

MASTER SERVICES AGREEMENT

BETWEEN

NEW YORK STATE HOUSING FINANCE AGENCY

and

[NAME OF SERVICE PROVIDER]

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MASTER SERVICES AGREEMENT

This Master Services Agreement (the “**Agreement**”) is made and entered into as of this [____] day of [____], 2015 (the “**Effective Date**”) by and between **NEW YORK STATE HOUSING FINANCE AGENCY** a New York public benefit corporation, with its principal place of business at 641 Lexington Avenue, New York, NY 10022 (the “**Agency**”) and [**SERVICE PROVIDER**], a _____ corporation, with its principal place of business at _____ (“**Provider**”).

WHEREAS, the Agency performs for its own operations a wide variety of business applications;

WHEREAS, the Agency desires to replace the majority of its custom-developed business applications with COTS (Commercial off-the-shelf) solutions, including an ERP (Enterprise Resource Planning) solution, and which may also include Software as a Service (SaaS) or Infrastructure as a Service (IaaS) solutions;

WHEREAS, the Agency requires certain software development, implementation, integration and configuration services, which may include certain SaaS and IaaS services, and certain other services as may be requested by the Agency from time to time (the “**Services**”) in connection with the replacement of such business applications;

WHEREAS, the Agency published its Request for Proposals, dated June __, 2015 (the “**RFP**”), setting forth its requirements with respect to the Services;

WHEREAS, Provider has responded to the RFP and is in the business of providing the Services and represents to the Agency that it has the personnel and expertise to provide the Services required by the Agency in a professional and confidential manner; and

WHEREAS, the Board of Directors of the Agency has approved this Agreement substantially in the form set forth herein.

NOW, THEREFORE, in consideration of the above and the mutual promises set forth in this Agreement, the parties agree as follows:

ARTICLE 1 GOALS AND OBJECTIVES; REFERENCES

1.1 Goals and Objectives. The parties agree upon the following specific goals and objectives for this Agreement:

- (a) Leverage the Services to optimize and reduce the overall cost of the Agency's operations while maintaining consistent quality of performance and efficiency;
- (b) Improve flexibility and agility for the Agency in providing its services; and
- (c) Achieve a higher level of quality and efficiency in the Agency's operations while maintaining service levels.

The provisions of this Section 1.1 are intended to be a general statement of the parties' mutual intentions and objectives in entering into this Agreement, a general introduction to the provisions of this Agreement, and an aid to the dispute resolution and/or arbitration process contemplated by this Agreement, but are not intended to alter the plain meaning of the specific terms and conditions of this Agreement or to impose obligations on the parties which are not otherwise contemplated by this Agreement. However, to the extent the terms and conditions of this Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be interpreted and construed with reference to, and so as to give the fullest possible effect to, the mutual intentions and objectives of the parties, as of the Effective Date, set forth in this Section 1.1.

1.2 Rules of Interpretation.

- 1.2.1 References to any law shall also mean references to such law in changed or supplemented form or to a newly adopted law replacing such law.
- 1.2.2 References to and mentions of the word "including" or the phrase "e.g." shall mean "including, without limitation".
- 1.2.3 All references in this Agreement to Articles, Sections, Exhibits or Schedules, unless expressed or indicated otherwise, are to the Articles, Sections, Exhibits or Schedules to this Master Services Agreement.
- 1.2.4 Words importing persons or entities include, where appropriate, firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- 1.2.5 Words importing the singular include the plural and vice versa. Words of the masculine gender are deemed to include the correlative words of the feminine and neuter genders.
- 1.2.6 All references to a number of days mean calendar days, unless expressly indicated otherwise.
- 1.2.7 The recitals to this Agreement are deemed to be a part of this Agreement.

- 1.2.8 All references herein to this “Agreement” shall include the Exhibits, Statements of Work and Schedules attached to this Agreement. The Exhibits, Statements of Work and Schedules are deemed to be a part of this Agreement and are incorporated by reference herein.
- 1.2.9 The Article, Section, Schedule, Statements of Work and Exhibit headings, the Table of Contents and the Table of Exhibits and Schedules are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

