

**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**



**Brad Lander
Comptroller**

**REQUEST FOR PROPOSALS

FOR

OUTSIDE COUNSEL LEGAL SERVICES
IN CONNECTION WITH
NEW YORK CITY RETIREMENT SYSTEMS'
ASSET MANAGEMENT PRIVATE MARKET INVESTMENTS**

PIN: 01524OGC68565



Table of Contents

SECTION I - TIMETABLE	1
A. RFP Release Date	1
B. Pre-Proposal Conference.....	1
C. Proposal Due Date and Time.....	1
D. Questions.....	1
E. Acknowledgement of Addenda	2
F. Anticipated Contract Start Date.....	2
SECTION II – SUMMARY OF THE REQUEST FOR PROPOSALS	3
A. Purpose of RFP.....	3
B. Anticipated Contract Term	3
C. Anticipated Available Funding	4
D. Anticipated Payment Structure	4
E. Minimum Qualification Requirements	4
A. Goals and Objectives for this RFP.....	7
B. Contractor Knowledge and Experience	7
C. Organizational Capacity (Firm Staffing and Servicing of Accounts).....	7
D. Anticipated Scope of Services.....	7
E. Task Order Selection and Award Process.....	9
F. Assumptions Regarding Contractor Approach.....	12
G. Compliance with Local Law 34 of 2007.....	13
H. Whistleblower Protection Expansion Act Rider.....	13
I. Compliance with the Iran Divestment Act.....	13
J. Subcontractor Compliance Notice.....	13
K. Tax Affirmation.....	14
SECTION IV - FORMAT AND CONTENT OF THE PROPOSAL	15
A. Proposal Format.....	15
B. Proposal Format for Contractor Pool #2	16
B. Proposal Package Submission, Contents (“Checklist”) and Labeling.....	18
SECTION V - PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES	19
A. Evaluation Procedures.....	19
B. Evaluation Criteria	20
C. Basis for Contract Award.....	20
SECTION VI - GENERAL INFORMATION TO PROPOSERS.....	21
A. Complaints.....	21
B. Applicable Laws	21
C. General Contract Provisions	21

D. Contract Award.....	21
E. Proposer Appeal Rights	21
F. Multi-Year Contracts.....	21
G. Prompt Payment Policy	22
H. Prices Irrevocable.....	22
I. Confidential, Proprietary Information or Trade Secrets	22
J. RFP Postponement/Cancellation	22
K. Proposer Costs.....	22
L. PASSPort/VENDEX Fees	22
M. Whistleblower Protection Expansion Act Rider.....	22
N. Subcontractor Compliance Notice	22
O. Charter Section 312(a) Certification	23

ATTACHMENTS

Attachment A:	Proposer’s Cover Letter Form
Attachment B:	Acknowledgment of Addenda
Attachment C:	Price Proposal Form
Attachment D:	Sample Task Order Request for Services and Task Order Templates
Attachment E:	Doing Business Data Form
Attachment F:	Whistleblower Protection and Expansion Act Rider
Attachment G:	Certification of Compliance with Iran Divestment Act Rider and Bidder Certification
Attachment H:	Tax Affirmation Form

APPENDICES

Appendix A:	General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services
-------------	---

AUTHORIZED COMPTROLLER CONTACT PERSON

Proposers are advised that the Authorized Comptroller Contact Person for **all** matters concerning this RFP is:

Name: Brittanica Stewart
E-mail Address: BAMCounselSubmission@comptroller.nyc.gov

SECTION I - TIMETABLE

A. RFP Release Date

The RFP Release Date is **December 22, 2023**.

B. Pre-Proposal Conference

An optional pre-proposal conference will be held virtually on **Wednesday, January 17, 2024 at 11:00 AM EST**. Potential proposers interested in attending this virtual conference must register at least one day in advance. Please [click on this link to register](https://us02web.zoom.us/meeting/register/tZUtdeChpjoIG9fZPu8rrfyAZn-gHBINNDHU) or copy and paste the following to your web browser:

<https://us02web.zoom.us/meeting/register/tZUtdeChpjoIG9fZPu8rrfyAZn-gHBINNDHU>.

Although attendance at the pre-proposal conference is not mandatory, it is strongly encouraged.

C. Proposal Due Date and Time

All proposals for both contractor pools must be submitted **no later than Thursday, February 1, 2024 at 5:00 PM EST**. Proposals received after the Proposal Due Date and Time are late and will not be accepted by the Comptroller's Office, except as provided under New York City's Procurement Policy Board ("PPB") Rules. The Comptroller's Office will consider requests made to the Authorized Comptroller Contact Person to extend the Proposal Due Date and Time prescribed above. However, unless the Comptroller's Office issues a written addendum to the RFP that extends the Proposal Due Date and Time for all proposers, the Proposal Due Date and Time prescribed above will remain in effect.

D. Questions

Questions about this RFP may be submitted in writing to the Authorized Comptroller Contact Person no later than **5:00 PM on Tuesday, January 23, 2024**. Please include **"PIN 01524OGC65865 – NEW YORK CITY RETIREMENT SYSTEMS PRIVATE MARKET INVESTMENTS OUTSIDE COUNSEL RFP"** in the subject line of any e-mail sent to the address above.

In the event the Comptroller's Office determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers known to have downloaded the RFP. All addenda will be available on the Comptroller's website at <https://comptroller.nyc.gov/services/for-businesses/doing-business-with-the-comptroller/rfps-solicitations/>. It is the proposer's responsibility to check the website regularly for any updates and addenda to this solicitation. To receive email notifications regarding this solicitation, proposers must register and download this RFP on the Comptroller's website.

E. Acknowledgement of Addenda

Receipt of an addendum to this RFP by a proposer must be acknowledged by attaching a signed PDF of the addendum to the Technical Proposal, as defined herein. All addenda shall become a part of the requirements of this RFP. In addition to the individual signed addenda, proposal submissions should also contain a signed PDF of **Attachment B**, Acknowledgement of Addenda.

F. Anticipated Contract Start Date

The contract(s) awarded pursuant to this RFP are anticipated to begin no later than **November 1, 2024**.

REMAINDER OF PAGE INTENTIONALLY BLANK

SECTION II – SUMMARY OF THE REQUEST FOR PROPOSALS

A. Purpose of RFP

Pursuant to section 3-03 of the PPB Rules (“Competitive Sealed Proposals”), the Office of Comptroller of the City of New York (“Comptroller” or “Comptroller’s Office”) is seeking to engage appropriately qualified law firms to become members of one or both of the outside counsel legal services contractor pools described below. Law firms awarded master agreements in either contractor pool will be required to provide legal services on an “as needed” basis and serve as the outside investment counsel (the “Investment Counsel”) to New York City Retirement Systems (each a “System” and collectively, the “Systems”) and the Comptroller’s Office in connection with a broad range of private market investments to be made by the Systems during the contract term.

- Contractor Pool #1. Law firms awarded a master agreement in this pool will be required to be available throughout the term of the master agreement to provide legal services in connection with private market investments in the following three asset classes: (1) private equity; (2) opportunistic fixed income; and (3) real estate and infrastructure (“real assets”). The Comptroller’s Office anticipates awarding up to eleven master agreements for Contractor Pool #1.
- Contractor Pool #2. Law firms awarded a master agreement in this pool will be required to be available throughout the term of the master agreement to provide legal services in connection with private market investments in the hedge funds asset class. The Comptroller’s Office anticipates awarding up to six master agreements for Contractor Pool #2.

Proposers for either contractor pool must possess applicable asset class specific knowledge and experience representing investors, particularly government investors, in connection with investments in private investment funds, primarily formed as limited partnerships and limited liability companies, and structured as commingled funds or separate accounts, as well as investments through joint venture, sidecar, or co-investment vehicles, or a strategic relationship.

The Comptroller’s Office will enter a general or “master” agreement with each law firm selected for award pursuant to this RFP in either of the above-referenced contractor pools. Each master agreement will contain language requiring the law firm to be available upon request to provide any of the applicable legal services described herein during the term of such agreement. Additionally, each master agreement resulting from this RFP will contain the terms and conditions upon which a firm may serve as outside counsel and will establish the general parameters for performance and compensation.

Although law firms may be awarded master agreements pursuant to this RFP in either or both contractor pools, there is no guarantee that any minimum amount of work will result from inclusion in a contractor pool. Rather, the Comptroller’s Office will award work to firms on specific matters in accordance with the “Task Order Selection and Award Process” set forth in Section III(E) of this RFP.

B. Anticipated Contract Term

It is anticipated that the term of any master agreement awarded from this RFP will be for a period of three (3) years (“Term”), with two 3-year renewal options exercisable at the sole discretion of the Comptroller’s Office.

C. Anticipated Available Funding

It is anticipated that the available funding for the initial Term of any master agreement awarded from this RFP will be \$1,500,000. Greater consideration will be given to proposers that propose more competitive pricing.

D. Anticipated Payment Structure

Contracts awarded from this RFP will be set up as master agreements, which will include not-to-exceed flat fees based on the following categories of work:

- Category A: New Relationship
- Category B: Prior Relationship (Subsequent investment with sponsor in subsequent fund)
- Category C: Sole Investor (involving negotiation of structure issues and drafting and/or negotiation of all transaction documents; issuance of legal opinions, etc.)

The Price Proposal Form, included as Attachment C to this RFP, details pricing. The master agreement will include a not-to-exceed hourly rate that will be applicable for all post-closing work completed during the contract term.

Work will be assigned through a competitive task order process open to all Contractors awards with master agreements in the respective contractor pool. During the task order process, firms shall propose flat fees and post-closing hourly rates that may not exceed the not-to-exceed rates set forth in their respective master agreements. This means that regardless of the actual time or effort spent on completing the work, the Contractor will not receive more than the agreed upon flat fee.

Payment for services provided under a task order will be made upon completion of the work identified in each task order.

E. Minimum Qualification Requirements

The following are the Minimum Qualification Requirements (“MQRs”) of this RFP. Proposals that fail to meet all these requirements will be rejected.

- Proposers must have at least 20 years of aggregate expertise providing the legal services described in Section II(A) above and in Section III(D). At least one member of the proposed team must have a minimum of ten years of relevant legal experience and a second member of the team must have a minimum of five years of relevant legal experience. Relevant legal experience must have been obtained while the team member was working as an attorney in the U.S. and authorized to practice law in a U.S. jurisdiction. Please provide a resume and detailed explanations to clearly show the qualifications and experience of each proposed team member.
- Each lawyer identified in the proposal must be authorized to practice law and a member in good standing in the state in which each such individual primarily practices.
- Proposers must currently have at least four (4) public, private pension, or other institutional investor clients; and
- Proposers must comply with the “Conflict of Interest” requirements set forth in Section II(F) below (“Conflicts of Interest and Other Restrictions”) and must continue to comply with the requirements throughout the Term of any contract awarded pursuant to this RFP.

Proposers must certify that it meets these minimum qualifications by signing Attachment A to this RFP. Contractors must maintain the MQRs for the entire Term of any contract awarded pursuant to this RFP.

