cost-effective element for the City employees that choose to participate in this program.

The Proposer shall describe how each aforesaid component would be accomplished or how each desired capability would be met in compliance with the payroll card program objectives stipulated in the Scope of Services. If deemed appropriate, Proposers may include suggestions on possible alternative approaches. The City reserves the right to consider and accept proposed alternatives or proposed program components deemed more favorable to the City and its employees and deemed in the best interests of the City.

FISA-OPA expects that the implementation and promotion of the Payroll Card Services may result in a large number of participants in the program. Accordingly, the Contractor must have demonstrated ability to service a large customer base, equal to or greater than that of the City. However, the City does not guarantee that any particular number of City employees will enroll in the Payroll Card Services.

The Proposer must describe a payroll card project plan, which must include card design, collection of needed City data, setup of accounts, card production and card delivery to the prospective cardholders. Below are the minimum requirements that Proposers must address, along with a general description of the Payroll Card Services:

2.1 Issuance

The Contractor shall *not* issue any cards without coordinating the initial distribution with the FISA-OPA. The Contractor must have the ability to send and receive employee information in an encrypted electronic file format in order to set up and enroll individuals in the Payroll Card Services. The Contractor will indicate the time frame from the receipt of the card request to the issuance (process time) and card delivery (options should be indicated).

The Contractor must provide a standard “welcome” card package to the employee including items such as the payroll card, a card carrier, terms and conditions and a cardholder guide. The Payroll Card Services must have a simple online and/or other electronic batch enrollment process. FISA-OPA anticipates that, after the initial enrollment, which must be coordinated with the City, subsequent cards will be issued directly to individual City employees.

2.2 Card Replacement

The Proposer must describe the procedures when cardholders report non-receipt of their initial or replacement payroll card. In the event of non-receipt (defined as the payroll card not being activated within seven (7) business days of mailing or when the cardholder contacts Contractor’s customer service to report non-receipt), the Contractor’s procedures must provide for expedited delivery of a replacement card at no cost to the City employee.

The Proposer must describe the procedures for expediting a replacement card at the request of the City employee. Unless Contractor chooses to offer this service for free, expediting a replacement card will be at the expense of the recipient except in the case of non-receipt of an initial or replacement card. Describe any limitations or features for expediting payroll cards (e.g. P.O. boxes, cut-off times, Saturday delivery, etc.).

2.3 Payroll Card Services Reports and Data

The Contractor must provide activity reports to the FISA-OPA on an agreed upon basis (e.g., daily, monthly quarterly, annually) including but not limited to the following:

- Funds amount received/daily transfers;
- Record count of daily transmission file;
- Dollar amount and record count of funds applied;
- Funds amount returned and account information/transfer rejections;
- Number of new accounts established;
- Undeliverable/Returned cards

Proposers must provide examples of reports for electronic payment services requested in this RFP that are available to the City and identify other available reports and their frequency (e.g., Days before Card Expire, Account Creation, Account Activation, ACH Rejects, Lost/stolen Cards, Non-Activated and Re-Issued Accounts, listing of current cardholder accounts, summary of closed, activated, active and inactive cardholder accounts). Proposers must provide a description of the reporting packages they offer and indicate whether the package has exporting or e-mail capabilities. Proposers must describe how the City personnel will access the Contractor’s on-line system for management information/reports that will be made available to the City. Please indicate any specific hardware and software requirements.

2.4 Account Functionality

On the Settlement Date specified by FISA-OPA, the full amount of the employee’s pay will immediately be deposited in the employee’s payroll card account and will be owned by the employee. In cases where a reversal may be necessary to correct or adjust the pay amount, FISA-OPA will need the ability to request a reversal of the transaction in accordance with the NACHA Rules.

2.5 Liability

The City and/or FISA-OPA shall not be liable for the unauthorized or fraudulent use of payroll account numbers and/or payroll cards, or payroll cards which are lost or stolen. Additionally, the City and/or FISA-OPA shall not be responsible for collecting or paying any time there are overdrawn funds connected to a payroll card account. The Contractor must provide industry standard fraud prevention and mitigation measures to address these issues, and Proposers must describe these measures.

2.6 Card Termination

The Contractor will cancel/terminate payroll cards online in real-time upon request of FISA-OPA or its designated agent. This notification may also be in writing or verbal form with written confirmation. Proposers must describe the logistics of card termination.

2.7 Expiration

The Contractor must automatically track the payroll card expiration dates for all active cardholders and must mail a new payroll card with the same card number to the cardholder sufficiently in advance of the expiration date so as to ensure (barring unforeseen circumstances) no interruption of the cardholder's ability to use the card.

2.8 Implementation

Provide a detailed implementation plan that may include, but is not limited to the following:

- Detailed description of the implementation process, including testing and a suggested implementation schedule. The implementation schedule must outline the milestone dates to accomplish the deployment of replacing current payroll card, with detailed tasks, dates and resources assigned identified for each milestone.
- Support to be provided during implementation, including training, technical assistance, user manuals and on-site visits.
- Support to be provided after implementation.

2.9 Training

The Contractor must provide training to approximately 100-200 agency payroll officers of the City of New York as described below. Proposers must explain how training will be provided for the initial implementation as well as on an ongoing basis, both as new features are added and for new payroll officers. In addition, Proposers must describe the "Welcome" package and/or other material to be provided to employees who elect to use the Payroll Card Services.

Proposers must describe and provide examples of the form(s) of training materials that it will provide. The City may copy and distribute Contractor provided materials to staff at no extra cost. Proposers are encouraged to describe any additional training that would benefit FISA-OPA and City employees.

- **Training Materials**

The Contractor must be able to provide written materials that may be used by City staff to educate cardholders on the proper use of the card. Updated versions of these materials must be made available over time. The Contractor will provide additional copies of training materials at no additional cost as needed or requested by the City. The City may copy and distribute Contractor provided materials to staff at no extra cost.

- **Training Plan**

Training plans must incorporate at least the following at the start of the Payroll Card Services:

- On-site and virtual training to City staff who will be utilizing the payroll card.

- Training must address benefits and features of the card, billing procedures, available reports, and the application process.

2.10 Employee Customer Service

The Contractor must provide customer service to cardholders at a minimum through both a website that is accessible on multiple types of electronic devices and a toll-free customer service phone number. These systems must maintain functionality to log the number of online inquiries or telephone calls received. The employee should be able to access account/program status, address information, transaction history, customer service information, and any service announcements related to the payroll card services. All types of customer service must be accessible, at a minimum, from 8AM through 6PM Eastern Time, Monday through Friday. Extended hours and days beyond this minimum are preferred.

Proposers must describe their customer service capabilities for a customer the size of the City of New York. Additionally, Proposers must address the following:

- Will a dedicated customer service representative be assigned to handle this program? How many other accounts is this representative the primary contact for? How will continuity of service be ensured when the primary customer service representative is unavailable?
- How does the Contractor monitor customer satisfaction? For example, does the Proposer provide customers with the ability to participate in periodic evaluations of their account team, as well as overall product performance?
- Describe the responsibilities of customer service personnel, including the chain of command for problem resolution.
- What are the procedures for processing inquiries related to lost/stolen cards and non-receipt of cards, as well as card balances, research and adjustments?
- Are there established turnaround times for inquiries related to lost/stolen cards, non-receipt of cards and research and adjustments? If so, specify, and provide specific details of how well those times have been met.

2.11 Card Format Design

The Contractor must work with FISA-OPA in designing/branding the payroll cards, and all designs must be approved by FISA-OPA prior to issuance.

2.12 Proximity Locations

The Contractor must include charts showing ATM access available to cardholders. The Contractor must state the number of branches and ATMs, including stand-alone ATMs, in each of the five City boroughs.

Proposers must indicate the extent to which the payroll card will be accepted across the entire United States plus its territories.

Proposers must state whether an employee will have the option to add funds from sources other than City payroll, and how that will be accomplished.

Proposers must provide a detailed list of, and describe, any free services and/or proposed fees to employees associated with the Payroll Card Services, including any fees assessed for non-Contractor-based withdrawals. Fee information should include third-party fees to the extent the Proposer is able to determine them.

2.13 Payment Card Industry Data Security Standards (PCI DSS)

Any organization processing, storing, or transmitting payroll card numbers or transactions must be PCI DSS compliant. Proposers must provide proof of PCI DSS compliance, and the Contractor must warrant and represent in the Contract that it is PCI DSS compliant at the time of execution and that it will remain so throughout the term of the Contract (including any renewals or other extensions thereof). The Contractor will be responsible for the security and integrity of all cardholder data that is in its control or possession, as mandated by PCI DSS and applicable law, and (without limiting any other obligation under the contract or applicable law) will be required to notify FISA-OPA of any security breach. For further information, please click on the following site - [Myths](#)

[surrounding PCI Compliance \(pcicomplianceguide.org\)](http://pcicomplianceguide.org)

2.14 Sale of Cardholder Information

The Contractor must not sell, rent, or otherwise distribute to any entity for any purpose any information pertaining to participating City employees or other cardholders under the Contract, including but not limited to the fact of their participation, their addresses, or any other information.