ARTICLE 2 SERVICES

- 2.1 Proposals. The representations of Provider in any written proposals made to the Agency for work to be provided under this Agreement (the Provider proposal and any agreed upon amendments are collectively, the “**Proposal**”) are hereby confirmed by Provider and Provider acknowledges that such representations shall be relied upon by the Agency in entering into this Agreement, and are hereby incorporated herein by this reference, except to the extent specifically described as being out of scope in the applicable Statement of Work.
- 2.2 Overview.
- 2.2.1 Promptly after the Effective Date and until the Commencement Date (the “**Transition Phase**”), Provider shall perform the Transition Services in accordance with the provisions of Section 3.1 hereof. Upon the Agency’s determination, in accordance with the provisions of Section 3.1 of Provider's completion and satisfaction of the quantitative and other standards set forth in the Transition Plan (the “**Exit Criteria**”), the parties shall thereupon enter into the phase for the ongoing provision of Services by Provider that are listed in any Statement of Work agreed to by the parties, including the initial Statement of Work annexed hereto as Schedule 2.3.
- 2.2.2 Provider acknowledges and agrees that the Agency may request, and Provider shall provide, Services in accordance herewith not only for the benefit of the Agency itself, but also for the benefit of Agency Affiliates. “**Affiliate**” shall mean any affiliate of the Agency, including, without limitation the State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency, and Tobacco Settlement Financing Corporation. Unless the Agency expressly authorizes Provider to do so, Provider shall not contract with any Agency Affiliates, or otherwise communicate with any Agency Affiliate, with respect to any Services or any other subject matter of this Agreement.
- 2.3 Services. Provider shall provide the Services in accordance with this Agreement and as described in one or more statements of work executed by the parties (each such statement of work, a “**Statement of Work**”). The initial Statement of Work is set forth as Schedule

2.3 attached hereto and incorporated by reference herein, and the Services to be performed by Provider pursuant to the Statement of Work set forth in Schedule 2.3 shall be at the following locations and Provider Services Centers and as set forth in such Statement of Work (each such location a “Site”):

ID	Location Name	Location Street Address	Services to be performed at this Location
		[TO BE COMPLETED BY BIDDERS]	

“**Provider Services Centers**” shall mean the portion of Provider’s owned or leased facilities identified above, from which Provider provides services to its other customers, a portion of which shall be specifically identified or dedicated to provide Services to the Agency hereunder. The Dedicated Provider Personnel will provide services to the Agency from the Provider Services Center, unless otherwise stated in a Statement of Work or the Agency otherwise expressly agrees in writing.

Additional Statements of Work shall be in a form substantially similar to Schedule 2.3 attached hereto and made a part hereof and shall become effective when signed by both parties. All Statements of Work, including Schedule 2.3, shall be incorporated into and form part of this Agreement. Each Statement of Work shall set forth the date by which Provider shall assume responsibility for certain components of the Services set forth in such Statement of Work (“**SOW Services Commencement Date**”), and may set forth the date or timeframe for the achievement of certain other milestones (collectively, the “**Milestones**”). To the extent there is a conflict between the terms of this Agreement and a Statement of Work, the terms of this Agreement shall control. The Commencement Date determined in accordance with Section 3.1.1 for the Statement of Work set forth in Schedule 2.3 shall also constitute the SOW Services Commencement Date for such Statement of Work.

2.4 Scope of Services. The Services to be provided by Provider hereunder include: (a) the services, processes, functions and responsibilities described in this Agreement, including the Schedules and Statements of Work to this Agreement; (b) any services, processes, functions or responsibilities not specifically described in this Agreement but which are an inherent, necessary or customary part of the Services or that are required for the proper performance and delivery of the services described in the preceding sub-clause (a); (c) the services, functions or responsibilities performed during the twelve (12) month period preceding the Effective Date by the Agency’s personnel (if any) whose functions were displaced or replaced as a result of this Agreement, even if such services, functions, or

responsibilities are not specifically described in this Agreement, including any Schedules or Statements of Work to this Agreement; and (d) services or tasks described in the Proposals. For any services or tasks described in a Proposal to be determined out of scope of the Services, such services or tasks must be specifically described in the applicable Statement(s) of Work as out of scope services; otherwise such services and tasks shall be considered part of the Services.

2.5 Procedures Manual.

2.5.1 Within ten (10) days after the Effective Date, Provider shall deliver to the Agency for review and comment a draft of a manual (the “**Procedures Manual**”) describing in detail how Provider shall perform the Services, the activities Provider proposes to undertake in order to provide the Services, including, where appropriate, those direction, supervision, monitoring, quality assurance, staffing, reporting, planning and overseeing activities Provider shall provide under this Agreement, and further including detailed acceptance testing procedures in accordance with Article 6 and quality assurance procedures approved by the Agency. Provider shall incorporate any comments and suggestions made by the Agency and shall deliver a revised Procedures Manual within fifteen (15) days after receipt of the Agency’s comments. The final Procedures Manual shall be subject to the Agency’s written approval. The Procedures Manual is a critical Deliverable.

2.5.2 Provider shall update the Procedures Manual throughout the Term to reflect changes in the Services for additional Statements of Work and the procedures and resources used to provide such Services. Updates to the Procedures Manuals shall also be provided to the Agency for review, comment and approval. Provider shall update and deliver to the Agency for approval portions of the Procedures Manual relating to any material operational change in such Services within fifteen (15) days of such change.

2.5.3 Provider shall perform the Services in accordance with the then-current version of the applicable Procedures Manual. The Procedures Manual shall be for operational purposes only, and shall not constitute a contractual document. Accordingly, in the event of a conflict between the provisions of this Agreement and a Procedures Manual, the provisions of this Agreement shall control, and the Agency’s acceptance of a Procedures Manual shall not be deemed a waiver of any rights of the Agency.