F. Conflict of Interest and other Restrictions

Proposers must comply with the following:

1. Proposers must disclose in their written proposals, all pending claims, proceedings and actions, including cross-claims and counterclaims, by the proposers, its subcontractors, employees, associates, partners or attorneys serving as of counsel, or in which the proposers, its subcontractors, agents, representatives, employees, associates, partners or attorneys serving as of counsel represent a client against the City or any of its agencies or entities, including but not limited to, NYCERS, TRS, Police, Fire, and BERS, and/or any employee or indemnitee of these entities in their capacity (or relating to their capacity) as employee or indemnitee, of any nature.
2. Proposers must disclose in their written proposals (i) any material arrangements, relationships or other employment that the firm or any firm employee has with any financial advisory firms, accounting firms, claims administrators, investment banks, investment advisers, investment managers, fund or other law firms or other persons or entities that may create a conflict of interest or the appearance of a conflict of interest in acting as Investment Counsel to NYCERS, (ii) any family relationship that any principal, partner, member, associate, or employee of the firm has with any City public servant that may create a conflict of interest or appearance of a conflict of interest in acting as Investment Counsel to NYCERS, and (iii) any other matter that the firm believes may create a conflict of interest or the appearance of a conflict of interest in acting as Investment Counsel to NYCERS.
3. Proposers must provide a resume, job description, and identify the name and title of their conflict officer(s) in their proposals and agree to promptly advise the Comptroller's Office if a new conflicts officer is appointed and of any conflicts that would be responsive to F)(1)–(2) of this section of the RFP from the date of the proposal deadline and throughout the Term of any contract awarded pursuant to this RFP. Proposer must certify in their proposals that they have conducted a conflict check prior to the submission of their proposals, and, if awarded, must conduct another conflict check prior to the execution of any contract or task order.
4. Proposers must certify in writing to the Comptroller's Office that they have removed themselves from any claims, actions, proceedings or relationships, where the Comptroller, in its sole discretion, determines such removal is necessary for a contract award to proceed.
5. The Comptroller's Office reserves the right to require any contractor during the Term of any contract awarded pursuant to the RFP to:
 - a. Conduct periodic conflict checks as described in paragraph (F)(2) above;
 - b. Certify in writing that the contractor has conducted the required conflict check;
 - c. Advise the Comptroller's Office in writing of all potential conflicts described in paragraph (F)(1)–(F)(2) above; and

- d. Remove itself from any such matter in the event the Comptroller's Office determines such matter presents a conflict of interest and advise the Comptroller's Office in writing of such removal.

The existence of any conflicts or potential conflicts will be evaluated and a determination will be made, at the sole discretion and consideration of the Comptroller's Office, as to whether such conflict(s) will disqualify a proposer.

REMAINDER OF PAGE INTENTIONALLY BLANK

SECTION III – SCOPE OF SERVICES

A. Goals and Objectives for this RFP

The Comptroller's goals and objectives for this RFP are to establish two (2) separate outside counsel pools of qualified law firms who can provide a broad range of private market investments legal services to the Systems and the Comptroller's Office on an "as needed" basis.

B. Contractor Knowledge and Experience

In furtherance of the goals and objectives for this RFP, the Comptroller's Office expects that law firms in either contractor pool will possess the following knowledge and experience:

1. Applicable asset class specific knowledge and experience representing investors, particularly government investors, in connection with investments in the private investment funds, formed as limited partnerships and limited liability companies, and structured as commingled funds or separate accounts, as well as investments through joint venture, sidecar, or co-investment vehicles, or a strategic relationship; and
2. Significant experience successfully representing United States public pension plans or other large United States institutional investors in the investments such as those listed above and must agree to perform the necessary services at competitive prices.

C. Organizational Capacity (Firm Staffing and Servicing of Accounts)

The Comptroller's Office assumptions regarding which organizational capacity will most likely achieve the goals and objectives set out in this solicitation are:

1. The firm's size and history are aligned with the goal and objectives and required scope of services of this RFP;
2. The firm would ensure proposed attorneys are appropriately qualified to provide the required services and will be available for the duration of the contract;
3. The firm has the organizational, technical, managerial, and financial capability to perform the services required for each contractor pool;
4. The firm has the capability to integrate the services into their existing firm operations; and
5. The firm would have a commitment to diversity, equity, and inclusion, including the diversity composition of the attorneys that will perform the services set forth in this Section III and the percentage of business generation credit (for example origination and billing credit) that will be awarded to diverse attorneys that will perform these services (for purposes of this RFP, this includes women, LGBTQ+, lawyers with disabilities, and racial/ethnic minority lawyers).

D. Anticipated Scope of Services

Successful proposers for each contractor pool will be awarded a master agreement, which will establish overarching terms, conditions and not-to-exceed rates for the duration of the Term. Assignment of work will be determined through a competitive task order process (described further in Paragraph E below) among all firms awarded a master agreement for each contractor pool.

Task Order Assignments will be made based on one of the four (4) following categories for each contractor pool:

Category A: New Relationship. New Manager - Funds where the Investor has no prior existing relationship with the manager of the fund.

- A.1: Lead/large investor in first-time fund.** Investor commitments above \$100 million (or above 5% of the fund's total commitments) to a new manager's first fund.
- A.2: Large investor in subsequent fund - first close.** Investor commitments above \$100 million (or above 5% of the fund's total commitments) to any successor funds raised by the new manager where the Investor participates in the first closing.
- A.3: Large investor in subsequent fund - subsequent close.** Investor commitments above \$100 million (or above 5% of the fund's total commitments) to any successor funds raised by the new manager where the Investor participates in subsequent closing.
- A.4: Average-sized investor in first-time fund - first close.** Investor commitments above \$100 million (or above 5% of the fund's total commitments) to any successor funds raised by the new manager where the Investor participates in subsequent closing.
- A.5: Average-sized investor in first-time fund - subsequent close.** Investor commitments less than \$100 million (or less than 5% of the fund's total commitments) to a new manager's first fund where the Investor participates in subsequent closing.
- A.6: Average-sized investor in subsequent fund.** Investor commitments less than \$100 million (or less than 5% of the fund's total commitments) to any successor funds raised by the new manager where the Investor participates in subsequent closing.

Category B: Prior Relationship (Subsequent investment with sponsor in subsequent fund). Existing Manager - Funds where the Investor has a prior existing relationship with the manager of the fund.

- B.1: Lead/large investor.** Investor commitments above \$100 million (or above 5% of the fund's total commitments) to any successor funds raised by the existing manager.
- B.2: Average sized investor.** Investor commitments less than \$100 million (or less than 5% of the fund's total commitments) to any successor funds raised by the existing manager.

Category C: Sole Investor (involving negotiation of structure issues and drafting and/or negotiation of all transaction documents; issuance of legal opinions, etc.). Investor's investment in a fund of one or a similar structure, created only between the Investor and the manager.

Category D: Investor in a Bespoke Unique Transaction. Investor's investment in a fund involving novel or unusual or otherwise non-standard issues involving separate accounts, funds of one, strategic partnership, or platform programs or other types of funds.

The following is a non-exclusive list of services selected firms in both Contractor Pool 1 (Private Equity, Opportunistic Fixed Income and Real Assets Private Market Investments) and Contractor Pool 2 (Hedge Funds) shall perform during the Term:

- a. Work with the designated counsel for the Comptroller's Office ("NYC Counsel") and the counsel for the particular investment fund ("Fund Counsel") to obtain copies of all relevant transaction documents including, but not limited to, limited partnership agreements, subscription agreements, investment management agreements, and guarantee agreements (and provide copies of all such documents to the Comptroller's Office immediately upon receipt);
- b. Review and/or draft and identify issues in connection with all relevant transaction documents described above as well as side letters and opinions of counsel;
- c. Provide a summary checklist of the key terms and a memorandum detailing all different or additional terms that NYC Counsel should seek to have included by Fund Counsel in the transaction documents;
- d. Negotiate the terms of Systems' investments, including the preparation and negotiation of Systems' side letters and, where applicable, the negotiation and/or preparation of limited partnership agreements, investment management agreements and/or ancillary transactional documents;
- e. Provide legal analysis and a review of legal issues as they arise in connection with the closing of the applicable Systems' investments and any post-closing matters related to any of the foregoing, including, but not limited to, amendments, MFN elections, or alternative investment vehicles;
- f. Conduct legal due diligence, as requested by the Comptroller's Office;
- g. Finalize the transaction documents for execution by the Comptroller's Office on behalf of the Systems;
- h. Present relevant legal issues to the Comptroller's Office and/or the Systems' Boards of Trustees, as needed;
- i. Participate in conference calls and negotiation sessions with the sponsors of the private market investments and their Fund Counsel, as necessary; and
- j. Provide other related services that may be requested by NYC Counsel and the Comptroller's Office from time to time.

E. Task Order Selection and Award Process

1. Overview.

Any firm selected for an award in either contractor pool will be required to enter into a master agreement with the Comptroller's Office. The master agreement will include terms requiring the firm to respond to Requests for Services ("RFS") issued by the Comptroller's Office. The RFS will contain details about the specific fund and asset class for which services are needed and will be addressed to members of the appropriate contractor pool. Firms responding to the RFS will complete the required template (a sample is included as Attachment D to this RFP) and the selected firm will be issued a Task Order Agreement, which indicates the specific scope of the work, subject to the overarching terms and conditions of the master agreement. Selection to work on a particular Task Order will be made in accordance with the criteria and process set forth below.

2. Task Order Request for Services.

At the time legal services of outside counsel are required for a particular transaction, the Comptroller's Office will issue a "mini-solicitation" in the form of a "Task Order Request for Services" or "RFS", a sample of which is attached to this RFP as "Template 1" in Attachment D. The RFS shall include, but is not limited, the following:

- the contractor pool being solicited;

- a detailed description of the work to be issued, including the name of the proposed investment fund;
- the evaluation criteria to be used to evaluate RFS Proposals (as hereinafter defined) and award a particular Task Order;
- a standardized RFS Proposal Form; and
- instructions to firms on how to respond to the RFS.

3. **Task Order Process.**

The RFS will be issued to all members of the relevant contractor pool. All members of the respective pool are required to respond by the date and time set forth in the RFS using a standardized “Request for Services Proposal Form” (or “RFS Proposal”), a sample of which is attached to this RFP as “Template 2” in Attachment D.

4. **Request for Services Proposal**

- a. Each firm’s RFS Proposal must provide the information requested in the RFS Proposal template and include a price proposal generally in the form of a fixed flat fee to cover the following anticipated “pre-closing” services:
 - i. Initial review of the LPA and/or other governing documents of a particular fund and review of any co-investment terms (including review and negotiation of any co-investment vehicle);
 - ii. Initial review of all other fund documents;
 - iii. Drafting and negotiation of side letters;
 - iv. Consultations with NYC Counsel;
 - v. Discussion and negotiations of the comments and/or requested changes to the LPA and other documents with Fund Counsel;
 - vi. Finalizing all closing documents, including the LPA, side letters, subscription documents, guarantees, opinions, among else.
- b. Each firm’s RFS Proposal must include a separate price proposal expressed as a flat fee and an hourly rate in accordance with the format indicated in the RFS and the master agreement to the following anticipated non-exhaustive list of “post-closing” services:
 - Subsequent MFN reviews by the selected firm;
 - Review of LPA amendments;
 - Review of co investment opportunities and other alternative investment vehicles (if any); and
 - Review of other related matters.

Note: The hourly rates set forth in the selected firm’s master agreement will represent the maximum rates that may be set forth in individual Task Orders issued to said firm.