2.15 Marketing/Promotion

The Contractor must be able to increase awareness of FISA-OPA's Payroll Card Services by engaging in marketing campaigns and outreach to eligible City employees. All Technical Proposals (as described in Section IV.A.2) must include a description of any proposed marketing/promotion tools that will be used in such efforts. Examples include periodic posters about the programs, and e-mail notifications and other similar outreach programs. FISA-OPA must approve all such marketing/promotional materials and programs in advance.

Any Contract resulting from this RFP will contain language in substantially the form stated in Section D.5 below regarding ownership and copyright of materials. The City may grant the Contractor permission to use the City seal, the name of the City, and/or the names of City officials in the marketing and promotional materials for the Payroll Card Services, and the Contractor shall grant the City permission to use its name and logo in connection with the marketing and promotion of the Payroll Card Services, all of which shall be on such terms and conditions as stated in the Contract.

3. On-Demand Pay/Earned Wage Access

The City does not currently offer On-Demand Pay to its employees. Proposers must demonstrate how their financial institution would deliver this service.

E. Other Requirements

1. Disaster Recovery

The Contractor must provide a comprehensive backup and disaster recovery plan that will ensure continuous, uninterrupted Services to the City under a variety of circumstances ranging from routine service interruptions to catastrophic events. The Contractor must cooperate with the City during any emergency situations as described more fully herein.

Proposers should describe their formal disaster recovery and business continuity plans in the event of an operational interruption or disaster. Include information such as: when was the plan last reviewed and actually tested, the general location of alternate work sites, recovery time required, the circumstances and/or timing that will trigger notification to the City, and the effect moving to a backup site would have on fund availability and processing capacity. Proposers must explain how often the City's data will be backed up. Proposers must describe how much system down time the City can expect to experience.

Proposers must include a primary and secondary set of procedures for operational recovery in the event of any interruption of service, regardless of the degree of severity that to any degree adversely affects the Contractor's ability to provide the Services and/or the City's ability to meet the needs of the City as supported by the Services. The Proposer must provide a description of how such events will be handled where the impact is to the Contractor, the City, FISA-OPA or any combination of the three, and provide all relevant details of solutions, such as remote processing, that permit continuity of operations and the Services under any scenario.

Proposers must also include turn-key disaster recovery options that include printing payroll checks and being able to complete all ACH transactions. The Contractor must fully test all disaster recovery options during the transition phase of the Contract and the City must accept and sign off on the results of the testing. Each Proposer must include detailed descriptions of this testing process along with timeframes for same, as well as the Proposer's schedule for testing during

the term of the Contract.

With respect to specific emergent situations, Proposers must explain how they will comply with the following requirements:

- The Contractor must maintain business continuity by utilizing its hot-backup site in the event that it anticipates any delays in processing.
- All deposits must be back-valued to the date(s) at which they would have been deposited before the switch to hot-backup mode.
- Check payment and ACH operations must be continued without interruption in case of a failure at a Contractor's facility.
- All reporting, inquiry system, imaging system, and other City end-user requirements must be maintained while the Contractor is in hot-backup mode.
- Once the primary processing facility is recovered, the Contractor shall switch from its hot-backup mode to the primary facility with no interruption of Service.

The Contractor must participate with the City in disaster recovery tests or drills that will be conducted to validate successful transmission of communications and processing. Disaster recovery tests will take place between the City's recovery site and the facilities of the Contractor, and may include sending and receiving transmissions to and from the Contractor's recovery site during tests. It is anticipated that FISA-OPA will be involved with any disaster recovery tests or drills.

All Proposals must incorporate and provide copies of a disaster recovery plan covering the areas discussed in this section. In the alternative, the Proposer must explain its disaster recovery plan in detail.

The City's Information Security Directive: Archiving and Retention requires providers of electronic communications services to the City to implement recovery practices adequate to ensure rapid recovery from security intrusions and service interruptions that must be so done in accordance with the City's Information Security Directive: Business Continuity. These policies may be found at [Cybersecurity Requirements for Vendors & Contractors - NYC Office of Technology and Innovation - OTI](#)

2. Contact Information

The Contractor must designate a Client Manager with overall responsibility for management of the Services to be provided under the Contract. The Client Manager will identify specific contacts for support and problem resolution in particular areas, and will serve as an escalation point for matters that cannot be resolved by the individual contacts, but will also be available for direct contact as the City deems necessary. The Client Manager must provide the names, direct telephone numbers, and email addresses for these individuals to FISA-OPA at the outset of the Contract (if not before), and update any applicable information whenever there is a change.

To facilitate daily City payroll and related operations, the Contractor must provide (and update whenever necessary) direct and fax telephone numbers and the e-mail address for the Contractor team in charge of administering the City Accounts and the operations area of the Bank in which the Accounts are handled, as well as for one or more backup officer contact(s) that FISA-OPA may contact whenever such primary officer is unavailable. At least one team member must be available to the City at all times (i.e., on a 24x7 basis).

3. Transitioning from the City's Existing Provider to the Contractor

Proposers must provide a detailed implementation and conversion plan for all Services. This plan must identify all tasks, estimated timeframes for the tasks, milestones, and roles and responsibilities for the City's and Contractor's respective personnel. The minimum anticipated high-level deliverables include, but are not limited to:

- a) Kick-off and Introduction
- b) Configure Account structure (including Payroll Card and/or alternative accounts as applicable)
- c) Implement Electronic Banking and Reporting
- d) Configure and Test File Transmissions and Electronic Communication Channels

- e) Map and Migrate all Legacy Data related to Payroll and Related Accounts
- f) Establish Security and Encryption Protocol(s)
- g) Implement ACH debit blocks, where appropriate
- h) Train FISA-OPA and other City staff
- i) Implement other banking services as determined
- j) Reconciliation and Close-out of the Implementation and Conversion

Each Proposer must describe the support and other services and materials it will provide during conversion and implementation, including training, technical assistance, user manuals, and on-site visits.

Each Proposer must describe its experience in managing complicated implementation efforts, and show how the experience is relevant to the transitioning functions that must occur at the commencement of the Contract to ensure the changeover is seamless, orderly, and presents no disruptions to the City's Services, temporary or otherwise.

All Proposals must demonstrate how all phases of the City's transition to the Contractor will be conducted and tested. The transition testing structure must include all conceivable system issue scenarios, including disaster recovery operations, in addition to simulating a 100 percent employee participation environment.

Proposers must describe all information, preparation, materials, processes, and so on that will be required of the City's existing contractor to effectuate a seamless transition to the Contractor. The Contractor will be responsible for performing (and bearing all related costs for) any conversion, adaptation, and/or other action necessary to for it to use such information, materials, etc. for the transition.

Proposers must provide a dedicated transition manager who will have primary responsibility for the entire transition, both logistically and technically. This person will work closely with City personnel and must have sufficient ability within the Contractor's organization to marshal any and all resources to ensure the transition is smooth and any issues are resolved in a timely manner. Each Proposal must identify one or more proposed transition manager(s) and detail their respective qualifications.

At the end of the Contract, the Contractor must, at its own cost, provide all outgoing transition services and cooperate fully with any subsequent vendor so that there is no disruption to any of the Services.

4. Data Security (IT) Requirements and Technical Support:

FISA-OPA maintains a technical infrastructure and highly complex network environment that includes many security features to protect and safeguard the City's sensitive information assets. Sensitive data is stored and maintained in compliance with the directives and policies promulgated by the OTI Security Division and its predecessor, the New York City Department of Investigation Citywide Information Security Architecture Formulation and Enforcement. Additionally, the OTI Security Division plays a significant role in FISA-OPA's application security by providing directives to ensure that developed applications maintain the highest level of security and integrity.

All City and non-City personnel working at or for FISA-OPA, including temporary contract employees, contractors, vendors, consultants and the vendor/consultant company for which they work are subject to these policies. In addition to complying with Citywide requirements, the Contractor will be required to adhere to specific FISA-OPA security requirements. Contractor staff that will have access to City employee personal data may be required to undergo nationwide background checks (at the Contractor's expense) and/or sign non-disclosure/confidentiality agreements before accessing any such data. Among other things, these agreements prohibit the Contractor's staff from disclosing to any third party any confidential, non-public information concerning the operations of the City.

Please describe procedures for using an industry-standard, electronically secure data connection, using point-to-point data encryption, which allows the City to transmit account information (e.g., new accounts, updates, payments, etc.). These procedures must include providing an electronic confirmation to the FISA-OPA of the receipt of files. Additionally, Proposers must specify the security procedures that are in place to monitor, detect, and minimize the risk of unauthorized transactions (e.g., encryption/authentication, endpoint security, IDS/IPS, Role Based Access Control and quarterly reviews of such access, encryption at rest, incident response plans and procedures, breach identification and notification plans).