2.6 Change Control Procedure. From time to time during the term of a Statement of Work, the Agency may request, in writing, changes in the Services, Deliverables, Milestones or other aspects of Provider’s performance. Upon receipt of each such request from the Agency (a “**Change Request**”), Provider will evaluate the impact that the Change Request will have on the resources required by Provider to implement the change. Provider will notify the Agency in writing as to the results of such evaluation (the “**Change Proposal**”) as soon as reasonably feasible following receipt of the Change Request, but in no event later than fifteen (15) days from such Change Request. To the

extent the changes set forth in the Change Request can, in the reasonable business judgment of Provider and the Agency, be performed without an increase in the Fees, there will be no additional fees payable by the Agency. In the event the Change Proposal cannot, in the reasonable business judgment of Provider and the Agency, be implemented without an increase in the Fees, Provider and the Agency shall mutually agree upon the Fees therefore and timetable to implement the Change Proposal as well as any changes to the applicable Statement of Work. The Fees for the Services represented by such Change Proposal shall be as agreed to by the parties. Changes to the Services required due to changes in laws or regulations of the United States or any other jurisdiction in which the Agency or any Agency Affiliates conducts business and that affect the Agency's business, whether or not specified in any Statement of Work as being Provider's responsibility, shall be considered "in-scope" and shall not be subject to this Change Control Procedure. All other changes to the Services required due to changes in laws or regulations that affect Provider's business or performance of its obligations shall be the sole responsibility of Provider. Provider shall notify the Agency promptly of any changes in laws or regulations covered by the foregoing sentence.

- 2.7 New Services. "**New Services**" shall mean additional Services that are related to any Services described in any Statement of Work as construed in accordance with Section 2.4. The Agency, in its sole discretion, may, from time to time during the Term, request that Provider perform a New Service. In requesting a New Service, the Agency may communicate to Provider certain parameters governing performance thereof, including service levels. Upon receipt of such a request from the Agency, Provider shall provide the Agency with: (i) a written description of the work Provider anticipates performing in connection with such New Service and the performance parameters relating thereto; (ii) a schedule for commencing and completing the New Service; (iii) Provider's prospective charges for such New Service, which charges shall be stated in the pricing methodology specified by the Agency (e.g., time and materials, fixed price, "not to exceed"), and which charges shall be commensurate with the charges applicable hereunder for similar Services or Services requiring similar resources; (iv) the human resources necessary to provide the New Service; and (v) when applicable, acceptance test criteria and procedures for any new deliverables or services. Provider shall not begin performing any New Service, and the Agency shall not be obligated to pay for any New Service, until the Agency has provided Provider with written authorization from the Agency's Chief Technology Officer to perform the New Service. However, once the Agency provides Provider with written authorization to perform the New Service, Provider shall perform such New Service as required hereunder, and such New Service shall be deemed to be part of the "Services" for all purposes of this Agreement, including, without limitation, the provisions regarding Service Levels. Except as otherwise agreed by the parties, in the event that (a) the actual charges for any New Service provided by Provider exceed the estimate of the charges that were included in the Change Proposal for such New Service, Provider shall be responsible for the excess costs of such New Service and (b) the Provider or the Agency's human resources necessary to develop and operate the product or provide the New Service exceed the estimate for the Provider and the Agency's human resources that were included in Provider's proposal for such New Service, Provider shall reimburse the Agency for the costs of such excess human resources.

- 2.8 No Obligations; Renewal of Services. The Agency shall be under no future obligation to acquire additional or future services from Provider. In addition, at any time, the Agency, in its sole discretion, shall have the right to reduce the amount of Services to be provided by Provider under any Statement of Work. By entering into this Agreement, the Agency does not commit to any specific level or volume of business with Provider, nor does the Agency commit that Provider shall be the exclusive provider of the Services described herein.

ARTICLE 3
SERVICE DELIVERY AND SERVICE LEVELS

3.1 Transition.

- 3.1.1 In the event any Services are to be transitioned to Provider's platform, as part of the Services, Provider shall implement the detailed transition plan for the transition (the "**Transition**") of the Services to Provider's platforms as set forth in the transition plan set forth in Schedule 3.1 annexed hereto and incorporated by reference herein (the "**Transition Plan**"). Provider shall perform the applicable Services set forth in a Transition Plan (the "**Transition Services**") in accordance with the applicable Transition Schedule without causing any disruption to the Agency's business or operations. The Transition Plan will track Provider's performance of the Transition. The Transition for any business application shall be complete upon the date of Provider's successful completion and satisfaction, determined in the Agency's sole discretion, of the Exit Criteria with respect to such business application, said date constituting the "**Commencement Date**".
- 3.1.2 Notwithstanding anything in the Transition Plan to the contrary, Provider will design and lead all aspects of the Transition process, including (i) preparation of required documentation, standard operating procedures and training materials; (ii) delivery of training programs; (iii) design of test plans; (iv) execution of test plans; (v) performance of operational readiness assessments; (vi) conversion to production operations; (vii) performance of post-implementation assessments; and (viii) ongoing productivity enhancements and process improvements, including update and maintenance of process documentation. The Agency's contribution to these activities will be limited to providing (1) overall program management; (2) existing documentation and training materials; (3) subject matter experts to explain how business processes function at the Agency; (4) approvals of the way the functions will be performed by Provider; and (5) required work product approvals.
- 3.2 Knowledge Transfer. The parties agree that during the Transition Phase they will prepare and agree on a knowledge transfer plan which will be reasonably sufficient to allow for the following knowledge transfer: (i) transfer of the necessary knowledge regarding a Statement of Work to Provider for the purposes of performing the applicable Services hereunder, and (ii) transfer of knowledge from Provider to the Agency for the purposes of fully utilizing the Services and Deliverables.