- c. Each firm’s RFS Proposal must state whether any of the following circumstances apply to the particular transaction the applicable firm is proposing on:
 - i. Whether it has any conflicts of interest (past, current and/or potential) and whether such conflicts have been “cleared” (e.g., waived) or a waiver of conflict will be required;

- ii. Whether it has represented, is currently representing, or will represent other investors in the particular investment fund in question;
- iii. Whether it has represented other investors or any of the Systems on a prior fund with the manager in question;
- iv. Whether there is any additional information bearing on the firm's suitability to represent the Systems in the particular transaction (*e.g.*, any circumstances that a firm believes would make it particularly well-suited to handle the particular transaction, including a legal expertise and knowledge of a specified area of practice or familiarity with a particular jurisdiction and its laws and regulations); and
- v. Each attorney that will be assigned to the transaction, if selected, and whether any of the identified attorneys are expected to be absent from the office, or otherwise unavailable to work, for five (5) or more days during the transaction.

5. RFS Proposal Evaluation and Firm Selection

- a. Review Committee. A review committee consisting of members of the Comptroller's Office will review the submitted RFS Proposals.
- b. RFS Proposal Evaluation. In making a selection for a particular transaction, the review committee will evaluate each RFS Proposal based on the criteria prescribed in the RFS. Unless otherwise indicated in the RFS, the following criteria will be used to evaluate all TO Proposals:
 - I. "Price Proposal".
 - II. "Technical Response" including, but not limited to the following factors:
 - A. Whether the firm has previously represented the Systems with the fund sponsor;
 - B. Whether the firm has represented, or is representing, another investor in the current fund;
 - C. Whether the firm has represented another investor in a previous fund or another fund with sponsor identified in the RFS;
 - D. Whether the firm has represented the sponsor on other matters;
 - E. Any background or circumstances that the Comptroller's Office believes would make a firm particularly well-suited to handle the transaction, including a legal expertise and knowledge of a specified area of practice or familiarity with a particular jurisdiction and its laws and regulations; and
The number of investment matters that the firm currently has pending with the agency.

Selection of a firm may be based on any of the following conditions:

- Assignment to a vendor based on criteria prescribed in the RFS;

- Non-discretionary method of assignment, including where assignment pursuant to such method may be varied based on stated criteria (e.g., capacity or past performance);
- Assignment to or competition among particular vendor(s) with technical expertise particularly suited to the Task Order;
- Assignment to a particular vendor based on a vendor's particular geographic location, experience or knowledge;
- Assignment to a particular vendor based on the agency's need to distribute task orders among vendors;

Price shall be a consideration in all RFS Proposals. While not-to-exceed rates will be set under the master agreement, firms are encouraged to offer more competitive pricing in their RFS Proposal

- c. **Presentations and/or Negotiations.** The Comptroller's Office reserves the right to request presentations and/or negotiate with one or more proposing firms to assist in the evaluation of RFS Proposals and in the award of a Task Order.
 - d. **Concurrence by Law Department.** Once a firm has been identified by the Comptroller's Office for award, the name of the selected firm, as well as a summary of the basis for said selection will be provided to the Law Department for their approval.
6. **Task Order Issuance.** Once a firm has been selected as outside counsel for a specific transaction, the Comptroller's Office will issue a Task Order Agreement similar to the sample Template 3 included in Attachment D to this RFP. Task Orders will typically have a maximum term of three years or, if issued for a specific project, until the specific project is completed. Task Orders may also survive the expiration of the Master Agreement Term. Any changes to the Task Order, including pricing, shall be memorialized in a Task Order Amendment signed by the parties. A sample amendment document is included as Template 4 in Attachment D to this RFP.
7. **Failure to Respond to RFS.** Each firm must respond to every RFS for which it is solicited. If a firm is unwilling or unable to submit an RFS Proposal in response to the RFS, the firm must provide an explanation for its failure to submit an RFS proposal. The Comptroller's Office may ask for additional explanation for the failure to respond and may determine that a firm is in default of its obligation under its master agreement if the firm fails to submit a RFS Proposal without an adequate explanation, as determined by the Comptroller at its sole discretion, for such failure.

F. Assumptions Regarding Contractor Approach

The Comptroller's assumptions regarding the approach that will be taken by selected proposers who will perform the work under any master agreements awarded from this RFP are as follows:

1. Contractors must comply with applicable laws, regulations, and applicable rules of professional conduct.
2. Contractors must respond to every RFS;
3. Contractors must submit "good faith" responses to each RFS using the RFS Proposal form;

4. Contractors must adhere to the rates set forth in their respective master agreements (unless prior written approval is received from the Comptroller's Office); and
5. Contractors may not change any of the team members identified in their respective master agreements (unless prior written approval is received from the Comptroller's Office in the form of a written contract amendment).

G. 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 attached "Doing Business Data Form" (Attachment E) and return it with their proposals 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 Comptroller's Office 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 Comptroller's Office and will be given four (4) days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the Comptroller's Office. 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.

H. 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 Attachment F ("Whistleblower Protection Expansion Act Rider"), carefully.

I. 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 review the attached "Iran Divestment Act Compliance Rider for NYC Contractors" (Attachment G) and complete and submit the attached "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 Comptroller's Office 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 H for information on the Iran Divestment Act, including instructions on how to complete the required form and to <http://www.ogs.ny.gov/About/regs/ida.asp> for additional information concerning the list of entities.

J. Subcontractor Compliance Notice

The selected vendor will be required to utilize the City's web-based system to identify all subcontractors in order to obtain subcontractor approval pursuant to section 4-13 of the PPB Rules and will also be required to enter all subcontractor payment information and other related information in

such system during the contract term. The City's web-based subcontractor reporting system is located online at the Payee Information Portal at: <https://a127-pip.nyc.gov/webapp/PRDPCW/SelfService>.

K. Tax Affirmation

Proposers are required to provide a completed, signed and notarized "Tax Affirmation Form" (Attachment H) with their proposal submissions.

SECTION IV - FORMAT AND CONTENT OF THE PROPOSAL

Instructions: Proposers must submit a proposal package for each desired contractor pool in the format outlined below. The proposal will be evaluated based on its content, not length. Failure to comply with any of these instructions will not make the proposal non-responsive.

A. Proposal Format

1. Proposal Cover Letter

The Proposal Cover Letter Form (Attachment A) transmits the proposer's Proposal Package to the Comptroller's Office and demonstrates that the minimum qualification requirements for this RFP have been met. It must be completed, signed, and dated by an authorized representative of the proposer and clearly identify the contractor pool for which it is proposing. *A proposer must submit a separate Proposal Package for each contractor pool for which it is proposing.*

2. Technical Proposal

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

a. Experience (of the firm)

- i Describe the successful, relevant experience of the proposer, if any, and the proposed key staff in providing the work described in Section III of this RFP. Specifically, address the following:
 - The proposer's experience successfully representing U.S. public pension plans or other large U.S. institutional investors;
 - The proposer's demonstrated understanding of, and expertise in, providing legal services in the area(s) of private equity, opportunistic fixed income, real asset investments; and
 - The proposer's demonstrated understanding of the legal and practical issues that are unique to public pension funds or other similarly situated clients with fiduciary obligations.
- ii In addition:
 - Attach a listing of at least three (3) verifiable and relevant references for which services of similar scope and complexity were performed during the past three (3) years. For each reference, proposers must include the following information:
 - o The name of the referenced entity;
 - o A brief statement describing the relationship between the proposer or proposed subcontractor (as applicable) and the referenced entity;
 - o The name, address, telephone number and website address of each referenced entity; and
 - o The name, title, telephone number, and email address of a contact person of each referenced entity.

b. Organizational Capability (Firm Staffing and Servicing of Accounts)

- i Demonstrate the proposer's organizational capability to provide the work described in Section III (D) of this RFP on a timely and efficient basis. Specifically, address the following:
 - Provide a description of the proposing firm's size, history, and a list of all attorneys who will be providing the required services along with their resumes, attorney registration numbers (including the state in which they are licensed to practice);

- Describe or list the relevant non-attorney personnel (i.e. paralegals, administrative staff etc.), and other resources proposed for the provision of the required services and the availability of such when and where needed; and
 - Provide a description of the proposer's commitment to diversity, equity, and inclusion, including the diversity composition of the attorneys that will perform the services set forth in Section III of this RFP and the percentage of business generation credit (for example origination and billing credit) that will be awarded to diverse attorneys that will perform these services (for purposes of this RFP, this includes women, LGBTQ+, lawyers with disabilities, and racial/ethnic minority lawyers).
- ii In addition:
- Attach a chart showing where, or an explanation of how, the proposed services will fit into the proposer's organization;
 - Attach a copy of the proposer's latest audit report or certified financial statement, or a statement as to why no report or statement is available;
 - Provide a statement certifying that the proposed key staff will be available for the duration of the contract.

B. Proposal Format for Contractor Pool #2

1. Proposal Cover Letter

The Proposal Cover Letter Form (Attachment A) transmits the proposer's Proposal Package to the Comptroller's Office and demonstrates that the minimum qualification requirements for this RFP have been met. It must be completed, signed and dated by an authorized representative of the proposer and clearly identify the contractor pool for which it is proposing. A proposer must submit a separate Proposal Package for each contractor pool for which it is proposing.

2. Technical Proposal

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

a. Experience

- i Describe the successful relevant experience of the proposer, each proposed subcontractor, if any, and the proposed key staff in providing the work described in Section III of this RFP. Specifically, address the following:
 - The proposer's experience successfully representing U.S. public pension plans or other large U.S. institutional investors;
 - The proposer's demonstrated understanding of, and expertise in, providing legal services in hedge funds investments; and
 - The proposer's demonstrated understanding of the legal and practical issues that are unique to public pension funds or other similarly situated clients with fiduciary obligations.
- ii In addition:
 - Attach a listing of at least three (3) verifiable and relevant references for which services of similar scope and complexity were performed during the past three (3) years. For each reference, proposers must include the following information:
 - The name of the referenced entity;
 - A brief statement describing the relationship between the proposer or proposed subcontractor (as applicable) and the referenced entity;
 - The name, address, telephone number and website address of each referenced

- entity; and
- The name, title, telephone number, and email address of a contact person of each referenced entity.

b. Organizational Capability

- i Demonstrate the proposer’s organizational capability to provide the work described in Section III of this RFP on a timely and efficient basis. Specifically, address the following:
 - Provide a description of the proposing firm’s size, history, and a list of all attorneys who will be providing the required services along with their resumes and attorney registration numbers;
 - Describe the relevant personnel, professional and other resources proposed for the provision of the required services and the availability of such resources when and where needed; and
 - Provide a description of the proposer’s commitment to diversity, equity, and inclusion, including the diversity composition of the attorneys that will perform the services set forth in Section III of this RFP and the percentage of business generation credit (for example origination and billing credit) that will be awarded to diverse attorneys that will perform these services (for purposes of this RFP, this includes women, LGBTQ+, lawyers with disabilities, and racial/ethnic minority lawyers).
- ii In addition:
 - Attach a chart showing where, or an explanation of how, the proposed services will fit into the proposer’s organization;
 - Attach a copy of the proposer’s latest audit report or certified financial statement, or a statement as to why no report or statement is available;
 - Attach for each key staff position a resume and/or description of the qualifications that will be required; and
 - Provide a statement certifying that the proposed key staff will be available for the duration of the contract.

3. Price Proposal

Proposers for either contractor pool must submit a price proposal in the form of a completed Attachment C. Failure to submit a fully-completed Attachment C for the related contractor pool may result in the proposal being deemed non-responsive.

4. Acknowledgment of Addenda

The “Acknowledgment of Addenda” form (Attachment B) serves as the proposer’s acknowledgment of the receipt of addenda to this RFP which may have been issued by the Comptroller’s Office prior to the Proposal Due Date and Time, as set forth in Section I(C), above. The proposer must complete this form as instructed.