Proposers must also describe the controls that they use to protect against lost files and duplication of transmissions, and security safeguards and procedures that will ensure the confidentiality of all data obtained from or sent to the City.

5. Ownership and Copyright of Materials:

Any Contract will (among other things) provide that the City will own the exclusive copyright and all other rights in and to all materials produced pursuant to the Contract (including, but not limited to, training materials, and artwork for the Payroll Card), except to the extent that they include pre-existing Contractor intellectual property, in which case the Contract will grant the City an irrevocable, royalty-free license to such intellectual property. Any Contract will also (among other things) require the Contractor to indemnify the City in the event any such materials become subject to a claim that they infringe a third party's rights.

6. Failure to Perform Contracted Services:

Any Contract will provide that the Contractor shall be liable to the City for any and all damages incurred by the City as the result of the vendor's failure to perform the Services as required under the Contract (including any Services that survive beyond the term of the Contract). These damages may include, but are not limited to: costs for City staff time and resources (including correspondence or technical programming costs) required to address the Contractor's performance failures, and any fees, costs, penalties or additional tax liability incurred by the City or its employees based on the Contractor's failures to provide the Services in accordance with relevant laws and regulations.

7. Alternate Solutions and Future Improvements:

Proposers are encouraged to suggest alternate solutions to satisfy the requirements contained in this RFP, and to illustrate their relevant advanced technologies, innovative product design, and service capabilities. In addition, Proposers may recommend different solutions that will result in lower costs, greater efficiency, and/or enhanced controls and protections for the City, so long as they meet any applicable constraints stated in this RFP (e.g., preserving the structure of City Accounts as described above). FISA-OPA will evaluate all recommendations and may select alternate solutions that, in FISA-OPA's sole judgment, are in the best interest of the City.

It is anticipated that, during the term of the Contract, changes will occur in the services provided by the selected Contractor that will result in increased automation, enhanced service, greater access to information, and/or reduced costs. Proposers should explain how, during the term of the Contract, such improvements will be communicated to FISA-OPA and how any cost reductions will be incorporated into the selected Contractor's pricing.

8. Subcontracting Requirements:

Proposers proposing the use of a subcontractor for any purpose in providing any Services must provide the following:

- The legal name, entity type (corporation, partnership, etc.), and jurisdiction of formation of each subcontractor, and any degree of effective control by the Proposer over the subcontractor (or vice versa) or any common ownership of both.
- All specific tasks to be performed by each subcontractor.
- Proposer's reasons for proposing to subcontract each specific task, with particular focus on why it is not proposing to perform the task(s) itself and how subcontracting the task(s) is beneficial to the City;
- A history of the Proposer's prior use of, and relationship with, the subcontractor(s), particularly for the provision of equivalent or similar task(s), and with particular focus on:
 - a. the subcontractor's record of successful and unsuccessful provision of such task(s), and
 - b. the subcontractor's resolution of any issues that did (or threatened to) adversely impact the successful completion of task(s) or the overall project;
- The steps the Proposer will take to effectively coordinate, monitor and evaluate the subcontractor's performance of each subcontracted task;
- The steps the Proposer will take to prevent or mitigate risks, with particular focus on how the Proposer will ensure that the applicable task(s) are performed if the subcontractor is unable, for whatever reason, to successfully perform the task(s) to completion as originally assigned; and
- A specific description of what (if any) rights FISA-OPA will have with regard to the subcontracted task(s) if the Proposer's relationship with the subcontractor terminates or is limited in any manner.

All subcontractors are subject to City approval. For additional information, please refer to Appendix A.

9. Subcontractor Compliance Notice:

The vendor will be required to utilize the City's web-based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term.

Please read Attachment G, the Subcontractor Compliance Notice as it relates to competitive solicitations. The City's web based subcontractor reporting system will be located on line at the Payee Information Portal at: <https://a127-pip.nyc.gov/webapp/PRDPCW/SelfService>.

10. Compliance with Local Law 34 of 2007:

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City established 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. For the purposes of the database, Proposers are required to complete the Attachment D, Doing Business Data Form, and return it with this Proposal, and should do so in a separate envelope. (If the Proposer 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 Proposer has failed to submit a Data Form or has submitted a Data Form that is not complete, the Proposer 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 complete Data Form to the Agency. 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 Proposer 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.

11. Whistleblower Protection Expansion Act Rider:

Local Law Nos. 30 and 33 of 2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, the Whistleblower Protection Expansion Act, protect employees of certain City contractors from adverse personnel action based on whistleblower activity relating to a City contract and require contractors to post a notice informing employees of their rights. Please read Appendix A, the Whistleblower Protection Expansion Act Rider, carefully.

12. Compliance with the Iran Divestment Act:

Pursuant to State Finance Law Section 165-a and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Each Proposer is required to complete the attached Bidders Certification of Compliance with the Iran Divestment Act, certifying that it is not on a list of entities engaged in investments activities in Iran created by the Commissioner of the NYS Office of General Services. If a Proposer appears on that list, the Agency/Department will be able to award a contract to such Proposer only in situations where the Proposer is taking steps to cease its investments in Iran or where the Proposer is a necessary sole source. Please refer to Attachment F for information on the Iran Divestment Act required for this solicitation.

13. HIRENYC and Reporting Requirements:

The Hiring and Employment Rider shall apply to contracts valued at \$1 million or more for all goods, services and construction except human services contracts that are subject to the Public Assistance Hiring Commitment Rider. The Rider describes the HireNYC process and obligations, including reporting requirements throughout the life of the contract. The HireNYC process requires contractors to enroll with the HireNYC system within thirty days after the registration of the contract subject to this solicitation, to provide information regarding all entry to mid-level job opportunities arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities. The Rider also includes reporting requirements unrelated to HireNYC (see Attachment K). The Hiring and Employment Rider will be included in any Contract awarded from this RFP.

14. Paid Sick Leave Law Contract Rider:

The Earned Safe and Sick Time Act (ESSTA) , also known as the Paid Safe and Sick Leave Law, requires covered employees in New York City to be provided with paid safe and sick time. Contractors of the City of New York or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA, codified at Title 20, Chapter 8, of the New York City Administrative Code. The ESSTA will be a material term of any Contract awarded under this RFP, as provided in the Earned Safe and Sick Time Act Contract Rider that is part of Appendix A included in Addendum 2 to the RFP.

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SECTION IV - FORMAT AND CONTENT OF THE PROPOSAL

Instructions: Proposers should provide all information required in the format below. The Proposal should be printed on both sides of 8 ½" X 11" paper. The City requests that all Proposals be submitted on paper with no less than 30% postconsumer material content. Pages should be paginated. The Proposal will be evaluated on the basis of its content, not length. In addition, Proposers must submit a USB flash drive containing an electronic copy (in PDF format, preferably searchable PDF) of all hardcopy documents submitted in response to this RFP. Failure to comply with any of these instructions will not make the Proposal non-responsive.

A. Proposal Format

1. Proposal Cover Letter

The Proposal Cover Letter form (Attachment A) transmits the Proposer's Proposal Package to the Agency. It should be completed, signed and dated by an authorized representative of the Proposer.

2. Technical Proposal

The Technical Proposal is a clear, concise narrative which addresses the following:

a. Experience

Describe the successful relevant experience of the Proposer and the proposed key staffing providing the products and services described in Section III of this RFP. Specifically address and/or provide the following:

The Proposer should have the following minimum experiences and capacities:

- A minimum of seven (7) years relevant experience providing the Services required by this RFP.
- Ability to assign staff to support the City's operating requirements who have a minimum of five (5) years relevant experience delivering the Services required by this RFP.
- Demonstrate that the key persons to be assigned to the Contract have the relevant experience and qualifications required and that the identified key staff, or similarly qualified persons, would be available for the duration of the Contract. This includes providing resumes of key staff who will be assigned to the Contract. FISA-OPA will accept other personnel throughout the term of the Contract so long as the qualifications of those individuals are similar to that of the originally identified key staff.
- Provide a minimum of two (2) references (preferably a substantial city or other government entity) including (but not limited to): the name of the reference; a brief statement describing the relationship between the Proposer and the reference; and the name, title and telephone number of a contact person at the reference. Submission of a reference will be deemed the Proposer's affirmation that the City has approval to contact the reference.

b. Organizational and Financial Capability

The Proposer must demonstrate:

- Organizational (technical, management and financial) capability to provide the Services described in this RFP.
- The capacity to integrate the proposed Services into its organization.
- Fiscal soundness and capability to manage the proposed Services for the duration of the Contract.