- 3.3 Cooperation. Provider shall cooperate with the Agency and any third party designated by the Agency that performs services for, or provides products to, the Agency or otherwise participates in work related to any Statement of Work (the “**Third Parties**”), to the extent reasonably required by the Agency, including by providing: (a) in writing, all information required so that any services, products, enhancements or developments of the Agency and such Third Parties may be utilized by Provider and so that any services, products, enhancements or developments of Provider may be utilized by the Agency and such Third Parties; and (b) assistance and support to the Agency and such Third Parties as part of the Services; and (c) access to the Provider systems or facilities to the extent that such access is required for the performance of the Agency and such Third Parties.
- 3.4 Compliance with the Agency External Requirements. Provider shall provide, as part of the Services, all support necessary to enable the Agency to meet all legal and regulatory requirements with respect to the Services, including internal and external audit and reporting requirements.
- 3.5 Service Levels.
- 3.5.1 Certain Definitions.
- (a) “**Service Levels**”, as applicable through the entire Term, shall mean the Service Levels designated for a particular Service in the applicable Service Level Matrix (including the Service Levels and Service Level Credits) (the “**Service Level Matrix**”) which, if not met by Provider for any one (1) month during a given twelve (12) month period, will result in the payment of a Service Level Credit. Schedule 3.5.1 annexed hereto is the Service Level Matrix which includes the Service Levels and Service Level Credits for the Services in the Statement of Work set forth in Schedule 2.3.
- (b) A “**Catastrophic Failure**” is defined in Section 3.6.3 below.
- (c) “**Service Level Credit**” is defined in Section 3.6.1 below.
- 3.5.2 Determination of Service Levels.
- (a) Service Levels. The parties have agreed to the Service Levels set forth in Schedule 3.5.1, to be effective as of the Effective Date and applicable through the entire Term, to the Services listed in the Statement of Work set forth in Schedule 2.3.
- 3.5.3 Earn-Backs. Provider may earn back Service Level Credits in accordance with the Service Level Matrix set forth in Schedule 3.5.1.
- 3.6 Service Level Credits; Catastrophic Failures.

- 3.6.1 Service Level Credits. Provider recognizes that its failure to meet the Service Levels may have a material adverse impact on the Agency or Agency Affiliates' business and operations. Accordingly, in the event that Provider fails to meet a Service Level, then, in addition to any other rights and remedies available to the Agency under this Agreement, at law, or in equity, the Agency shall receive the credits set forth in the applicable Service Level Matrix (the "**Service Level Credits**"). The Service Level Matrix shall also specify increased Service Level Credits applicable to Catastrophic Failures. Schedule 3.5.1 annexed hereto is the Service Level Matrix which includes the Service Levels and Service Level Credits for the Services in the Statement of Work set forth in Schedule 2.3.
- 3.6.2 Measurement Cycle. Provider's performance of the Services with respect to any business application will be measured against the Service Levels for such business application beginning on the Commencement Date for such business application.
- 3.6.3 Catastrophic Failures.
- (a) A "**Catastrophic Failure**" by Provider is any one or more of the following:
- (i) a specific failure, as defined on the applicable Statement of Work with respect to a Service Level or other specific event;
- (ii) a material breach by Provider of its obligation to provide the Services in accordance with this Agreement, including any detailed business operating procedures specified in a Schedule or Statement of Work;
- (iii) a breach or failure in delivery of the Services which, in the reasonable opinion of the Agency, jeopardizes its relationship or reputation with any Agency Affiliates or its or their customers, bondholders or other constituents;
- (iv) a breach or failure in delivery of the Services which, in the reasonable opinion of the Agency or any regulatory authority having jurisdiction over the Agency or any Agency Affiliate, undermines or prejudices the ability of the Agency or any Agency Affiliate to comply with the relevant regulatory regime or otherwise compromises the Agency's or any Agency Affiliate's ongoing relationship with any regulatory authority; or
- (v) a breach or failure in delivery of the Services which exposes the Agency to a financial risk of loss which is unacceptable in the reasonable opinion of the Agency.
- (b) Provider will notify the Agency immediately (and in any event, in less than twenty-four (24) hours after Provider becomes aware) regarding any event or circumstance that impairs or threatens to impair the provision of the Services, including without limitation any Catastrophic Failure or Disaster (including any Force Majeure Event), which arises at any time during the Term of this Agreement.