REMAINDER OF PAGE INTENTIONALLY BLANK

B. Proposal Package Submission, Contents (“Checklist”) and Labeling

1. Proposal Package Submission

All proposers must submit their Proposal Packages by e-mail to BAMCounselSubmission@comptroller.nyc.gov by the date and time set forth in this RFP. Hard copies of proposals will not be accepted by the Comptroller’s Office. Proposers should include the following in the email subject header: “Proposal for PIN 01524OGC65865 – NEW YORK CITY RETIREMENT SYSTEMS PRIVATE MARKET INVESTMENTS OUTSIDE COUNSEL RFP.”

2. Proposal Package Contents (“Checklist”)

The Proposal Package should contain the following materials for each Contractor Pool. Proposers should utilize this section as a “checklist” to assure completeness prior to submitting their proposal to the Comptroller’s Office. Specifically, the Proposal Package must consist of **three (3)** separately labeled PDF files containing the following documents:

☐ **Document 1: Technical Proposal**

- ☐ Signed Proposer’s Cover Letter Form (Attachment A (Contractor Pool #1) or (Contractor Pool #2))
- ☐ Technical Proposal
 - ☐ Experience (Section IV(A)(2)(a))
 - ☐ Organizational Capabilities (Section IV(A)(2)(b))
- ☐ Signed “Acknowledgment of Addenda” Form (Attachment B)
- ☐ Completed (Signed and Notarized) “Certification of Compliance with Iran Divestment Act” (Attachment H)
- ☐ Completed (Signed and Notarized) “Tax Affirmation Form” (Attachment L)

☐ **Document 2: Price Proposal** (Attachment C)

☐ **Document 3: Doing Business Data Form** (Attachment F)

3. Proposal Labeling

The following label format should be used in the order provided below when attaching the proposal documents to the Comptroller’s Office: “Vendor Name_PIN for this Solicitation (PIN [PIN #])_File Description.” For example, if vendor company “ACME Inc.” is submitting its proposal documents for this RFP, it will label their three (3) separate submission files as follows:

- ACME Inc_PIN 01524OGC65865_Technical Proposal
- ACME Inc_PIN 01524OGC65865_Price Proposal
- ACME Inc_PIN 01524OGC65865_DBDF

The file format of the digital submission **must** be in PDF format, bookmarked, and text searchable. Where possible, it is best to save all PDF files as a “reduced file size” to allow for an easier electronic submission. The content of the digital submission must follow the instruction provided above in this solicitation.

SECTION V - PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Evaluation Procedures

All proposals accepted by the Comptroller's Office for each contractor pool will be reviewed to determine whether they are responsive or non-responsive to the requisites set forth in this RFP. Proposals that are determined by the Comptroller's Office to be non-responsive will be rejected.

Each contractor pool will be comprised of a two-round technical evaluation. All responsive proposals will be reviewed by an Evaluation Committee comprised of representatives from the Comptroller's Office and the Law Department. The technical evaluation phase may include preliminary and final rounds as well as discussions and/or technical Best and Final Offers. Additionally, the Comptroller's Office reserves the right to conduct site visits, interviews, and/or to request that proposers make presentations and/or demonstrations, as deemed applicable and appropriate.

1. First Round

The Comptroller's Office will first review and rate each of the responsive technical proposals received for each contractor pool based on the Evaluation Criteria prescribed in subsection (B)(1) of this Section V below. The Comptroller's Office shall rank proposers by technical merit from highest to lowest, based on the overall technical score. All responsive proposals from New York State and New York City-certified M/WBEs will receive a point preference of ten percent (10%) of the total technical points earned in the evaluation of the proposal. Once this quantitative preference is applied, total adjusted scores for each responsive technical proposal will be recorded (if applicable) to determine all first round technical scores and the proposers' rankings shall be adjusted based on the first round technical scores. All proposers with a technical score of 75 and above in each contractor pool will be selected for Second Round (an interview). Proposers with a technical score below 75 will no longer be considered.

2. Second Round

All proposers with a First Round technical score of 75 and above in each contractor pool shall be scheduled for an interview. Proposers in the Second Round will be evaluated based on the Evaluation Criteria prescribed in subsection (B)(2) of this Section V below. Once all the interviews have concluded, the Comptroller's Office will rank proposers by score from highest to lowest, based on the proposed approach score from the interview. Proposers from New York State and New York City-certified M/WBEs will receive a point preference of ten percent (10%) of the total points earned in the evaluation of the interview. Once this quantitative preference is applied, total adjusted scores for each such proposal in each contractor pool will be recorded (if applicable) to determine all final scores and the proposers' rankings shall be adjusted based on the final scores.

The Comptroller's Office will then consider price by negotiating a fair and reasonable price with the highest ranked proposer(s) in each contractor pool and shall continue with the next highest technically ranked proposer, not exceeding the number of awards for each contractor pool advertised in this RFP. If such a price is not successfully negotiated, the Comptroller's Office may conclude such negotiations, and enter into negotiations with the next ranked proposer(s), as necessary.

Note that although discussions may be conducted with proposers submitting acceptable proposals, the Comptroller's Office reserves the right to award contracts based on initial proposals received, without discussions; therefore, the proposer's initial proposal should contain its best technical proposal and price terms.

B. Evaluation Criteria

There will be two (2) contractor (competition) pools from this RFP. Responsive proposals for each pool will be evaluated based on the following evaluation criteria:

1. Round 1: 100 Points Total

a. Experience (80 points)

- i. The proposer's demonstrated understanding of, and expertise in, providing legal services as described in the RFP. (60 points)
- ii. The proposer's demonstrated understanding of the legal and practical issues that are unique to public pension funds or other similarly situated clients with fiduciary obligations. (20 points)

b. Organizational Capability (20 points)

- i. The proposing firm's size as well as the personnel, professional and other resources proposed for the provision of the required services and the availability of such resources when and where needed.

2. Round 2: 100 Points Total (Applicable only to responsive proposers with a final First Round Score of 75 points or above)

a. Proposed Approach

- i. The proposer's approach to identifying and effectively addressing potential issues in transaction documents and side letters. (50 points)
- ii. The proposer's initial work product created after reviewing the assigned transaction documents (please explain your process for preparing such documents). (25 points)
- iii. The proposer's approach to negotiating the transactions for the respective contractor pool. (25 points)

C. Basis for Contract Award

Contract award(s) will be made to the responsible Proposer(s) whose proposal(s) represents the best value to the City by optimizing quality, cost and efficiency and therefore is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP, including the quantitative preference to be provided to proposals submitted by vendors that are M/WBEs or State-certified M/WBEs. Contract award will be subject to:

- a determination of vendor responsibility,
- the timely completion of contract negotiations between the Comptroller's Office and the selected proposer, and
- contract registration pursuant to Section 328 of the New York City Charter.

Notwithstanding the above, by soliciting proposals, the Comptroller is not obligated to award any contract, or to award a contract for the performance of the entire scope of services.

REMAINDER OF PAGE INTENTIONALLY BLANK

SECTION VI - GENERAL INFORMATION TO PROPOSERS

A. Complaints

The Comptroller's Office 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 Bureau of Contract Administration, the David N. Dinkins Municipal Building, 1 Centre Street, Room 727, 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 RFP and the resulting contract awards, if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board ("PPB") Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-0010 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, specifically the form that appears in "Appendix A - General Provisions Governing Contracts for Consultants, Professional and Technical Services." A copy of the applicable document is attached to this RFP for review as Appendix A.

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 Procurement and Sourcing Solutions Portal (PASSPort) Questionnaires/Certification of No Change 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. Although not required at this time, PASSPORT Questionnaires and Supply and Services Reports are available from the Comptroller's Web site, www.comptroller.nyc.gov. Select "Services/For Businesses/Doing Business with the Comptroller/Questionnaires and Forms".

E. Proposer Appeal Rights

Pursuant to New York City's PPB Rules, proposers have the right to appeal Comptroller non-responsiveness determinations and Comptroller non-responsibility determinations and to protest a Comptroller's Office determination regarding the solicitation or award of a contract.

F. Multi-Year Contracts

Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Comptroller's Office 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 Comptroller's Office will notify the contractor as soon as it 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 provided for in the contract.

G. Prompt Payment Policy

Pursuant to New York City's PPB Rules, it is the policy of the City to process contract payments efficiently and expeditiously.

H. Prices Irrevocable

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

I. Confidential, Proprietary Information or Trade Secrets

Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the Comptroller's Office. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the Comptroller's Office.

J. RFP Postponement/Cancellation

The Comptroller's Office reserves the right to postpone or cancel this RFP, in whole or in part, and/or reject all proposals.

K. Proposer Costs

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

L. PASSPort/VENDEX Fees

Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the PASSPort/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(s) 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.

M. Whistleblower Protection Expansion Act Rider

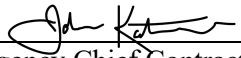
Local Law Nos. 30 and 33 of 2012 codified at sections 6-132 and 12-113 of the New York City Administrative Code, the Whistleblower Protection Expansion Act, protect employees of certain City contractors from adverse personnel action based on whistleblower activity relating to a City contract and require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

N. Subcontractor Compliance Notice

The selected 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. The City's web-based subcontractor reporting system is located online at the Payee Information Portal (PIP) at: www.nyc.gov/pip.

O. Charter Section 312(a) Certification

- ☒ The Comptroller's Office has determined that the contract(s) to be awarded through this RFP will not result in the displacement of any New York City employee within this Agency. See attached Displacement Determination Form.
- ☐ The Comptroller's Office has determined that the contract(s) to be awarded through this Request for Proposals will result in the displacement of New York City employee(s) within this Agency. See attached Displacement Determination Form.
- ☐ The contract to be awarded through this Request for Proposals is a task order contract that does not simultaneously result in the award of a first task order; a displacement determination will be made in conjunction with the issuance of each task order pursuant to such task order contract. Determinations for any subsequent task orders will be made in conjunction with such subsequent task orders.



Agency Chief Contracting Officer

12/22/2023

Date

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: 01524OGC68565

Your Name: Alison MacLeod

Phone: (212) 669-3216

Email: amacleo@comptroller.nyc.gov

Please specifically identify the service(s) being procured.

The Office of Comptroller of the City of New York ("Comptroller" or "Comptroller's Office") is seeking to engage appropriately qualified law firms to become members of one or both of the outside counsel legal services contractor pools described below. Law firms awarded master agreements in either contractor pool will be required to provide legal services on an "as needed" basis and serve as the outside investment counsel (the "Investment Counsel") to New York City Retirement Systems (each a "System" and collectively, the "Systems") and the Comptroller's Office in connection with a broad range of private market investments to be made by the Systems during the contract term.



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

☐ 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.

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.

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.

☐ 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 A
PROPOSAL COVER LETTER

Select One (if proposing for both Pools, complete a separate form)

☐ Pool #1 (Private Equity,
Opportunistic Fixed Income and
Real Assets)

☐ Pool #2 (Hedge Funds)

Proposer Information

Name: _____

Address: _____

Tax ID/EIN #: _____

Proposer's Contact Person

Name: _____

Title: _____

Telephone #: _____

Email: _____

Certification of Compliance with Minimum Qualification Requirements

By signing below, the authorized representative for the proposer certifies that its firm meets the minimum qualification requirements set forth in Section II(F) of the RFP and listed below:

- Proposers must have at least 20 years of aggregate expertise providing the legal services described in Section III.D. of this RFP relating to the pool indicated above;
- Each lawyer identified by proposers in their proposals must be authorized to practice law in the state in which each such individual primarily practices and must be a member in good standing with the Bar of the state in which each such individual primarily practices;
- Proposers must currently have at least four (4) public or private pension or other institutional investor clients; and
- Proposer complies with the "Conflict of Interest" requirements set forth in Section II(F) of this RFP ("Conflicts of Interest and Other Restrictions") and will continue to comply with said requirements during the Term of any contract awarded pursuant to this RFP.