In connection with the foregoing, the Proposer must:

- Attach a chart showing where, or an explanation of how, the Services will fit into the Proposer's organization.
- Provide two (2) years of its most recent Annual Reports to the Proposer's shareholders. Printed documents or URLs at which the reports can be retrieved are acceptable.
- Provide a copy of its latest audit report or certified financial statement, or a statement as to why no report or statement is available.

c. Proposed Approach

Describe in detail how the Proposer will meet the requirements described in Section III (Scope of Services) including (but not limited to) how the Proposer's approach will fulfill FISA-OPA's objective. This RFP sets forth FISA-OPA's assumptions regarding the approach that FISA-OPA believes to be most likely to achieve its objectives. However, each Proposer is encouraged to propose a different approach that it believes is most likely to achieve FISA-OPA's objective. Proposers may also suggest more than one approach. However, if an alternate approach affects other areas of the Proposal such as experience, organizational capability or price, that alternate approach should be submitted as a complete and separate Proposal providing all the information specified in Section IV of this RFP.

3. Price Proposal

The Price Proposal must include price per unit of service and total offering price in the format prescribed in the Price Proposal Form attached as Attachment B. Proposers are encouraged to also propose innovative payment structures, which must be described in an attachment separate from Attachment B. FISA-OPA reserves the right to select any payment structure that is in the City's best interest.

Proposers must submit their cost Proposal for the initial five (5) year Contract term for all Services requested herein, as set forth on the attached Price Proposal Form.

Proposers must also provide pricing for the Optional Services described in Section III (C). As stated above, the City may elect to implement some or all of these Optional Services in the future, or not at all, as it sees fit.

Proposers should base their pricing for individual Services on the estimated volumes stated on Attachment B, but there is no guarantee that the City will require or achieve any particular volume of any Service(s).

4. Acknowledgment of Addenda

The Acknowledgment of Addenda form (Attachment C) serves as the Proposer's acknowledgment of receipt of any Addenda to this RFP that FISA-OPA may have issued prior to the Proposal Due Date and Time set forth in Section I(D), above. The Proposer should complete this form as instructed on the form.

5. Proposer Standard Terms and Conditions

Any terms and conditions that a Proposer wishes to have apply to particular Services should be provided as a separate attachment. **Please note that any such terms and conditions are solely for the City's information and will not be considered or evaluated as part of any Proposal.** In no event will the City's receipt or review of any such terms and conditions, and/or the award of any Contract in response to a Proposal that is accompanied by (or references) any such terms and conditions, be deemed the City's acceptance of, or agreement to, any such terms and conditions in whole or in part. The City will only be bound by terms and conditions contained in an awarded Contract (if any) duly executed by the City.

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B. Proposal Package Contents

The Proposal package should contain the following materials. Proposers should utilize this section as a checklist to assure completeness prior to submitting their Proposals to FISA-OPA.

1. A sealed inner envelope labeled “Technical Proposal,” containing one original set, five (5) collated duplicate sets, and one USB flash drive, each containing all of the documents listed below, presented in the following order:
 - Proposal Cover Letter (Attachment A)
 - Technical Proposal
 - Section I – Experience
 - Section II – Organizational Capability
 - Section III – Proposed Approach
 - Acknowledgement of Addenda (Attachment C)
 - Bidder’s Certification of Compliance with Iran Divestment Act (Attachment F)
 - Tax Affirmation Form (Attachment M)
2. A second sealed inner envelope labeled “Price Proposal” containing one (1) original and five (5) duplicates of the Price Proposal Form (Attachment B).
3. A third sealed inner envelope labeled “Doing Business Data Form” containing an original, completed Doing Business Data Form (Attachment D).
4. A fourth sealed inner envelope labeled “Audit Report” containing the Proposer’s latest audit report or certified financial statement, or a statement indicating why no audit report or financial statement is available.
5. A fifth sealed inner envelope labeled “Proposer Standard Terms and Conditions” containing the Proposer’s Standard Terms and Conditions.
6. A sealed outer envelope, enclosing the five sealed inner envelopes. The sealed outer envelope should have two (2) labels containing:
 - The Proposer’s name and address, the title and PIN of this RFP, and the name, email address, and telephone number of the Proposer’s contact person.
 - The name, title, and address of the FISA-OPA Authorized Contact Person.

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SECTION V - PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Evaluation Procedures

All Technical Proposals accepted by FISA-OPA will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that FISA-OPA determines to be non-responsive will be rejected. FISA-OPA's Evaluation Committee will evaluate and rate all remaining Technical Proposals based on the Evaluation Criteria described below. These Technical Proposals will be ranked in order of highest to lowest technical score and FISA-OPA will establish a shortlist through a natural break. FISA-OPA will then open, and the Evaluation Committee will review, the Price Proposals from only the short-listed Proposals. Each Proposer's Price Proposal should contain the Proposer's best cost and price terms. Although FISA-OPA may (at its sole option) conduct interviews and/or discussions with Proposers and/or ask Proposers to give presentations or demonstrations, it reserves the right to award any Contract solely on the basis of cost and pricing information contained in the Proposer's original Price Proposal as submitted in response to this RFP. Neither FISA-OPA's invitation (if any) to a Proposer to engage in any such interviews and/or discussions and/or to give any presentation or demonstration, nor the fact or content thereof, shall be deemed to create any right or expectation of the Proposer or obligation of FISA-OPA.

B. Evaluation Criteria

Technical Proposals will be evaluated according to the following criteria, which will be given the weight indicated:

Demonstrated quantity and quality of successful relevant experience	40%
Demonstrated level of organizational capability	30%
Quality of proposed approach	30%

C. Basis for Contract Award

A Contract will be awarded to the responsible Proposer (if any) whose Proposal is determined to be the most advantageous to the City, taking into consideration the price and the criteria set forth in this RFP, and particularly the Evaluation Criteria, as these factors pertain to the Services. The City will consider price by negotiating a fair and reasonable price with the highest technically ranked Proposer. The Agency will proceed to negotiate with the next highest ranked Proposer should negotiations with the highest ranked Proposer fail. Contract award shall be subject to the timely completion of contract negotiations between FISA-OPA and the selected Proposer.

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SECTION VI - GENERAL INFORMATION FOR 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 1005, New York, NY 10007; contract@comptroller.nyc.gov, or at (212) 669-2323. 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, if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, the New York City Charter and the PPB Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-0010 or at: <http://www.nyc.gov/html/mocs/ppb/html/home/home.shtml>.

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." 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 the PPB Rules, Proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.

F. Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change).

All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. In anticipation of awards, Proposers must create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings. For more information about

PASSPort, please visit [PASSPort \(cityshare.nycnet\)](http://PASSPort.cityshare.nycnet).

G. 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.

H. Prompt Payment Policy. Pursuant to the PPB Rules, it is the policy of the City to process contract payments efficiently and expeditiously.

I. Prices Irrevocable. Prices proposed by the Proposer shall be irrevocable until Contract award, unless the Proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to 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.

J. 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.

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

L. Proposer Costs. Proposers will not be reimbursed for any costs incurred to prepare Proposals.

M. 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 the contract resulting from this RFP is estimated to be above \$1million.

N. Charter Section 312(a) Certification.

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.

Agency Chief Contracting Officer

Date

Attachment A: Proposal Cover Letter

Proposer:

Name: _____

Address: _____

Tax Identification #: _____

Proposer's Contact Person:

Name: _____

Title: _____

Telephone #: _____

Email: _____

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____ Date: _____

Is the response printed on both sides, on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in the instructions to this RFP?

Yes

No

Attachment B: Price Proposal Form

The Attachment B: Price Proposal Form is enclosed as a separate document in Excel (fillable).

Attachment C: Acknowledgment of Addenda

ACKNOWLEDGEMENT OF ADDENDA

RFP Title: Payroll Banking and Related Services
PIN: 1312022BNKRFP

Complete Part I or Part II, whichever is applicable.

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

Addendum #1, dated _____, 20_____

Addendum #2, dated _____, 20_____

Addendum #3, dated _____, 20_____

Addendum #4, dated _____, 20_____

Addendum #5, dated _____, 20_____

Addendum #6, dated _____, 20_____

Addendum #7, dated _____, 20_____

Addendum #8, dated _____, 20_____

PART II:

No Addenda were received in connection with this RFP.

Proposer Name: _____

By Authorized Representative:

Signature: _____

Printed Name: _____

Printed Title: _____

Date: _____



Doing Business Data Form

To be completed by the City agency prior to distribution

Agency _____ Transaction ID _____

Check One

Transaction Type (check one)

- Proposal
- Award
- Concession
- Economic Development Agreement
- Franchise
- Grant
- Pension Investment Contract
- Contract

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's PASSPort registration or VENDEX requirements.**

Please return the completed Data Form to the City office that supplied it. Please contact Doing Business Accountability at DoingBusiness@mocs.nyc.gov or 212-298-0600 with any questions regarding this Data Form. Thank you for your cooperation.

If you are completing this form by hand, please print clearly.