(c) If a Catastrophic Failure occurs, upon written notice to Provider, the Agency may invoke any one or more of its following rights (including a combination thereof):

(i) require Provider to remediate the problem and re-perform such obligation in the required manner as soon as possible but in all events within twenty-four (24) hours of such failure, and, in addition, require Provider: (i) to perform root cause analysis to determine the source of the Catastrophic Failure; and (ii) to notify and report to the Steering Committee regarding such problem and provide assurances satisfactory to the Agency that such failure will not recur after corrective efforts have been completed;

(ii) request Provider to develop and implement a **“Work Around Plan,”** which will be submitted to the Agency for comments and approval, and will include, without limitation: (i) details of resources to be allocated to work around the failure; (ii) time frames for resolution; and (iii) an indication of which aspects of the Service Levels will be complied with during implementation of the Work Around Plan;

(iii) where Services are performed by Provider at a Site, place one or more members of the Agency’s personnel and/or consultants on-site at the Provider Site to work with the Provider’s personnel and to oversee and manage the provision of the Services that are the subject of the Catastrophic Failure (a **“Step-In”**) until the Agency agrees in writing that the Catastrophic Failure has been remediated to its reasonable satisfaction (for the avoidance of doubt, the Agency need not request Provider to remedy the Catastrophic Failure or develop a Work Around Plan prior to invoking its Step-In rights);

(iv) immediately terminate this Agreement, including all Schedules and Statements of Work hereunder, in its entirety, with the termination date to be set by the Agency; or

(v) immediately terminate this Agreement and/or any Schedule(s) or Statements of Work hereunder, in whole or in part to the extent related to the Services affected by the Catastrophic Failure, as determined by the Agency in its sole discretion.

The Agency’s invocation of any one or more of its rights above will not affect its rights to invoke any of the other rights and remedies set forth in this Section 3.6.3 or any other provision of this Agreement or at law or in equity.

3.7 Adjustment of Service Levels. The parties (i) shall periodically review and work together to establish more aggressive Service Levels and (ii) with respect to any Service Levels that require periodic adjustment pursuant to this Agreement or are no longer appropriate because of an increase, decrease or change to the Services, shall adjust the Service Levels, and (iii) with respect to all other Service Levels, may adjust the Service Levels.

3.8 Progress Reports and Meetings. At no additional charge, Provider shall submit a detailed written progress report (**“Progress Report”**) to the Agency Project Manager weekly during the Transition and for each Statement of Work. Such Progress Reports will detail: (i) the current status of Provider activities; (ii) indication of the progress of the work

being performed in comparison to the applicable project plans and estimated time to complete; (iii) for work performed on a time and materials basis, resources expended since the last report, as well as a cumulative total to date, estimated cost to complete; and (iv) identification of actual and anticipated problem areas, the impact thereof on Provider's work effort, and action being taken or alternative actions to be taken to remedy such problems. If the Agency so requests, Provider shall hold status meetings with the Agency Project Manager in order to review the status of Provider activities. As part of the Services and at no additional charge, Provider shall provide reports as the Agency may reasonably request from time to time.

- 3.9 Level of Performance. Provider shall provide the Services with respect to any business application at a level of performance and timeliness not less than the level of performance and timeliness provided by providers skilled in providing services in scope and content substantially similar to the Services.
- 3.10 Deliverables. Provider shall provide the Agency with any deliverables as described in each Statement of Work ("**Deliverables**"). Provider shall cause all Deliverables to conform to and be in accordance with the terms of this Agreement and the requirements and specifications therefor set forth in a Statement of Work or agreed to by the parties ("**Specifications**").
- 3.11 Root Cause Analysis. Within five (5) days of receipt of a notice from the Agency with respect to Provider's failure to provide the Services in accordance with the Service Levels, Provider shall: (a) perform a root cause analysis to identify the cause of such failure; (b) provide the Agency with a report detailing the cause of, and procedure for correcting, such failure; (c) correct such failure; (d) advise the Agency, as and to the extent requested by the Agency, of the status of remedial efforts being undertaken with respect to such problems; (e) provide the Agency with assurance satisfactory to the Agency that such failure will not recur after the procedure has been completed; and (f) take appropriate preventive measures so that the problem does not recur.
- 3.12 Measurement and Monitoring Tools. As part of the Services, Provider shall implement the necessary automated or other measurement and monitoring tools and procedures required to perform quality assurance testing on the Services, and measure and report Provider's performance of the Services against the applicable Service Levels, in the format pre-approved by the Agency. Such measurement and monitoring shall permit reporting at a mutually agreed upon frequency and at a level of detail sufficient to verify compliance with the Service Levels, and shall be subject to audit by the Agency. Provider shall provide the Agency with information and access to such tools and procedures on a real-time basis, for purposes of verification.
- 3.13 Continuous Improvement and Best Practices. Provider shall, on a continuous basis, as part of its total quality management process, (i) identify and implement ways to improve the Services and Service Levels, and (ii) identify and apply proven techniques and technology from within its operations or other third party processes that would benefit the Agency either operationally or financially. Provider shall implement such processes at no charge to the Agency.