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

ATTACHMENT B
ACKNOWLEDGEMENT OF ADDENDA

Instructions: Complete Part I or Part II, whichever is applicable, and sign your name in Part III.

Part I

☐ **Addendum/Addenda received in connection with this RFP.**

List the date(s) for each Addendum received by the proposer in connection with this RFP in the applicable space(s) below:

Addendum # 1, Dated _____, 2024
Addendum # 2, Dated _____, 2024
Addendum # 3, Dated _____, 2024
Addendum # 4, Dated _____, 2024
Addendum # 5, Dated _____, 2024
Addendum # 6, Dated _____, 2024
Addendum # 7, Dated _____, 2024
Addendum # 8, Dated _____, 2024
Addendum # 9, Dated _____, 2024
Addendum # 10, Dated _____, 2024

Part II

☐ **No Addendum was received in connection with this RFP.**

Part III

Proposer Name: _____

Signature of Authorized Representative: _____

Name of Authorized Representative: _____

Date: _____

ATTACHMENT C
PRICE PROPOSAL FORM
POOL 1 – PRIVATE EQUITY, OPPORTUNISTIC FIXED INCOME
AND REAL ASSETS

PROPOSER NAME: _____

INSTRUCTIONS: Proposers must fully complete the form below for each applicable contractor pool. Failure to do so may result in a non-responsive determination. Categories A, B and C will cover the firm's not-to-exceed flat fee for all pre-closing services. The not-to-exceed flat fee will be incorporated into the resulting Master Agreement, and shall govern the not-to-exceed flat fee that can be proposed in the Task Order Process. The hourly rates proposed are applicable to all categories of service, and will set the not-to-exceed hourly rate applied for all post-closing work.

	Not to Exceed Rate (Includes all Expenses)
Category A: New Relationship (New Manager - Funds where the Investor has no prior existing relationship with the manager of the fund.)	\$
A.1 Lead/large investor in first-time fund (Investor commitments above \$100 million (or above 5% of the fund's total commitments) to a new manager's first fund.)	\$
A.2 Large investor in subsequent fund - first close (Investor commitments above \$100 million (or above 5% of the fund's total commitments) to any successor funds raised by the new manager where the Investor participates in the first closing.)	\$
A.3 Large investor in subsequent fund - subsequent close (Investor commitments above \$100 million (or above 5% of the fund's total commitments) to any successor funds raised by the new manager where the Investor participates in subsequent closing.)	\$
A.4 Average-sized investor in first-time fund - first close (Investor commitments above \$100 million (or above 5% of the fund's total commitments) to any successor funds raised by the new manager where the Investor participates in subsequent closing.)	\$
A.5 Average-sized investor in first-time fund - subsequent close (Investor commitments less than \$100 million (or less than 5% of the fund's total commitments) to a new manager's first fund where the Investor participates in subsequent closing.)	\$
A.6 Average-sized investor in subsequent fund (Investor commitments less than \$100 million (or less than 5% of the fund's total commitments) to any successor funds raised by the new manager where the Investor participates in subsequent closing.)	\$

ATTACHMENT C
PRICE PROPOSAL FORM
POOL 1 – PRIVATE EQUITY, OPPORTUNISTIC FIXED INCOME
AND REAL ASSETS

PROPOSER NAME: _____

Category B: Prior Relationship (Subsequent investment with sponsor in subsequent fund) (Existing Manager - Funds where the Investor has a prior existing relationship with the manager of the fund.)	\$
B.1 Lead/large investor (Investor commitments above \$100 million (or above 5% of the fund's total commitments) to any successor funds raised by the existing manager.)	\$
B.2 Average sized investor (Investor commitments less than \$100 million (or less than 5% of the fund's total commitments) to any successor funds raised by the existing manager.)	\$
Category C: Sole Investor (involving negotiation of structure issues and drafting and/or negotiation of all transaction documents; issuance of legal opinions, etc.) (Investor's investment in a fund of one or a similar structure, created only between the Investor and the manager.)	\$
Hourly Rate for Post-Closing Work (Applicable to All Categories)	\$

ATTACHMENT C
PRICE PROPOSAL FORM
POOL 2 – HEDGE FUNDS

INSTRUCTIONS: Proposers must fully complete the form below for each applicable contractor pool. Failure to do so may result in a non-responsive determination. Categories A, B and C will cover the firm’s not-to-exceed flat fee for all pre-closing services. The not-to-exceed flat fee will be incorporated into the resulting Master Agreement, and shall govern the not-to-exceed flat fee that can be proposed in the Task Order Process. The hourly rates proposed are applicable to all categories of service, and will set the not-to-exceed hourly rate applied for all post-closing work.

	Not to Exceed Rate (Includes all Expenses)
Category A: New Relationship (New Manager - Funds where the Investor has no prior existing relationship with the manager of the fund.)	\$
A.1 Lead/large investor in first-time fund (Investor commitments above \$100 million (or above 5% of the fund’s total commitments) to a new manager’s first fund.)	\$
A.2 Large investor in subsequent fund - first close (Investor commitments above \$100 million (or above 5% of the fund’s total commitments) to any successor funds raised by the new manager where the Investor participates in the first closing.)	\$
A.3 Large investor in subsequent fund - subsequent close (Investor commitments above \$100 million (or above 5% of the fund’s total commitments) to any successor funds raised by the new manager where the Investor participates in subsequent closing.)	\$
A.4 Average-sized investor in first-time fund - first close (Investor commitments above \$100 million (or above 5% of the fund’s total commitments) to any successor funds raised by the new manager where the Investor participates in subsequent closing.)	\$
A.5 Average-sized investor in first-time fund - subsequent close (Investor commitments less than \$100 million (or less than 5% of the fund’s total commitments) to a new manager’s first fund where the Investor participates in subsequent closing.)	\$
A.6 Average-sized investor in subsequent fund (Investor commitments less than \$100 million (or less than 5% of the fund’s total commitments) to any successor funds raised by the new manager where the Investor participates in subsequent closing.)	\$

ATTACHMENT C
PRICE PROPOSAL FORM
POOL 2 – HEDGE FUNDS

PROPOSER NAME: _____

Category B: Prior Relationship (Subsequent investment with sponsor in subsequent fund) (Existing Manager - Funds where the Investor has a prior existing relationship with the manager of the fund.)	\$
B.1 Lead/large investor (Investor commitments above \$100 million (or above 5% of the fund's total commitments) to any successor funds raised by the existing manager.)	\$
B.2 Average sized investor (Investor commitments less than \$100 million (or less than 5% of the fund's total commitments) to any successor funds raised by the existing manager.)	\$
Category C: Sole Investor (involving negotiation of structure issues and drafting and/or negotiation of all transaction documents; issuance of legal opinions, etc.) (Investor's investment in a fund of one or a similar structure, created only between the Investor and the manager.)	\$
Hourly Rate for Post-Closing Work (Applicable to All Categories)	\$

ATTACHMENT D

**SAMPLE TASK ORDER REQUEST FOR SERVICES AND TASK ORDER
TEMPLATES**

**PRIVATE MARKETS COUNSEL TEMPLATE 1:
REQUEST FOR SERVICES**



REQUEST FOR SERVICES

PRIVILEGED AND CONFIDENTIAL

THIS FORM MUST BE COMPLETED BY THE COMPTROLLER'S OFFICE

Contractor Pool:	☐ Private Equity, Opportunistic Fixed Income and Real Assets ☐ Hedge Funds
Category of Service:	☐ Category A (New Relationship) ☐ Category B (Prior Relationship) ☐ Category C (Sole Investor) ☐ Category D (Investor in a Bespoke Unique Transaction)
Fund	<INSERT FUND NAME>

TO Submission Details	
RFS Issue Date	
RFS Response Due Date and Time	
RFS Submission Email	BAMCounselSubmission@comptroller.nyc.gov
RFS Submission Subject/Fund Name	
Required RFS Proposal Documentation	- A fully completed and signed "RFS Proposal Form" ("RFS Proposal") – Parts A and B; OR - A fully completed and signed "No Bid" Response (Part C) Note: While the RFS will generally be in this format, the Comptroller's Office reserves the right to add additional detailed information for a specific transaction if the Comptroller's Office deems such additional detail to be necessary for firms' submission of a fully responsive RFS Proposal.
Questions	All questions regarding this RFS must be submitted by email to [insert email address] no later than 12 P.M. (EST) on . The Comptroller's Office will provide responses to any questions simultaneously to all applicable contractor pool members as expeditiously as possible via an email addendum.

**PRIVATE MARKETS COUNSEL TEMPLATE 1:
REQUEST FOR SERVICES**

TO Proposal Evaluation Criteria/Basis for Award	
Evaluation Criteria	1. Part A - Price Proposal 2. Part B - Technical Response, including, but not limited to, the following factors: ▪ Whether the firm has previously represented Systems with the fund sponsor; ▪ Whether the firm has represented, or is representing, another investor in the current fund; ▪ Whether the firm has represented another investor in a previous fund or another fund with sponsor; ▪ Whether the firm has represented the sponsor on other matters; and Any background or circumstances that the Comptroller's Office believes would make a firm particularly well-suited to handle the transaction, including a legal expertise and knowledge of a specified area of practice or familiarity with a particular jurisdiction and its laws and regulations.
Task Order Award	Award of Task Order will be made to the proposing firm whose RFS Proposal is determined to be in the best interests of the Systems as determined by the Comptroller's Office, taking into consideration the Price Proposal and Technical Response as well as the other evaluation criteria and factors set forth above relating to the Technical Response. Greater consideration will be given to vendors that offer more competitive pricing. Work will begin on the date indicated in the fully executed TO.

**PRIVATE MARKETS COUNSEL TEMPLATE 1:
REQUEST FOR SERVICES**

TRANSACTION DESCRIPTION

Fund	
General Partner	
Manager	
Key Principals	
Objective	
Target Size (if applicable)	
Hard Cap (if applicable)	
Expected Commitments*	
Prior Relationship (Check One)	☐ YES ☐ NO
Anticipated Investment Date	
Fund Counsel	
Attached Draft Documents	1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____

INSTRUCTIONS: Insert and attach list of applicable documents (e.g., the LPA)

* Numbers displayed here are intended to help your firm prepare its Price Proposal. Firms must confirm actual commitment amounts with the Comptroller's Office prior to completing Subscription Documents for individual deals.