Entity Information

Entity EIN/TIN _____ Entity Name _____

Filing Status

(Select One)

NEW: Data Forms submitted now must include the listing of **organizations**, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, a no change form will not be accepted.

- Entity has never completed a Doing Business Data Form. Fill out the entire form.
- Change from previous Data Form dated _____. Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.
- No Change from previous Data Form dated _____. Skip to the bottom of the last page.

Entity is a Non-Profit Yes No

Entity Type Corporation (any type) Joint Venture LLC Partnership (any type) Sole Proprietor Other (specify) _____

Address _____

City _____ State _____ Zip _____

Phone _____ E-mail _____

Provide your e-mail address in order to receive notices regarding this form by e-mail.

Principal Officers

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

Chief Executive Officer (CEO) or equivalent officer

This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CEO _____ on date _____

Chief Financial Officer (CFO) or equivalent officer

This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CFO _____ on date _____

Chief Operating Officer (COO) or equivalent officer

This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former COO _____ on date _____

Principal Owners

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the **Senior Managers** section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit The entity is an individual No individual or organization owns 10% or more of the entity

Other (explain) _____

Individual Owners (who own or control 10% or more of the entity)

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____
Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____
Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Organization Owners (that own or control 10% or more of the entity)

Organization Name _____

Organization Name _____

Organization Name _____

Remove the following previously-reported Principal Owners

Name _____ Removal Date _____

Name _____ Removal Date _____

Name _____ Removal Date _____

Senior Managers

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. At least one senior manager must be listed, or the Data Form will be considered incomplete. If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Managers

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____
Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____
Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____
Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Remove the following previously-reported Senior Managers

Name _____ removal date _____

Name _____ removal date _____

Certification

I certify that the information submitted on these two pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name _____ Title _____

Entity Name _____ Work Phone # _____

Signature _____ Date _____



Questions and Answers About the Doing Business Data Form

Doing Business Accountability

What is the purpose of the Doing Business Data Form (DBDF)?

To collect accurate, up-to-date identification information about organizations that have business dealings with the City of New York in order to comply with Local Law 34 of 2007 (LL 34), a campaign finance reform law. LL 34 limits municipal campaign contributions from principal officers, owners and senior managers of entities doing business with the City and mandates the creation of a Doing Business Database to allow the City to enforce the law. The information requested in this DBDF must be provided, regardless of whether the organization or the people associated with it make or intend to make campaign contributions. No sensitive personal information collected will be disclosed to the public.

Why have I received this DBDF?

The contract, franchise, concession, grant or economic development agreement you are proposing on, applying for or have already been awarded is considered a business dealing with the City under LL 34. No proposal or application will be considered and no award will be made unless this DBDF is completed. Most transactions valued at more than \$5,000 are considered business dealings and require completion of the Doing Business Data Form. Exceptions include transactions awarded on an emergency basis or by "conventional" competitive sealed bid (i.e. bids that do not use a prequalified list or "Best Value" selection criteria.) Other types of transactions that are considered business dealings include real property and land use actions with the City.

What individuals will be included in the Doing Business Database?

The principal officers, owners and certain senior managers of organizations listed in the Doing Business Database are themselves considered to be doing business with the City and will be included in the Database.

- **Principal Officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer, or their functional equivalents. See the DBDF for examples of titles that apply.
- **Principal Owners** are individuals who own or control 10% or more of the organization. This includes stockholders, partners and anyone else with an ownership or controlling interest in the entity.
- **Senior Managers** include anyone who, either by job title or actual duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any contract, concession, franchise, grant or economic development agreement with the City. At least one Senior Manager must be listed or the Data Form will be considered incomplete.

As of January 2018, the DBDF must report organizations, as well as individuals, that own 10% or more of the entity. A DBDF with such a certification, filed as a full (never filed before) or as a change form, must be submitted before an entity can then file a DBDF that indicates no changes since the previous form. Contact DBA at 212-298-0600 or at doingbusiness@mocs.nyc.gov to inquire if DBA has received such a form.

I have already completed a Doing Business Data Form, do I have to submit another one?

Yes. An organization is required to submit a DBDF each time it enters into a transaction considered a business dealing with the City, including contract, concession and franchise proposals. However, the DBDF has both a Change option, which requires only information that has changed since the last DBDF was filed, and a No Change option. No organization should have to fill out the entire DBDF more than once.

If you have already submitted a DBDF for one transaction type (such as a contract), and this is the first time you are completing a DBDF for a different transaction type (such as a grant), please select the Change option and complete Section 4 (Senior Managers) for the new transaction type.

Will the personal information on the DBDF be available to the public?

No. The names and titles of the officers, owners and senior managers reported on the DBDF will be made available to the public, as will information about the organization itself. However, personal identifying information, such as home address and date of birth, will not be disclosed to the public, and home address will not be used for communication purposes.

I provided some of this information in PASSPort; do I have to provide it again?

Yes. Although a Doing Business Data Form and PASSPort request some of the same information, they serve entirely different purposes. In addition, the DBDF requests information concerning senior managers, which is not in PASSPort.

What organizations will be included in the Doing Business Database?

Organizations that hold \$100,000 or more in grants, contracts for goods or services, franchises or concessions (\$500,000 for construction contracts), or that hold any economic development agreement or pension fund investment contract, are considered to be doing business with the City for the purposes of LL 34. Because all of the business that an organization does or proposes to do with the City will be added together, the DBDF must be completed for all transactions valued at more than \$5,000 even if the organization doesn't currently do enough business with the City to be listed in the Database.

No one in my organization plans to contribute to a candidate; do I have to fill out this DBDF?

Yes. All organizations are required to return this DBDF with complete and accurate information, regardless of the history or intention of the entity or its officers, owners or senior managers to make campaign contributions. The Doing Business Data Form must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

My organization is proposing on a contract with another firm as a Joint Venture that does not exist yet; how should the Data Form be completed?

A joint venture that does not yet exist must submit a DBDF for each of its component firms. If the joint venture receives the award, it must then complete a form in the name of the joint venture.

How long will an organization and its officers, owners and senior managers remain listed on the Doing Business Database?

- **Contract, Concession and Economic Development Agreement holders:** generally for the term of the transaction, plus one year.
- **Franchise and Grant holders:** from the commencement or renewal of the transaction, plus one year.
- **Pension investment contracts:** from the time of presentation on an investment opportunity or the submission of a proposal, whichever is earlier, until the end of the contract, plus one year.
- **Line item and discretionary appropriations:** from the date of budget adoption until the end of the contract, plus one year.
- **Contract proposers:** for one year from the proposal date or date of public advertisement of the solicitation, whichever is later.
- **Franchise and Concession proposers:** for one year from the proposal submission date.

For information on other transaction types, contact the Doing Business Accountability Project.

How does a person remove him/herself from the Doing Business Database?

When an organization stops doing business with the City, the people associated with it are removed from the Database automatically. However, any person who believes that s/he should not be listed may apply for removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the organization. Organizations may also update their database information by submitting an update form. Removal Request and Update forms are available online <https://www1.nyc.gov/site/mocs/resources/forms.page> or by calling 212-298-0600.

What are the campaign contribution limits for people doing business with the City?

Contributions to City Council candidates are limited to \$250 per election cycle; \$320 to Borough President candidates; and \$400 to candidates for citywide office. Please contact the NYC Campaign Finance Board for more information at www.nyccfb.info, or 212-306-7100.

The DBDF is to be returned to the City office that issued it.

If you have any questions about the Doing Business Data Form please contact Doing Business Accountability at 212-298-0600 or doingbusiness@mocs.nyc.gov.

Attachment E: Whistleblower Protection Expansion Act Rider

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.



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

<p>DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT: New York City Department of Investigation (DOI) 80 Maiden Lane, 17th floor New York, New York 10038 Attention: COMPLAINT BUREAU</p> <p>OR FILE A COMPLAINT ON-LINE AT: www.nyc.gov/doi</p> <p>All communications are confidential</p>	 <p>Or scan the QR Code above to make a complaint</p>
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**THE LAW PROTECTS EMPLOYEES OF
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages

Attachment F: Iran Divestment Act Compliance Rider for New York City Contractors

**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”) §103-9. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

- (a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- (b) The person is a financial institution that extends twenty million dollars or more in credit to another person' for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

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

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

- (1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
- (2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

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

Pursuant to General Municipal Law §103-9, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[Please Check One]

BIDDER'S CERTIFICATION

- By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

- I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, New York
 _____, 20__

SIGNATURE

PRINTED NAME

TITLE

Sworn to before me this
____ day of _____, 20__

Notary Public

Attachment G: Subcontractor Compliance Notice

NOTICE TO BIDDERS

As of March 2013 the City has implemented a new web based subcontractor reporting system through the City's Payee Information Portal (PIP), available at www.nyc.gov/pip. In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

In order to obtain subcontractor approval under section 3.02 of Appendix A or Article 17 of the Standard Construction Contract and PPB Rule § 4-13, Contractor is required to list the subcontractor in the system. For each subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within 30 days of making the payment. If any of the required information changes throughout the term of the contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages.