- 3.14 Benchmarking. The Agency reserves the right from time to time, at its option, to obtain the services of an independent third party to benchmark the cost and performance of such Services, giving due consideration to the total scope of Services being performed, against standards satisfied by other providers performing services similar to the Services or the Agency's internal provision of such similar services by the Agency, and under similar environments, to the extent available information permits ("**Benchmarking**"). Such third party shall be independent of the parties and shall be qualified to do the work. Such third party also shall not reasonably be deemed to be a competitor of Provider; provided that this provision shall not be used to reduce available third parties hereunder at any given time to less than two (2). The parties will share equally the costs and expenses of conducting the benchmark. Each party shall be provided the opportunity to review, comment on and request changes in the results. Provider shall cooperate with the third party benchmarker and with the Agency to investigate variances, if any, and to take corrective action to respond to any deficiencies; provided that, if such results show an overcharge of five percent (5%) or more in the cost of the Services, or that the Services are substantially out of conformance with the terms of this Agreement, the Fees shall be reduced accordingly, and any deficiencies in the Services shall be remedied.
- 3.15 Compliance with the Agency Methodology. Provider shall have the right to utilize its own project management methodology in managing the provision of Services; provided, however, that it shall provide sufficient information as requested by the Agency to enable the Agency to manage each Project and Statement of Work using the Agency's project management methodology.
- 3.16 Time of the Essence. Provider agrees that in the performance of Services under this Agreement, time is of the essence.
- 3.17 Liability for Damage. Provider shall be liable for any damage to or destruction of the Agency's Equipment and Facilities, Data or the Agency's Systems due to the acts or omissions of Provider, its subcontractors and/or its and their employees or agents.

ARTICLE 4 FEES, EXPENSES, TAXES AND RECORDS

- 4.1 Fees.
- 4.1.1 Provider agrees to invoice the Agency for fees for the Services and/or the Deliverables provided to the Agency based on milestones achieved by Provider at the rates set forth on Schedule 4.1 (the "**Fees**") in U.S. Dollars, and in accordance with the milestone-based schedule of payments, and agreed reimbursable expenses, set forth in the payment schedule attached to each Statement of Work. No other amounts shall be payable for the performance of the Services. Provider agrees that it has performed all necessary due diligence prior to entering into this Agreement and no adjustments to Fees for the Services will be requested by Provider after the effective date of the applicable Statement of Work under which

such Services are provided. The fees set forth on Schedule 4.1 shall enable the Agency, and the Agency shall have the right, to increase or reduce the volume and types of Services, without any minimums or take-or-pay requirements. A W-9 form (Request for Taxpayer Identification Number and Certification) must be provided by Provider before payment.

- 4.1.2 All invoices shall be in a form and contain the information approved in advance by the Agency. Any invoice for a Deliverable provided or a Milestone achieved under a Statement of Work shall include a detailed breakdown of the Fees for such Deliverable or Milestone in a form acceptable to the Agency.
- 4.1.3 Most Favored Pricing. The Agency shall be entitled to receive the most favorable customer pricing that Provider offers at any time to any of its other customers. Provider represents and warrants that all of the fees and other pricing terms hereunder are comparable to or better than the equivalent provisions being offered by Provider to any of its other customers. If Provider offers more favorable pricing provisions to any entity during the Term of this Agreement, such provisions shall be deemed incorporated into this Agreement, and the Agency shall have the benefit thereof. Upon request, Provider shall provide the Agency with a certification by an officer of Provider certifying that all of the price-related provisions of this Agreement, including, but not limited to, the fees hereunder, are comparable to or better than the equivalent provisions being offered by Provider to any other entity.

4.2 Cost of Performance. Except as set forth herein or the applicable Statement of Work, Provider shall have sole responsibility for all costs and expenses necessary for the performance of the Services or incurred as a result of performing the Services, including those of personnel, facilities, telecommunications network and software.

4.3 Payment.

- 4.3.1 All invoices for payment must be addressed to Ana Arnao, Disbursement Manager, Accounts Payable at the Agency. Unless otherwise specified in the Statement of Work, the charges or expenses invoiced in accordance with this Section, except for any amounts disputed by the Agency or otherwise withheld as provided in the applicable Statement of Work, shall be payable by the Agency within thirty (30) days of receipt of each invoice, in accordance with the Agency's Prompt Payment Policy.
- 4.3.2 If the Agency in good faith believes there is a Dispute (as defined in Section 20.1 hereof) concerning the accuracy or applicability of any invoiced amount, they will notify Provider of the nature of such Dispute and will provide support for such Dispute within ten (10) business days after giving notice. In such an event, the Agency may withhold payment of such amount in Dispute but will continue to pay all undisputed amounts. No failure by the Agency to Dispute a charge or

other invoiced amount prior to payment of an invoice will limit or waive any of its rights or remedies with respect thereto, including its right to withhold such amount in Dispute from payment on subsequent invoices. The withholding of an amount in Dispute in accordance with this Section 4.3.2 will not be considered a basis for monetary or other default or grounds for termination under this Agreement.