**PRIVATE MARKETS COUNSEL TEMPLATE 2:
RESPONSE TO REQUEST FOR SERVICES**

REQUEST FOR SERVICES PROPOSAL FORM (PARTS A, B & C)

COMPTROLLER	Legal Counsel Pool: ☐ Private Equity, Opportunistic Fixed Income and Real Assets ☐ Hedge Funds Fund: <INSERT FUND NAME>
FIRM	Name of Proposing Firm: _____ Name of Authorized Representative: _____ Signature: _____ Date: _____

Instructions: Responding Firm must fully complete Parts A and B of this Request for Services Proposal Form. *If a firm decides not to submit a proposal in response to this RFS, the firm must fully complete Part C with including a written explanation of the reason for their non-submission. Failure to provide a valid explanation may affect the firm's eligibility for future work.*

Part A: Price Proposal	
(1) Proposed Flat Fee for Initial Review and Related Services. The Proposed Flat Fee covers the following anticipated services relating to the transaction described in <u>Attachment A to RFS</u>: - Initial review of the Limited Partnership of the Fund, as amended ("LPA") and/or other governing document of the Fund and review of any co-investment terms (including review and negotiation of any co-investment vehicle); - Initial review of any and all other fund documents; - Drafting and negotiation of side letters, keeping the Systems' particular requirements in mind; - Consultations with the designated counsel from the Comptroller's Office ("NYC Counsel");	\$ _____ Note: If selected, the proposed flat fee listed above will become binding. The flat fee must be a specific dollar amount, not a range, and cannot exceed the flat fee set forth in the Master Agreement.

**PRIVATE MARKETS COUNSEL TEMPLATE 2:
RESPONSE TO REQUEST FOR SERVICES**

- Discussion of the firm's comments with the counsel for the particular investment fund in question ("Fund Counsel"); - Discussion of the Fund Counsel responses to the firm's requests with NYC Counsel; and - Attention to closing matters.	
(2) Proposed Fee for Post-Closing Services. The Proposed Fee for Post-Closing Services covers the anticipated services listed below relating to the transaction described in <u>Attachment A to RFS</u>. It should be expressed as a flat fee and/or a "fee discount" from the proposing firm's standard hourly rates). - Subsequent MFN reviews by the selected firm, - Review of LPA amendments - Review of new co-investment opportunities and other alternative investment vehicles (if any); - Review of other related matters.	\$ _____ per hour \$ _____ Maximum Cap Amount Note: The hourly rates proposed cannot exceed the rates set forth in the Master Agreement. Proposal must include an hourly rate and a maximum cap amount.
(3) Identify below each attorney that will be assigned to this transaction if selected, and whether any of those attorneys are currently expected to be absent from the office, or otherwise unavailable to work, for five (5) or more days during this transaction. Attorney 1: _____ Hourly Rate \$ _____ Attorney 2: _____ Hourly Rate \$ _____ Attorney 3: _____ Hourly Rate \$ _____ Attorney 4: _____ Hourly Rate \$ _____ ☐ Listed Attorneys are not expected to be absent from the office or otherwise unavailable to work for five or more days during the term of this transaction. Firm acknowledges that attorneys listed above are listed on the approved list of Attorneys in the Master Agreement.	

**PRIVATE MARKETS COUNSEL TEMPLATE 2:
RESPONSE TO REQUEST FOR SERVICES**

Part B: Technical Response

(4) Based on the Fund information contained in Attachment A to RFS (including the list of principals), provide responses to the following:

a) Has your firm cleared all conflicts? Yes _____ No _____

If No, explain:

b) Indicate in the space directly below any past, current, or potential conflicts your firm has cleared. _____

c) Will your firm require a conflict waiver letter? Yes _____ No _____

If Yes, please explain:

d) Has your firm represented, is it currently representing, or does it intend to represent other investors in this Fund? Yes _____ No _____

If Yes, explain:

e) Has your firm represented other investors or the Systems on a prior fund with this manager? Yes _____ No _____

If Yes, explain:

(5) Please provide any background or circumstances that make your firm particularly well-suited to handle the transaction, including a legal expertise and knowledge of a specified area of practice or familiarity with a particular jurisdiction and its laws and regulations.

**PRIVATE MARKETS COUNSEL TEMPLATE 2:
RESPONSE TO REQUEST FOR SERVICES**

Part C: “No Bid” Response

Instructions: Firms that do not submit a proposal in response to this RFS, must provide a written explanation. Failure to provide a valid explanation may affect the firm’s eligibility for future work, and may result in a firm’s negative performance evaluation of its Master Agreement.

SAMPLE

Name of Authorized Representative from Proposing Firm: _____

Signature: _____

Date: _____

**PRIVATE MARKETS COUNSEL TEMPLATE 3:
TASK ORDER AGREEMENT**



TASK ORDER AGREEMENT

Master Agreement Number (MMA1): _____

Task Order Number: _____

Task Order Start: _____

Task Order End: _____

Task Order Value: \$ _____

Master Contract

This Task Order ("TO") is issued pursuant to the Master Agreement referenced above by and between the Office of Comptroller of the City of New York ("Comptroller" or "Comptroller's Office") and <FIRM NAME> (hereinafter the "Firm"). Any term not otherwise defined herein shall have the meaning ascribed to it in the Master Agreement.

Scope of Work

Your company is hereby awarded the assignment to provide services as described in the Request for Services ("RFS") for the above-referenced assignment number and information contained in the Task Order Proposal Form (Parts A and B) Request for Services, each of which shall be included as an attachment to this TO.

Task Order Changes

Any changes to this Task Order must be mutually agreed to by the Parties in writing in the form of an Amendment.

Invoicing

Invoices for work performed pursuant to this Task Order will be submitted to <_____, and shall include at minimum the following information:

1. Firm name, address and contact name and phone number must be prominently displayed.
2. Master Agreement Number.
3. Task Order Number.
4. Invoice number and date of invoice.
5. Invoice Service Period.
6. Detailed description of service must be in-line with the scope of services defined in the Task Order.
7. Itemized list of all charges related to transaction. This should include the attorney's name and hourly rate, the time spent on each task including the date of service, and a brief description of the task.
8. Total amount due

**PRIVATE MARKETS COUNSEL TEMPLATE 3:
TASK ORDER AGREEMENT**

9. The Firm's remittance address.

Miscellaneous Terms and Conditions

- a. The terms and conditions set forth in this TO Agreement shall not alter or supersede any terms, conditions or rates set forth in the Master Agreement.
- b. Amendments. Any amendments to this TO Agreement must be agreed to by the Firm and The Comptroller in writing.
- c. Counterparts. This TO Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this TO Agreement by fax or e-mail shall be effective as delivery of a manually executed counterpart.
- d. Governing Law. This TO Agreement shall be governed by and interpreted in accordance with the laws of the State of New York.

**AGREED TO AND ACCEPTED BY:
<FIRM NAME>**

By: _____
(Signature)
Name: _____
Title: _____
Date: _____

**AGREED TO AND ACCEPTED BY:
OFFICE OF COMPTROLLER OF THE CITY OF NEW YORK**

By: _____
(Signature)
Name: _____
Title: _____
Date: _____

**PRIVATE MARKETS COUNSEL TEMPLATE 4:
TASK ORDER AMENDMENT**



TASK ORDER AMENDMENT

Master Agreement Number (MMA1): _____

Task Order Number: _____

Amendment Number: _____

Original Task Order Start: _____

Amended Task Order Start: _____

Original Task Order End: _____

Amended Task Order End: _____

Original Task Order Value: \$ _____

Amended Task Order Value: \$ _____

Master Contract

This Task Order Amendment ("TO Amendment") is issued pursuant to the Master Agreement referenced above by and between the Office of Comptroller of the City of New York ("Comptroller" or "Comptroller's Office") and <FIRM NAME> (hereinafter the "Firm"). Any term not otherwise defined herein shall have the meaning ascribed to it in the Master Agreement.

Amendment

The Task Order is amended as follows:

<INCLUDE DESCRIPTION OF CHANGES>

Task Order Changes

Any additional changes to the Task Order must be mutually agreed to by the Parties in writing in the form of an Amendment.

Miscellaneous Terms and Conditions

- a. No Amendment. With the exception of the changes listed above, this Amendment shall not alter, modify or amend the terms and conditions contained in the Original Task Order in any respect.
- b. Counterparts. This Amendment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature

**PRIVATE MARKETS COUNSEL TEMPLATE 4:
TASK ORDER AMENDMENT**

page of this Amendment by fax or e-mail shall be effective as delivery of a manually executed counterpart.

- c. Governing Law. This Amendment shall be governed by and interpreted in accordance with the laws of the State of New York.

AGREED TO AND ACCEPTED BY:

<FIRM NAME>

By: _____

(Signature)

Name: _____

Title: _____

Date: _____

AGREED TO AND ACCEPTED BY:

OFFICE OF COMPTROLLER OF THE CITY OF NEW YORK

By: _____

(Signature)

Name: _____

Title: _____

Date: _____

ATTACHMENT E
DOING BUSINESS DATA FORM

A fillable form can be downloaded from the Comptroller's Website at
<https://comptroller.nyc.gov/services/for-businesses/doing-business-with-the-comptroller/questionnaires-and-forms/>

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.

Entity Information

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

Entity EIN/TIN _____ Entity Name _____

Filing Status

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.

(Select One)

- ☐ 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

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

☐ This position does not exist

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

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

☐ This position does not exist

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

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

☐ This position does not exist

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 _____

Please return this form to the City agency that supplied it to you, not to Doing Business Accountability.

Standard Form

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.

NEW FOR 2018: 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 212-788-8104 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 212-788-8104.

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 212-409-1800.

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 the Doing Business Accountability Project at 212-788-8104 or doingbusiness@mocs.nyc.gov.

ATTACHMENT F

WHISTLEBLOWER PROTECTION AND EXPANSION ACT RIDER

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

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

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

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.

Local Law 30-2012

By Council Members Garodnick, Barron, Brewer, Chin, Dromm, Ferreras, Fidler, Gennaro, Gentile, Jackson, James, Koppell, Lander, Mark-Viverito, Mealy, Mendez, Palma, Rose, Seabrook, Vann, Williams, Nelson, Foster, Van Bramer, Halloran and Koo

A Local Law to amend the administrative code of The City of New York, in relation to requiring city contractors and subcontractors to post information concerning their employees' reporting of fraud, false claims, criminality or corruption and their whistleblower protection rights.

Be it enacted by the Council as follows:

Section 1. Title 6 of the administrative code of The City of New York is amended by adding a new section 6-132 to read as follows:

§6-132. Posting of notice of whistleblower protection rights.

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

(1) "Contract" shall mean any written agreement, purchase order or instrument valued in excess of one hundred thousand dollars or more pursuant to which a contracting agency is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, and shall include a subcontract between a contractor and a subcontractor.

(2) "Contracting agency" shall mean a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from The City treasury.

(3) "Contractor" shall mean a person or business entity who is a party to a contract with a contracting agency valued in excess of one hundred thousand dollars, and "subcontractor" shall mean a person or entity who is a party to a contract with a contractor valued in excess of one hundred thousand dollars.

b. Posting of information about reporting fraud, false claims, criminality or corruption. Every contractor or subcontractor having a contract valued in excess of one hundred thousand dollars or more shall post a notice, in a prominent and accessible place on any site where work pursuant to such contract or subcontract is performed, containing information about

(1) 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 such contract or subcontract, and

(2) the rights and remedies afforded to its employees under sections 7-805 and 12-113 of the administrative code for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with such contract or subcontract.

c. Contract provisions. Every city contract or subcontract valued in excess of one hundred thousand dollars shall contain a provision detailing the requirements of this section. If a contracting agency determines that there has been a violation of this section, it shall take such action it deems appropriate consistent with the remedies available under the contract or Subcontract.

d. Nothing in this section shall be construed to limit an agency's authority to cancel or terminate a contract, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a contractor city business.