Contractor hereby agrees to these provisions.

Attachment H: Displacement Determination Form

Displacement Determination Form—Pursuant to City Charter §312(a)
(for PSRs or equivalent pre-procurement documents)

This form must be used to certify whether or not there is displacement in the instant contracting action, as defined in City Charter § 312(a) (as amended by Local Law 63 of 2011). You can either certify that there is no displacement by completing Part 1 of this form, or you can certify that there is displacement by completing Part 2 of this form.

If the contract that you are awarding is a task order contract that does not simultaneously result in the award of a first task order, then you must check the box on the bottom of this page; displacement determinations will be made in conjunction with the issuance of task orders pursuant to the subject contract. If the contract that you are awarding does simultaneously result in the award of a first task order, then the displacement determination for that first task order must be done prior to issuance of the solicitation and you must complete either Part 1 or Part 2 of this form.

If you have any questions about Local Law 63 or about completing this form, please contact the Mayor's Office of Contract Services at APTLL63@cityhall.nyc.gov or (212) 788-0010.

Procurement Description:

APT EPIN: 1312022BNKRFP

Agency: FISA-OPA

Your Name: Erika Lerner

Phone: 212-857-1538

Email: elerner@fisa-opa.nyc.gov

Please specifically identify the service(s) being procured.

FISA-OPA seeks a qualified commercial bank to provide payroll banking and related services (collectively referred to in this RFP as "Services") for the City of New York payroll operations. The current agreement expires on December 31, 2023. A new banking services agreement is required to maintain the bank account structure used for the disbursement of payroll and related payments.

— If the contract to be awarded as a result of this procurement action is a task order contract (multiple or single award and multiple or single agency) that does not simultaneously result in the award of a first task order, then displacement determinations will be made in conjunction with the issuance of task orders pursuant to the subject contract. (Check this box *only* if you are completing this form for a task order contract that will not simultaneously result in the award of the first task order. If you check this box, do not fill out the remainder of this form.)

If the contract to be awarded as a result of this procurement action *does* simultaneously result in the award of a first task order, then the displacement determination for that first task order must be done prior to issuance of the solicitation and you must complete either Part 1 or Part 2 of this form.

Part 1: Certification of No Displacement

X The Agency has determined that the contract resulting from this procurement action *will not* result in the displacement of any City employee within this Agency, as defined by Charter § 312(a).

The basis upon which the Agency has made this determination (Please answer *all* questions under Part 1):

Do any civil service and/or job titles within this Agency currently perform the services sought by the proposed contract and/or services of a substantially similar nature or purpose?

Yes No

If so, list the names of such titles and the extent to which Agency employees within such titles currently perform such services.

Do the services sought by the proposed contract expand, supplement, or replace existing services?

Yes No

In either event, include a detailed description comparing the services sought by the proposed contract with such existing services.

FISA-OPA administers the City of New York payroll operations, but does not have the resources to render such services sought.

Is there capacity within the Agency to perform the services sought by the proposed contract?

Yes No

If not, provide a detailed description specifying the ways in which the Agency lacks such capacity.

FISA-OPA is not a financial institution.

For the term of the proposed contract, list the projected headcount of employees within such titles or employees who perform such services and/or services of a substantially similar nature or purpose.

N/A

Check this box to confirm that none of the below events have occurred within the Agency in the past three years.

- The displacement of a City employee within the agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or
- The announcement of spending reductions in connection with a budgetary program, including but not limited to a Program to Eliminate the Gap, that could result or has resulted in the displacement of a City employee within the Agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or
- Any other statement by an Agency or by the Mayor of a specific anticipated employment action that could result or has resulted in the displacement of a City employee within the Agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose.

List any other bases for the Agency's determination that the contract resulting from this procurement action will not result in the displacement of any City employee within this Agency.

Part 2: Certification of Displacement

_____ The agency has determined that displacement, as defined by Charter § 312(a), has or will occur as a result of this contracting action. The agency has performed the required cost-benefit analysis, as described in Charter § 312(a).

Attachment I: Continuity of Operations (COOP) Plan Rider

**CONTINUITY OF OPERATIONS PLAN RIDER: TO BE USED FOR THOSE PROGRAMS WHERE
CONTINUATION OF SERVICES ON THE IMMEDIATE AFTERMATH OF AN EMERGENCY IS
ESSENTIAL FOR PUBLIC HEALTH OR SAFETY**

Prior to the commencement of services under this Agreement, the Contractor shall submit for the Department's review and approval a written Continuity of Operations Plan (COOP) for its business which indicates its ability to continue the provision of essential services to the Department in the event that a State of Emergency is declared by the Mayor. The vendor should seek guidance from the Department in how to develop a COOP plan. A COOP plan includes, but is not limited to: the identification of an alternate site of business; appointment of alternate personnel for identified essential staff; development of protocols for the safekeeping of vital business records; and, a transportation contingency plan for its employees.

**Attachment J: Notice to All Prospective Contractors:
Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement**

**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 and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). Section 6-129 establishes the program for participation in City procurement (“M/WBE Program”) by minority- owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”), certified in accordance with Section 1304 of the New York City Charter. As stated in 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 pursuant to Section 6-129, and the rules of the Department of Small Business Services (“DSBS”) promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the “M/WBE Utilization Plan”), and are detailed below.

The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard 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, STANDARD AND PROFESSIONAL SERVICES
CONTRACTS OR TASK ORDERS**

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, (“**Participation Goals**”), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6- 129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor’s participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **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, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, 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 **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered ("Master Services Agreement") and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed non-responsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER 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 SCHEDULE B 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 BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING

OR UPON DELIVERY, IF DELIVERED.

5. Where an **M/WBE** 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. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **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 Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** 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. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of MBE and 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. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** 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 the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and 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 it paid to subcontractors, and, where applicable pursuant to Section 6- 129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; 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, 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 **M/WBE** Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE** Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE** Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of **the Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the Participation Goals in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its **M/WBE** Utilization Plan.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at _____ or via facsimile at (). Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE Utilization Plan**. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, 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 represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE Utilization Plan** is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of **M/WBE Utilization Plan**. (a) A Contractor may request a modification of its **M/WBE Utilization Plan** 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 M/WBE Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's **M/WBE 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 Participation Goals. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (i) 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;
- (ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
- (iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;
- (iv) 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 **M/WBE Utilization Plan**, and for which the Contractor claims an inability to retain MBEs or WBEs;
- (v) 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;
- (vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

- (vii) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;
- (viii) 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.

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE Utilization Plan** and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program 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 **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its **M/WBE Utilization Plan**, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to 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 **M/WBE 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 **M/WBE Utilization Plan**.

2. Pursuant to DSBS rules, construction contracts that include a requirement for a **M/WBE Utilization Plan** shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.

3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.

4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, 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 MBEs and/or WBEs to meet the required **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 **M/WBE** Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor 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 Section 6-129, including, but not limited to, any **M/WBE** 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) assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, 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) exercising 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) taking any other appropriate remedy.
4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.
5. Whenever Agency has reason to believe that an MBE and/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(c)(8)), 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.
6. 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 and/or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.

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Attachment K: Hiring and Employment Rider

HIRENYC AND REPORTING REQUIREMENTS

Introduction

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services’ (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor shall enroll with the HireNYC system, found at www.nyc.gov/sbs, within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor ([see](https://labor.ny.gov/statsI/2012-2022-NYS-Employment-Prospects.xls) Column F of <https://labor.ny.gov/statsI/2012-2022-NYS-Employment-Prospects.xls>). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor’s ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (\$500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

Audit Compliance

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

Other Reporting Requirements

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

Construction Requirements

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above. In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract. Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

Federal Hiring Requirements

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.

Attachment M: Tax Affirmation

TAX AFFIRMATION FORM

RFP Title: Payroll Banking and Related Services
PIN: 1312022BANKRFP

The undersigned Proposer affirms and declares that said Proposer 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 that relates to the responsibility or qualification of the Proposer to receive public contracts, except:

Full name of Proposer or Bidder: _____

Address: _____

City: _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorship
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.

APPENDIX A

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

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ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

A. “Agency Chief Contracting Officer” or “ACCO” means 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” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” means the City of New York.

D. “City Chief Procurement Officer” or “CCPO” means 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” means 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” means the Comptroller of the City of New York.

G. “Contractor” means the entity entering into this Agreement with the City.

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

I. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.

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

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

L. “PPB Rules” means 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. “SBS” means the New York City Department of Small Business Services.

N. “State” means the State of New York.

ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty 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 2.01(B) 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 Section 2.02(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.