4.4 Taxes.

- 4.4.1 All Fees stated in any payment schedule in a Statement of Work are deemed inclusive of all forms and types of taxes in all jurisdictions. All invoices shall be net of value added taxes (VAT) and withholding taxes, as applicable. The Agency and Provider each shall be financially responsible for (i) any franchise or privilege taxes on its business, (ii) any taxes based on its net income or gross receipts, and (iii) any sales, lease, use, personal property or other such taxes on equipment, software or property for which it has financial responsibility under this Agreement. Further, in no event shall the Agency pay or be responsible for any taxes, duties or, where applicable, bailments: (a) in the nature of employee withholding taxes or other taxes or insurance relating to Provider personnel performing Services hereunder; (b) imposed on, with respect to, or in connection with Provider's purchase of any supplies, materials, equipment, software or services acquired for use or used in providing the Services; (c) in the nature of Permits required to provide the Services; (d) imposed by any federal, state or local taxing authority as withholding taxes, or taxes in the nature of withholding taxes, on or with respect to any amounts paid or accrued with respect to the Services; (e) any value added taxes; (f) imposed by any foreign taxing jurisdiction; or (g) in the nature of service taxes or bailment assessed against Provider or the Agency in connection with the Services.
- 4.4.2 The parties agree to cooperate with each other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible, including with respect to withholding taxes. Each party will provide and make available to the other any resale certificates, information regarding out-of-state or out-of-country sales or use of equipment, materials or services, and other certificates or information reasonably requested by either party.
- 4.4.3 Provider will promptly notify the Agency of, and coordinate with the Agency the response to and settlement of, any claim for taxes asserted by applicable taxing authorities for which the Agency may be responsible hereunder, it being understood that with respect to any claim arising out of a form or return signed by a party to this Agreement, such party will have the right to elect to control the response to and settlement of the claim, but the other party will have all rights to participate in the responses and settlements that are appropriate to its potential responsibilities or liabilities. If the Agency request Provider to challenge the imposition of any tax, the Agency will reimburse Provider for the reasonable legal fees and pre-approved expenses. The Agency will be entitled to any tax refunds

or rebates granted to the extent such refunds or rebates are of taxes that were paid by the Agency.

4.5 Records. Provider shall maintain complete and accurate accounting records in accordance with generally accepted accounting principles applicable in the U.S., to substantiate the Fees and expenses hereunder.

4.6 Billing Reviews, Records and Audits.

4.6.1 Upon reasonable prior notice to Provider during or after the Term, the Agency and/or its designated representative may inspect and review the billing records and other documentation of Provider and its subcontractors underlying any Provider invoice for the purpose of evaluating the accuracy of such invoice and the Fees and expenses set forth therein (such inspection and review, a “**Billing Review**”). Provider will cooperate with and assist the Agency and/or its designated representative in any Billing Review and will provide access to such records, documentation, personnel and facilities as is reasonably necessary in connection with such Billing Review. Any Billing Review shall be conducted during Provider’s normal business hours at the Provider premises where it maintains such billing records and other documentation, in such a manner as not to interfere with Provider’s normal business activities, or, in the Agency’s sole discretion, at a reasonably convenient location in the State of New York designated by the Agency. In the latter case, Provider will provide access to such records and documentation at Provider’s expense.

4.6.2 If, as a result of any Billing Review, it is determined that Provider has overcharged the Agency for any Service, the Agency will notify Provider of the amount of such overcharge, and Provider will pay to the Agency the amount of the overcharge within fifteen (15) days of discovery of such overcharge. In addition, if the amount of the error is in excess of three percent (3%) of the amount invoiced, Provider will pay the costs of the Billing Review.

4.7 Performance.

4.7.1 Upon reasonable prior notice to Provider, with respect to any or all Statements of Work, the Agency and/or its designated representative may conduct a performance audit on Provider’s premises or the Site of the Services (including those used by any subcontractors of Provider) to ensure Provider’s compliance with the terms of this Agreement (including Service Levels) and applicable laws and regulations, to evaluate Provider’s performance hereof, for the Agency’s operational risk assessment, data security assessment, disaster recovery/business continuity assessment, information technology risk assessment, and as otherwise required for regulatory and reporting purposes (each such inspection and review, a “**Performance Audit**”). Provider will provide to the Agency and/or its designated representative all necessary access to information, Provider’s and its subcontractors’ employees and agents, Provider and its subcontractors’ facilities and infrastructure and all support reasonably necessary in connection with

Performance Audit at no charge to the Agency and/or its designated representative for any reasonable use related to the Performance Audit. Any Performance Audit shall be conducted during Provider's normal business hours in such a manner as not to interfere with Provider's normal business activities.