§2. This local law shall take effect 120 days after its enactment into law and shall apply to contracts and subcontracts for which bids or proposals are first solicited after such effective date; provided, however, that the commissioner of investigation and The City's chief procurement officer shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

Local Law 33-2012

By Council Members Garodnick, Halloran, Dromm, Barron, Brewer, Ferreras, Fidler, Gentile, Jackson, James, Koo, Koppell, Lander, Levin, Mark-Viverito, Palma, Rose, Sanders Jr., Seabrook, Van Bramer, Vann, Williams, Rivera, Rodriguez, Foster, Chin, Mealy, Gennaro and Ulrich

A Local Law to amend the administrative code of The City of New York, in relation to extending whistleblower protection for officers and employees of city contractors and subcontractors.

Be it enacted by the Council as follows:

Section 1. This bill shall be known and may be cited as the "Whistleblower Protection Expansion Act."

§ 2. Section 12-113 of the administrative code of The City of New York, as amended by local law number 10 for the year 2003, paragraphs 4, 5 and 6 of subdivision a and paragraph 3 of subdivision b as added by local law number 25 for the year 2007, and subdivision f as amended by local law number 25 for the year 2007, is amended to read as follows:

§ 12-113 Protection of sources of information. a. Definitions. For purposes of this section:

1. "Adverse personnel action" shall include dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space or 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.

2. "Remedial action" means an appropriate action to restore the officer or employee to his or her former status, which may include one or more of the following:

(i) reinstatement of the officer or employee to a position the same as or comparable to the position the officer or employee held or would have held if not for the adverse personnel action, or, as appropriate, to an equivalent position;

(ii) reinstatement of full seniority rights;

(iii) payment of lost compensation; and

(iv) other measures necessary to address the effects of the adverse personnel action.

3. "Commissioner" shall mean the commissioner of investigation.
4. "Child" shall mean any person under the age of nineteen, or any person ages nineteen through twenty-one if such person receives instruction pursuant to an individualized education plan.
5. "Educational welfare" shall mean any aspect of a child's education or educational environment that significantly impacts upon such child's ability to receive appropriate instruction, as mandated by any relevant law, rule, regulation or sound educational practice.
6. "Superior officer" shall mean an agency head, deputy agency head or other person designated by the head of the agency to receive a report pursuant to this section, who is employed in the agency in which the conduct described in such report occurred.
7. "Contract" shall mean any written agreement, purchase order or instrument having a value in excess of one hundred thousand dollars pursuant to which a contracting agency is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, and shall include a subcontract between a covered contractor and a covered subcontractor. Such term shall not include contracts or subcontracts resulting from emergency procurements or that are government-to-government procurements.
8. "Contracting agency" shall mean a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from The City Treasury.

9. "Covered contractor" shall mean a person or business entity who is a party or a proposed party to a contract with a contracting agency valued in excess of one hundred thousand dollars, and "covered subcontractor" shall mean a person or entity who is a party or a proposed party to a contract with a covered contractor valued in excess of one hundred thousand dollars.

10. "Officers or employees of an agency of The City" shall be deemed to include officers or employees of local development corporations or other not-for-profit corporations that are parties to contracts with contracting agencies and the governing boards of which include city officials acting in their official capacity or appointees of city officials. Such officers and employees shall not be deemed to be officers or employees of a covered contractor or covered subcontractor.

b. 1. No officer or employee of an agency of The City shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by another city officer or employee, which concerns his or her office or employment, or by persons dealing with The City, which concerns their dealings with The City, (i) to the commissioner, or (ii) to a council member, the public advocate or the comptroller, who shall refer such report to the commissioner. For purposes of this subdivision, an agency of The City shall be deemed to include, but not be limited to, an agency the head or members of which are appointed by one or more city officers, and the offices of elected city officers.

2. No officer or employee of a covered contractor or covered subcontractor shall take an adverse personnel action with respect to another officer or employee of such contractor or subcontractor 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 of such contractor or subcontractor, which concerns a contract with a contracting agency, (i) to the commissioner, (ii) to a council member, the public advocate or the comptroller, who shall refer such report to the commissioner, or (iii) to The City chief procurement officer, agency chief contracting officer, or agency head or commissioner of the contracting agency, who shall refer such report to the commissioner.

3. Every contract or subcontract in excess of one hundred thousand dollars shall contain a provision detailing the provisions of paragraph two of this subdivision and of paragraph two of subdivision e of this section.

[2.] 4. Upon request, the commissioner, council member, public advocate or comptroller receiving the report of alleged adverse personnel action shall make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making such report.

[3.] 5. No officer or employee of an agency of The City shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or reasonably believes to present a substantial and specific risk of harm to the health, safety or educational welfare of a child by another city officer or employee, which concerns his or her office or employment, or by persons dealing with The City, which concerns their dealings with The City, (i) to the commissioner, (ii) to a council member, the public advocate, the comptroller or the mayor, or (iii) to any superior officer.

c. An officer or employee (i) of an agency of The City, or (ii) of a public agency or public entity subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter who

believes that another officer or employee has taken an adverse personnel action in violation of subdivision b of this section may report such action to the commissioner.

d. 1. Upon receipt of a report made pursuant to subdivision c of this section, the commissioner shall conduct an inquiry to determine whether retaliatory adverse personnel action has been taken.

2. Within fifteen days after receipt of an allegation pursuant to subdivision c of this section of a prohibited adverse personnel action, the commissioner shall provide written notice to the officer or employee making the allegation that the allegation has been received by the commissioner. Such notice shall include the name of the person in the department of investigation who shall serve as a contact with the officer or employee making the allegation.

3. Upon the completion of an investigation initiated under subdivision c of this section, the commissioner shall provide a written statement of the final determination to the officer or employee who complained of the retaliatory adverse personnel action. The statement shall include the commissioner's recommendations, if any, for remedial action, or shall state the commissioner has determined to dismiss the complaint and terminate the investigation.

e. 1. Upon a determination that a retaliatory adverse personnel action has been taken with respect to an officer or employee of an agency of The City in violation of paragraph one or five of subdivision b of this section, the commissioner shall without undue delay report his or her findings and, if appropriate, recommendations to the head of the appropriate agency or entity, who (i) shall determine whether to take remedial action and (ii) shall report such determination to the commissioner in writing. Upon a determination that the agency or entity head has failed to take appropriate remedial action, the commissioner shall consult with the agency or entity head and afford the agency or entity head reasonable opportunity to take such action. If such action is not taken, the commissioner shall report his or her findings and the response of the agency or entity head (i) if

the complainant was employed by an agency the head or members of which are appointed by the mayor, to the mayor, (ii) if the complainant was employed by a non-mayoral agency of The City, to The City officer or officers who appointed the agency head, or (iii) if the complainant was employed by a public agency or other public entity not covered by the preceding categories but subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter, to the officer or officers who appointed the head of the public agency or public entity, who shall take such action as is deemed appropriate.

2. Any officer or employee of a covered contractor or covered subcontractor who believes that he or she has been the subject of an adverse personnel action in violation of paragraph two of subdivision b shall be entitled to bring a cause of action against such covered contractor or covered subcontractor to recover all relief necessary to make him or her whole. Such relief may include but shall not be 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 attorneys' fees. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the agency chief contracting officer or agency head or commissioner of the contracting agency of such action; provided, however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against The City, any

public agency or other public entity, or local development corporations or not-for-profit corporations the governing boards of which include city officials acting in their official capacity or appointees of city officials, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

f. Nothing in this section shall be construed to limit the rights of any officer or employee with regard to any administrative procedure or judicial review, nor shall anything in this section be construed to diminish or impair the rights of a public employee or employer under any law, rule, regulation or collective bargaining agreement or to prohibit any personnel action which otherwise would have been taken regardless of any report of information made pursuant to this section.

g. Violation of this section may constitute cause for administrative penalties.

h. The commissioner shall conduct ongoing public education efforts as necessary to inform employees and officers of covered agencies and contractors of their rights and responsibilities under this section.

i. Not later than October thirty-first of each year, the commissioner shall prepare and forward to the mayor and the council a report on the complaints governed by this section during the preceding fiscal year. The report shall include, but not be limited to, the number of complaints received pursuant to this section, and the disposition of such complaints.

§ 3. This local law shall take effect ninety days after its enactment into law; provided, however, that the provisions of this local law shall apply only to contracts or subcontracts solicited or renewed on or after such effective date.

New York City Administrative Code section 7-805
Remedies of Employees.

a. (1) Any officer or employee of The City of New York who believes that he or she has been the subject of an adverse personnel action, as such term is defined in paragraph one of subdivision a of section 12-113 of the administrative code of The City of New York; or

(2) any officer or employee of The City or state of New York, who believes that he or she has been the subject of a retaliatory action, as defined by section seventy-five-b of the civil service law; or

(3) any non-public employee who believes that he or she has been the subject of a retaliatory action by his or her employer, as defined by section seven hundred forty of the labor law because of lawful acts of such employee in furtherance of a civil enforcement action brought under this section, including the investigation, initiation, testimony, or assistance in connection with, a civil enforcement action commenced or to be commenced under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include but not be limited to: (i) an injunction to restrain continued discrimination, (ii) reinstatement to the position such employee would have had but for the discrimination 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 discrimination, including litigation costs and reasonable attorneys' fees.

b. An employee described in subdivision a of this section may bring an action in any court of competent jurisdiction for the relief provided in this section.

ATTACHMENT G
CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT

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

[Please Check One]

☐ 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: _____, 20__

SIGNATURE

PRINTED NAME

TITLE

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

Notary Public

Dated: _____, 20__

IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS

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

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

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

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

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

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

ATTACHMENT H
TAX AFFIRMATION FORM

ATTACHMENT I
TAX AFFIRMATION FORM

The undersigned bidder or proposer 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

If a corporation, place
seal here:

Title

*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 mean of identifying businesses seeking City contracts.