Section 2.03 Certification Relating to Fair Practices

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

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

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

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

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

Section 2.04 Disclosures Relating to Vendor Responsibility

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor’s Office of Contract Services. The Contractor acknowledges that the Department’s reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

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

Section 2.06 Authority to Execute Agreement

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has

all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or the right to execute it, or the right, title, or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the 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 disclosure that is required by PPB Rule § 2-08(e) must be submitted within 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 Department 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 3.01 shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the 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. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. *Approval when subcontract is \$20,000 or less.* The Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$20,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal (www.nyc.gov/pip).

2. *Approval when subcontract is greater than \$20,000.*

The Contractor shall not enter into any subcontract for an amount greater than \$20,000.00 without the prior approval by the Department of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than \$20,000.00, 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, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal (www.nyc.gov/pip) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.¹

c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

¹ Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed \$25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the Agreement between the 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 4.05(D) 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.

C. 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.

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

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The 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.

F. 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.

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

H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

Section 4.02 Employees and Subcontractors

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation,

obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which he or she shall be employed. Whenever the 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 Days' written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage; Living Wage

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 ("Section 6-109"), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).

4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

Section 4.05 Non-Discrimination in Employment

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of

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individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

B. N.Y. Labor Law § 220-e. 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 N.Y. 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 \$50.00 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 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

C. 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 Admin. Code § 6-108, that:

1. 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.

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2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) 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.

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

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

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

a. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

b. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

c. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

d. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

e. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services ("DLS"); and

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

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

a. Disapproval of the Contractor; and/or

b. Suspension or termination of the Agreement; and/or

c. Declaring the Contractor in default; and/or

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

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

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).

5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) 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.

Section 4.06 Paid Sick Leave Law

[Section 4.06 has been superseded by the NYC Earned Safe and Sick Time Act Contract Rider attached hereto and made a part hereof.]

Section 4.07 Whistleblower Protection Expansion Act

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. 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 Agreement 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.

2. 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 this Section 4.07, 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.

3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:

a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 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 Agreement.

4. For the purposes of this Section 4.07, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

5. This Section 4.07 is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of \$100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

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

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the 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, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence 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. If observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

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

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the 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 5.04.

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 items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the 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 evidence" refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency 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.

6. 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.

7. 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 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 to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

B. The Contractor shall provide notice to the Department within three days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the 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 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the 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 5.08 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 and Ownership of Work Product

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the 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 maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance

A. The Contractor shall maintain workers’ compensation insurance, employers’ liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement

B. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers’ Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers’ Compensation Insurance*;
2. Form U-26.3, *State Insurance Fund Certificate of Workers’ Compensation Insurance*;
3. Form SI-12, *Certificate of Workers’ Compensation Self-Insurance*;
4. Form GSI-105.2, *Certificate of Participation in Worker’s Compensation Group Self-Insurance*;
5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;

6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
7. Form CE-200 – *Affidavit of Exemption*;
8. Other forms approved by the New York State Workers' Compensation Board; or
9. Other proof of insurance in a form acceptable to the City.

Section 7.03 Other Insurance

A. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and “occurrence” based rather than “claims-made.” Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial 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.

C. *Professional Liability Insurance.*

1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

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

D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

Section 7.04 General Requirements for Insurance Coverage and Policies

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

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

C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.05 Proof of Insurance

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. 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 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for

any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.06 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to 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, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of 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 negligence, any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

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

Section 8.04 Infringement Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur

allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

Section 8.06 Actions By or Against Third Parties

A. If any claim is made or any action brought in any way relating to Agreement other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance that the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

Section 8.07 Withholding of Payments

A. If any claim is made or any action is brought against the 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. If 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 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 set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 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 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

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 officials 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. The Contractor deviates from the requirements of this Agreement without a duly approved and executed change order document or written contract modification or amendment at its own risk.

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES

Section 10.01 Termination by 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. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, 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 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the 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 10.02, 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 10.02 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 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 or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for 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 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 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. 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 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 10.03, 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.

F. If the City terminates the Agreement pursuant to this Section 10.04, 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 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the 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 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within 45 Days an inventory to the 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 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; 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 10.06, 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 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

Section 10.07 Liquidated Damages

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

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. With some exceptions, 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 11.02 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 Department may waive the requirements of this Section 11.02 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 11.02 is applicable to contracts valued at \$25,000.00 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

Subject to Section 12.03, 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 12.02, 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 12.02.

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 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

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

B. All determinations required by this Section 12.03 shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by

this Section 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the 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 12.03 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 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 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 12.03 as the Contractor initiating the dispute.

3. **Agency Head Determination.** Within 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 12.03. 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 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 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 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 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 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 12.03 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 12.03, 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 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 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 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 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 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 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

Section 12.04 Claims and Actions

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officials, Agents, or Employees

No claim shall be made by the Contractor against any official, 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. If there is 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 Unlawful Discrimination in the Provision of Services

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual

orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123.* In accordance with 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 Admin. 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 \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status.* In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

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

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

Section 13.06 Voter Registration

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through 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 13.06. 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; SBS; 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 Hygiene; 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 13.06, 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 13.06 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 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 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 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 13.08 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 13.09 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 13.10 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 13.11 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 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. 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 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000.00 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 13.11 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 13.11 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 13.12 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 13.12. 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 14.01 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 modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 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 and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

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

C. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

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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.

SCHEDULE A

Article 7 -- Insurance	
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	Minimum Limits and Special Conditions
<p><input checked="" type="checkbox"/> Workers' Compensation §7.02</p> <p><input checked="" type="checkbox"/> Disability Benefits Insurance §7.02</p> <p><input checked="" type="checkbox"/> Employers' Liability §7.02</p>	<p>Statutory amounts.</p>
<p>Commercial General Liability §7.03(A)</p>	<p><u>\$1,000,000.00</u> per occurrence</p> <p><u>\$1,000,000.00</u> personal & advertising injury (unless waived in writing by the Department)</p> <p><u>\$2,000,000.00</u> aggregate</p> <p><u>\$0</u> products/completed operations</p> <p>Additional Insureds:</p> <p>1. City of New York, including its officials and employees, and</p> <p>2. _____</p> <p>3. _____</p>
<p><input type="checkbox"/> Commercial Auto Liability §7.03(B)</p>	<p><u>\$1,000,000.00</u> per accident combined single limit</p> <p>If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90</p>
<p><input type="checkbox"/> Professional Liability/Errors & Omissions</p>	<p><u>\$1,000,000.00</u> per claim</p>

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<p>§7.03(C)</p>	
<p><input type="checkbox"/> Crime Insurance §7.03(D)</p>	<p>\$ _____ Employee Theft/Dishonesty</p> <p>\$ _____ Computer Fraud</p> <p>\$ _____ Funds Transfer Fraud</p> <p>\$ _____ Client Coverage</p> <p>\$ _____ Forgery or Alteration</p> <p>\$ _____ Inside the Premises (theft of money and securities)</p> <p>\$ _____ Inside the Premises (robbery or safe burglary of other property)</p> <p>\$ _____ Outside the Premises</p> <p>\$ _____ Money Orders and Counterfeit Money</p> <p>City of New York is a loss payee as its interests may appear</p>
<p><input type="checkbox"/> Cyber Liability Insurance §7.03(E)</p>	<p><i>[If there is a significant cyber risk, please consult with the Law Department about specific insurance requirements.]</i></p>
<p><input type="checkbox"/> [OTHER]</p>	<p><i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i></p>
<p><input type="checkbox"/> [OTHER]</p>	<p><i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i></p>
<p>Section 10.07 – Liquidated Damages</p>	

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<ul style="list-style-type: none"> • Violation of Section 3.02(H), reporting subcontractors in the City's Payee Information Portal • _____ 	<p>\$100 per day</p> <p>\$ _____</p>
<p>Section 14.04 – Notice</p>	
<p>Department's Mailing Address and Email Address for Notices</p>	
<p>Contractor's Mailing Address and Email Address for Notices</p>	

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER



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

DOI CAN ALSO BE REACHED BY MAIL
OR IN PERSON AT:

New York City Department of
Investigation (DOI)
80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:

www.nyc.gov/doi

All communications are confidential



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to make a complaint

**THE LAW PROTECTS EMPLOYEES OF
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(Superseding Section 4.06 of Appendix A)

A. *Introduction and General Provisions.*

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq.* (“DCWP Rules”).

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

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

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B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency;

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

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5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

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

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA.

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In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>.

The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer .

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

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

Proposer's Name: _____

A.	Per Service/Unit Measure	Estimated Annual Volume	Unit Prices					Extended Annual Costs = (Estimated Annual Volume x Unit Price)						
			Year 1	Year 2	Year 3	Year 4	Year 5	Year 1	Year 2	Year 3	Year 4	Year 5	Extended Total	
Descriptions														
Depository Services - Please itemize services associated with your Proposal including but not limited to:														
1	Account Maintenance - Concentration Account	Per month	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	Daily Bank Statements - Concentration Account	Per day, for account	260						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3	Check Deposits to Concentration Account	Per item	73						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4	Items Deposited to Concentration Account	Per item	400						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5	EFT Credits to Concentration Account	Per EFT	1						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	Monthly Account Analysis Statement (ANSI Format)	Per month	23						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
7	ACH Debit Block Monthly Maintenance	Per month, per account	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
8	ACH Debit Filter(s) Maintenance	Per month, per account	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
9	FDIC Charges	Per month							\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Disbursement Services - Please itemize services associated with your proposal including but not limited to:														
10	Checks Paid (DDA Account)	Per check	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
11	Account Maintenance (DDA) - 18 Accounts	Per month	216						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
12	Automated Reconciliation (ARP) per Check	Per check	1,800,000						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
13	ARP Monthly Maintenance - Concentration Account	Per month	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14	ARP Monthly Statement Reports - Electronic Image	Per year	216						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
15	Positive Pay Monthly Maintenance	Per month	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
16	Positive Pay Item Match (DDA Account)	Per item	95						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
17	Payee Positive Pay Item Match (DDA Account)	Per item	95						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
18	Controlled Disbursement Monthly Maintenance	Per month	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
19	Controlled Disbursement per Check	Per check	1,800,000						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
20	Electronic Imaging per Check	Per check	1,800,000						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
21	Electronic Imaging per CD or alternate media (acceptable to FISA-OPA)	Per CD-Rom	80						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
22	Electronic Imaging Monthly Fixed Cost	Per month	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
23	ARP Daily Issuance Transmission Input	Per transmission	1,700						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
24	ARP Monthly Transmission Output	Per transmission	2,900						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
25	Electronic Stop Payment - Per Stop	Per stop	4,000						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
26	Electronic Stop Payment - Monthly Maintenance	Per month	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
27	Online Exception Notification		4160						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
28	Cancellation of Outstanding Item from Issuance File	Per item	144						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
29	Forgery Cases Paid	Per check	40						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
30	Return Items	Per item	5						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Electronic Reporting Services - Please itemize services associated with your proposal including but not limited to:														
31	On-line Stop/Cancel/Inquiry System Monthly Maintenance	Per month	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
32	On-line Stop/Cancel/Inquiry System per Additional User	Per user	12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PC Initiated Fedwire and ACH Services - Please itemize services associated with your proposal including but not limited to:														
33	Non-Repetitive Fedwire - Outgoing	Per wire	1						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
34	Repetitive Fedwire - Outgoing	Per wire	1						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
35	Added Charge for Release of Fedwires Against Overdraft	Per wire	1						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
36	Repetitive ACH - PC Initiated	Per ACH	1						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
37	ACH Debit Block Monthly Maintenance	Per month, per account	192						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
38	ACH Debit Filter(s) Maintenance	Per month, per account	192						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
ACH Transactions - Please itemize services associated with your proposal including but not limited to:														
39	ACH Monthly Maintenance	Per account							\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
40	ACH Email NOC		1,500						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
41	ACH Return Email Notification		4,800						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
42	ACH Credit per Transaction	Per credit	7,800,000						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
43	ACH Debit per Transaction	Per debit							\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

PAYROLL BANKING RELATED SERVICES / EPIN: 1312022BNKRFP
 ATTACHMENT B: PRICE PROPOSAL FORM

44	ACH Addenda	Per addenda								\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
45	ACH Transmission from City to Bank	Per ACH								\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
46	ACH Returns	Per return								\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
47	ACH Reversals	Per reversal								\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
48	ACH Deletions	Per deletion								\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
Daily Balance and Transaction Reporting - Please itemize services associated with your proposal including but not limited to:																					
49	Previous Day Reporting Monthly Maintenance	Per month	12							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
50	Previous Day Reporting Per Transaction	Per report	54,000							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
51	Current Day Reporting Monthly Maintenance	Per month	12							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
52	Current Day Reporting - Per Transaction	Per report	561							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
53	Online Service Maintenance per Account	Per month	12							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
54	Automated Reconcilement ARP Per Check	Per check	1,800,000							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
55	ARP Daily Issuance Transmission Input, per file fee	Per file	1,700							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
56	ARP Monthly Transmission Output	Per month	2,900							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
57	ARP Checks Paid-Full Reconciliation	Per month	1,800,000							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
58	ARP Checks Returned w/Statement Item	Per month	2,500							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
59	ARP Optional Reports	Per month	1							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
60	ARP Aged Issue Purged Records on File- item	Per month	28							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
Remote Deposit Services - Please itemize services associated with your proposal including but not limited to:																					
61	Remote Deposit Maintenance	Per month	12							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
62	Deposits	Per deposit	180							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
63	Checks Deposited	Per check	720							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
64	Encoded Deposit Scanned	Per scan	1							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
65	Research Deposit Discrepancies	Per item	1							\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
Check Printing - Please itemize services associated with your Proposal including but not limited to:																					
66	Check/Advice Print 0-250,000	Per check								\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
67	Check/Advice Print 250,001-500,000	Per check								\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
68	Check/Advice Print 500,001+	Per check								\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
69	Special Handle-Courier Insert	Pass through								\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
TOTAL ANNUAL COSTS										\$	-	\$	-	\$	-	\$	-	\$	-	\$	-
																	TOTAL - 5 YEARS (Years 1 through 5)		\$	-	

BY

 Signature and title of person submitting the proposal

ATTESTED BY

 Signature of corporate secretary

Affix Corporate Seal

Proposer's Name: _____

NOTE: The Optional Services pricing below will not be considered for purposes of this award. However, the applicable pricing will be binding on the Proposer if FISA-OPA elects to have the Proposer implement Optional Services in whole or part as described in the RFP. The City is under no obligation to use the services of the Proposer to perform any Optional Services.

B. OPTIONAL SERVICES		Please populate Per Service/Unit Measure for each item not previously populated*	Unit Prices					Extended Annual Costs = (Anticipated Monthly Volume x Unit Price x 12)					
			Year 1	Year 2	Year 3	Year 4	Year 5	Year 1	Year 2	Year 3	Year 4	Year 5	Extended Total
Descriptions													
Please itemize services associated with your proposal for optional Electronic Payments, Forms Preparation and Printing													
1	Electronic Payments						\$	\$	\$	\$	\$	\$	-
2	Forms Preparation and Printing						\$	\$	\$	\$	\$	\$	-
Please itemize services associated with your proposal for optional Payroll Card Services													
3	Program Set-up charges						\$	\$	\$	\$	\$	\$	-
4	Monthly Maintenance (if any)	Per month					\$	\$	\$	\$	\$	\$	-
5	Welcome Package	Per package					\$	\$	\$	\$	\$	\$	-
6	Training Charges						\$	\$	\$	\$	\$	\$	-
7	Marketing Charges						\$	\$	\$	\$	\$	\$	-
8	PIN POS						\$	\$	\$	\$	\$	\$	-
9	POS Cashback Fee						\$	\$	\$	\$	\$	\$	-
10	ATM Cash withdrawals						\$	\$	\$	\$	\$	\$	-
	In Bank network						\$	\$	\$	\$	\$	\$	-
	Out of Bank network						\$	\$	\$	\$	\$	\$	-
11	ATM Balance Inquiries						\$	\$	\$	\$	\$	\$	-
12	ATM Declines						\$	\$	\$	\$	\$	\$	-
13	Other Bank Teller Cash Withdrawals						\$	\$	\$	\$	\$	\$	-
14	Inactivity Fee						\$	\$	\$	\$	\$	\$	-
15	Replacement Card						\$	\$	\$	\$	\$	\$	-
16	Reissuance of Card due to Expiration (if any)						\$	\$	\$	\$	\$	\$	-
Please itemize services associated with your proposal for optional On-Demand Pay/earned wage access													
17	On-Demand Pay/earned wage access						\$	\$	\$	\$	\$	\$	-
Please list any additional optional services that may be relevant to our requirements. If additional space is needed, please attach a separate sheet following the same format.													
18							\$	\$	\$	\$	\$	\$	-
19							\$	\$	\$	\$	\$	\$	-
20							\$	\$	\$	\$	\$	\$	-
21							\$	\$	\$	\$	\$	\$	-
22							\$	\$	\$	\$	\$	\$	-
23							\$	\$	\$	\$	\$	\$	-
24							\$	\$	\$	\$	\$	\$	-
25							\$	\$	\$	\$	\$	\$	-

*If your institution does not provide any of these Optional Services, please indicate in your proposal and indicate N/A in the price proposal sheet, where applicable. If there are additional Optional Services, not previously listed please describe those services and populate the relevant section in the price proposal.

BY _____
 Signature and title of person submitting the proposal

ATTESTED BY _____
 Signature of corporate secretary
 Affix Corporate Seal