APPENDIX A

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

APPENDIX A

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

ARTICLE 1 - DEFINITIONS.....	1
<i>Section 1.01 Definitions.....</i>	<i>1</i>
ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS AND DISCLOSURES	2
<i>Section 2.01 Procurement of Agreement</i>	<i>2</i>
<i>Section 2.02 Conflicts of Interest</i>	<i>2</i>
<i>Section 2.03 Certification Relating to Fair Practices.....</i>	<i>3</i>
<i>Section 2.04 Disclosures Relating to Vendor Responsibility</i>	<i>3</i>
<i>Section 2.05 Disclosure Relating to Bankruptcy and Reorganization</i>	<i>3</i>
<i>Section 2.06 Authority to Execute Agreement</i>	<i>4</i>
ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING	4
<i>Section 3.01 Assignment.....</i>	<i>4</i>
<i>Section 3.02 Subcontracting</i>	<i>5</i>
ARTICLE 4 - LABOR PROVISIONS.....	7
<i>Section 4.01 Independent Contractor Status.....</i>	<i>7</i>
<i>Section 4.02 Employees and Subcontractors.....</i>	<i>8</i>
<i>Section 4.03 Removal of Individuals Performing Work</i>	<i>8</i>
<i>Section 4.04 Minimum Wage; Living Wage</i>	<i>9</i>
<i>Section 4.05 Non-Discrimination in Employment</i>	<i>11</i>
<i>Section 4.06 Paid Sick Leave Law.....</i>	<i>14</i>
<i>Section 4.07 Whistleblower Protection Expansion Act</i>	<i>18</i>
ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS.....	20
<i>Section 5.01 Books and Records</i>	<i>20</i>
<i>Section 5.02 Retention of Records</i>	<i>20</i>
<i>Section 5.03 Inspection</i>	<i>20</i>
<i>Section 5.04 Audit</i>	<i>21</i>
<i>Section 5.05 No Removal of Records from Premises</i>	<i>22</i>
<i>Section 5.06 Electronic Records</i>	<i>22</i>

Appendix A (Legal Services) January 2018 Final

<i>Section 5.07 Investigations Clause</i>	22
<i>Section 5.08 Confidentiality</i>	25
ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST	26
<i>Section 6.01 Copyrights and Ownership of Work Product</i>	26
<i>Section 6.02 Patents and Inventions</i>	28
<i>Section 6.03 Pre-existing Rights</i>	28
<i>Section 6.04 Antitrust</i>	28
Article 7 - INSURANCE	28
<i>Section 7.01 Agreement to Insure</i>	28
<i>Section 7.02 Workers' Compensation, Disability Benefits, and Employers' Liability Insurance</i>	28
<i>Section 7.03 Other Insurance</i>	29
<i>Section 7.04 General Requirements for Insurance Coverage and Policies</i>	31
<i>Section 7.05 Proof of Insurance</i>	31
<i>Section 7.06 Miscellaneous</i>	32
Article 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION	33
<i>Section 8.01 Reasonable Precautions</i>	33
<i>Section 8.02 Protection of City Property</i>	33
<i>Section 8.03 Indemnification</i>	34
<i>Section 8.04 Infringement Indemnification</i>	34
<i>Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation</i>	34
<i>Section 8.06 Actions By or Against Third Parties</i>	35
<i>Section 8.07 Withholding of Payments</i>	35
<i>Section 8.08 No Third Party Rights</i>	35
ARTICLE 9 - CONTRACT CHANGES	36
<i>Section 9.01 Contract Changes</i>	36
<i>Section 9.02 Changes Through Fault of Contractor</i>	36
ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES	36
<i>Section 10.01 Termination by the City Without Cause</i>	36
<i>Section 10.02 Reductions in Federal, State, and/or City Funding</i>	37
<i>Section 10.03 Contractor Default</i>	38
<i>Section 10.04 Force Majeure</i>	40

Appendix A (Legal Services) January 2018 Final

<i>Section 10.05 Procedures for Termination</i>	<i>40</i>
<i>Section 10.06 Miscellaneous Provisions</i>	<i>41</i>
<i>Section 10.07 Liquidated Damages.....</i>	<i>42</i>
Article 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER.....	42
<i>Section 11.01 Prompt Payment</i>	<i>42</i>
<i>Section 11.02 Electronic Funds Transfer.....</i>	<i>42</i>
Article 12 - CLAIMS	43
<i>Section 12.01 Choice of Law</i>	<i>43</i>
<i>Section 12.02 Jurisdiction and Venue.....</i>	<i>43</i>
<i>Section 12.03 Resolution of Disputes</i>	<i>43</i>
<i>Section 12.04 Claims and Actions</i>	<i>48</i>
<i>Section 12.05 No Claim Against Officials, Agents, or Employees.....</i>	<i>48</i>
<i>Section 12.06 General Release.....</i>	<i>49</i>
<i>Section 12.07 No Waiver</i>	<i>49</i>
ARTICLE 13 - APPLICABLE LAWS	49
<i>Section 13.01 PPB Rules.....</i>	<i>49</i>
<i>Section 13.02 All Legal Provisions Deemed Included.....</i>	<i>49</i>
<i>Section 13.03 Severability / Unlawful Provisions Deemed Stricken</i>	<i>49</i>
<i>Section 13.04 Compliance With Laws</i>	<i>49</i>
<i>Section 13.05 Unlawful Discrimination in the Provision of Services</i>	<i>50</i>
<i>Section 13.05 Americans with Disabilities Act (ADA)</i>	<i>50</i>
<i>Section 13.06 Voter Registration</i>	<i>51</i>
<i>Section 13.07 Political Activity.....</i>	<i>54</i>
<i>Section 13.08 Religious Activity</i>	<i>54</i>
<i>Section 13.09 Participation in an International Boycott.....</i>	<i>54</i>
<i>Section 13.10 MacBride Principles</i>	<i>54</i>
<i>Section 13.11 Access to Public Health Insurance Coverage Information.....</i>	<i>55</i>
<i>Section 13.12 Distribution of Personal Identification Materials</i>	<i>56</i>
Article 14 - MISCELLANEOUS PROVISIONS	57
<i>Section 14.01 Conditions Precedent.....</i>	<i>57</i>
<i>Section 14.02 Merger</i>	<i>57</i>
<i>Section 14.03 Headings</i>	<i>57</i>

Section 14.04 Notice..... 57

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.*

a. 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.

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.

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).

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 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.

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

A. *Introduction and General Provisions.*

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.² Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

² Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

2. The PSLI became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City's Department of Consumer Affairs ("DCA"). DCA's rules promulgated under the PSLI are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

3. The Contractor agrees to comply in all respects with the PSLI and the 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 PSLI in performance of this Agreement may result in its termination.

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLI involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLI and Rules.

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

B. Pursuant to the PSLI and the Rules: Applicability, Accrual, and Use.

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its "calendar year" pursuant to the PSLI ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

3. An employee entitled to sick time pursuant to the PSLL may use 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, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

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

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

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

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

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

C. *Exemptions and Exceptions.* Notwithstanding the above, the PSLL 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 in effect on April 1, 2014, until the termination of such agreement;
3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLI are expressly waived in such collective bargaining agreement;
4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLI for such employee;
5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
7. 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
8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

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

E. *Notice of Rights.*

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

G. *Enforcement and Penalties.*

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

2. DCA 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, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL 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.

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

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. Notwithstanding the above, where the Contractor maintains or creates client records with a unique identifier for a client, the Contractor may redact or maintain in separate records the names, addresses, social security numbers, and other personally identifying information before providing access pursuant

to this Section 5.03, provided that the Contractor not redact client borough and zip code. If the Contractor maintains and provides access to such redacted or uniquely identified records, the Contractor is not obligated to provide access to any records pursuant to this Section 5.03 where the inspection or review of such records would waive the attorney-client or attorney work product privileges. In addition, Contractor may, upon request to and written approval from the Department, withhold from disclosure certain categories of documents that are not protected by the attorney-client or attorney work product privileges but where Contractor believes that disclosure of such documents would interfere or impair the provision of services under this Agreement, provided that withholding such documents does not impede the ability of the Department to ascertain that contracted-for services have been rendered in accordance with this Agreement.

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. Notwithstanding the above, the Contractor is not obligated to allow observations of face-to-face client interactions where such access would waive the attorney-client privilege but 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 properly 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. Notwithstanding the above, where the Contractor maintains or creates client records with a unique identifier for a client, the Contractor may redact or maintain in separate records the names, addresses, social security numbers, and other personally identifying information before providing access pursuant to this Section 5.04, provided that the Contractor not redact client borough and zip code. If the Contractor maintains and provides access to such redacted or uniquely identified records, the Contractor is not obligated to provide access to any records pursuant to this Section 5.04 where the inspection or review of such records would waive the attorney-client or attorney work product privileges. In addition, the Contractor may, upon request to and written approval from the Department, withhold from disclosure certain categories of documents that are not protected by the attorney-client or attorney work product privileges but where the Contractor believes that disclosure of such documents would interfere or impair the provision of services under this Agreement, provided that withholding such documents does not

impede the ability of the Department to ascertain that contracted-for services have been rendered in accordance with this Agreement.

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.

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

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

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

1. The disqualification for a period not to exceed five 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.

TAX 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
■ Workers' Compensation §7.02 ■ Disability Benefits Insurance §7.02 ■ Employers' Liability §7.02		Statutory amounts.
■ Commercial General Liability §7.03(A)		<u>\$1,000,000.00</u> per occurrence <u>\$1,000,000.00</u> personal & advertising injury (unless waived in writing by the Department) <u>\$2,000,000.00</u> aggregate <u>\$0</u> products/completed operations Additional Insureds: 1. City of New York, including its officials and employees, and 2. The Comptroller of the City of New York, including its officials and employees.
□ Commercial Auto Liability §7.03(B)		<u>\$1,000,000.00</u> per accident combined single limit 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
■ Professional Liability/Errors & Omissions §7.03(C)		<u>\$2,000,000.00</u> per claim
□ Crime Insurance §7.03(D)		\$_____ Employee Theft/Dishonesty

Appendix A (Legal Services) January 2018 Final

	\$_____ Computer Fraud \$_____ Funds Transfer Fraud \$_____ Client Coverage \$_____ Forgery or Alteration \$_____ Inside the Premises (theft of money and securities) \$_____ Inside the Premises (robbery or safe burglary of other property) \$_____ Outside the Premises \$_____ Money Orders and Counterfeit Money City of New York is a loss payee as its interests may appear
☐ Cyber Liability Insurance §7.03(E)	<i>[If there is a significant cyber risk, please consult with the Law Department about specific insurance requirements.]</i>
☐ [OTHER]	<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>
☐ [OTHER]	<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>
Section 10.07 – Liquidated Damages	
Violation of Section 3.02(H), reporting subcontractors in the City’s Payee Information Portal	\$100 per day
_____	\$_____
Section 14.04 – Notice	

Appendix A (Legal Services) January 2018 Final

Department's Mailing Address and Email Address for Notices	Office of the New York City Comptroller The David Dinkins Municipal Building 1 Centre Street, Room 602 New York, NY 10007 <u>Attn:</u> Irina Tumova, Deputy General Counsel Email:
Contractor's Mailing Address and Email Address for Notices	[Contractor Name] [Contractor Address] [Contractor Contact Person] [Email for Contractor Contact Person]

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.

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

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



Or scan the QR Code above
to make a complaint

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

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

CITY OF NEW YORK
ADDENDUM
TO
APPENDIX A JANUARY 2018 FINAL

This Addendum modifies Appendix A January 2018 Final, General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services ("Appendix A"), as set forth below.

Subsection B of Section 5.08 (Confidentiality) of Appendix A is deleted in its entirety and replaced with the following:

Section 5.08 Confidentiality

* * *

B. Where in connection with the services under this Agreement the Contractor, or its employees, subcontractors, or agents, will have access to, acquire, disclose, or use any data that includes private information (as defined in Admin. Code § 10-501(b)), the Contractor shall provide written notice to the Department within three days of the earlier of discovery by the Contractor or notification to Contractor of any breach of security (as defined in Admin. Code § 10-501(c)). Such notice shall inform the Department of the nature and scope of the breach of security.

1. Upon such discovery or notification of such breach of security, the Contractor shall take reasonable steps to determine the cause(s) of such breach and to remediate the cause(s) of such breach, shall provide written notice to the Department of such steps, and shall cooperate with any investigation conducted by the City of such breach. Such cooperation includes, but is not limited to, promptly responding to the City's reasonable inquiries and providing prompt access to in human and machine readable format all evidentiary artifacts associated with such breach of security, such as relevant records, logs, files, data reporting, and other materials.
2. In the event of such breach of security, the Contractor shall cooperate and coordinate with the City regarding any notifications determined by the City to be made to individuals affected by such breach.
3. 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 such notifications to individuals affected by the breach of security and/or other actions mandated by any Law, or administrative or judicial order, to address such breach of security, and to cover the costs of any fines or disallowances imposed by the State or federal government as a result of such breach. 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 identity theft monitoring services for individuals affected by such 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 preventive 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.

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

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.

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;

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.

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

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.

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. 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.