- 4.7.2 Without limiting Provider's obligations or the Agency's rights and remedies provided elsewhere in this Agreement, or otherwise, if, as a result of any Performance Audit or at any other time it is determined by the Agency that Provider has not complied with the terms of this Agreement or has failed to perform in accordance with the requirements thereof (each, a "**Performance Failure**"), the Agency will notify Provider, in writing, of such Performance Failure, and Provider shall: (i) escalate to the appropriate management levels that a problem has occurred; (ii) attempt to isolate the reason for the Performance Failure; (iii) identify potential areas for performance improvement; (iv) develop an action plan, including specific recommendations for performance improvement; (v) review the action plan with the Agency; (vi) reach agreement with the Agency on the action plan; and (vii) if approval is reached, begin implementation of the action plan and document results. If such Performance Failure is not remedied in accordance with the foregoing provision within ten (10) business days after receipt of the Agency's notice of such noncompliance, it shall be deemed a material breach. If Provider performs an internal audit or engages a third party to perform an audit, Provider will provide the Agency with the results of such audit to the extent they affect or relate to Provider's performance under this Agreement. Further, Provider shall conduct annual security self-audits and shall submit to the Agency then-current copies of all materials related to such security audits and the results thereof on an annual basis, or immediately upon any change thereto.
- 4.8 Set-Off. With respect to any amount which (i) should be reimbursed to the Agency or (ii) is otherwise payable to the Agency pursuant to this Agreement, the Agency may upon notice to Provider deduct the entire amount owed to Provider against the charges otherwise payable or expenses owed to Provider under this Agreement. Any unused credits against future payments owed to the Agency by Provider pursuant to this Agreement shall be paid to the Agency within thirty (30) days of the expiration or termination of this Agreement.
- 4.9 Cost Savings. If general conditions or technology changes materially reduce Provider's recurring costs in providing the Services, Provider shall renegotiate with the Agency to share those reduced costs with the Agency. Provider will pass through to the Agency reductions in the cost of delivery of the Services resulting from significant changes in technology or extraordinary reductions in the costs of delivering the Services which could not have been foreseen as of the applicable SOW Services Commencement Date but which occur during the Term and would be generally available to users of similar services in-house or provided by other third party Providers providing services similar to those provided by Provider.

- 4.10 Record Retention. As part of the Services, Provider shall (i) retain records and supporting documentation sufficient to document the Services and the Fees and expenses paid or payable by the Agency under this Agreement during the Term and for a period of time following the expiration or termination of this Agreement, consistent with the Agency's record retention policy and legal, regulatory or reporting requirements, but in no event less than ten (10) years, and (ii) upon notice from the Agency, provide the Agency and the Agency's designees with reasonable access to and/or copies of such records and documentation.

ARTICLE 5 DELIVERY

- 5.1 Delivery of Deliverables. Provider shall provide the Services to the Agency and deliver to the Agency the Deliverables in accordance with the Specifications for each Statement of Work. Provider shall deliver the object code and source code for all software Deliverables, if any. "**Object Code**" shall mean machine readable language compiled or assembled from the source code. "**Source Code**" shall mean the files containing, without limitation: (i) all the program, code, routines, subroutines, diagnostic routines, algorithms, control software and documentation used in building the software Deliverables; (ii) all resource files, "make" files describing the structures and relationships of the software Deliverable files; (iii) all related files, including underlying code for programs necessary for the operation and assembly of the software Deliverables; (iv) code which comprises so-called software engines, device drivers, function drivers and links and hooks; navigation logic and implementation; know-how and technology; software tools and utilities; and database managers, as well as the design of database managers; and (v) any other code specified in any Statement of Work.
- 5.2 Notification of Delays. In the event of any delay that causes or can reasonably be expected to cause a delay in Provider's performance hereunder, Provider shall, as soon as practicable after the occurrence of such delay, notify the Agency Project Manager (as defined in Section 8.1 hereof) in writing of the particulars of such delay or default and the estimated impact of such delay on the timetable under the applicable Statement of Work.
- 5.3 Delays. In the event that any performance of any Service set forth in a Statement of Work is not met due to a delay caused by Provider, Provider agrees, at no charge to the Agency, to commit such additional resources and personnel as shall be necessary to ensure that such delay does not result in the slippage of any other Services pursuant to such Statement of Work and shall cooperate with the Agency by disclosing the details of such additional resources and personnel commitments.

ARTICLE 6 ACCEPTANCE

- 6.1 Services. For any Services for which Acceptance Criteria (as defined below) are not specified in a Statement of Work, acceptance of such Services shall be based on the Agency's reasonable satisfaction therewith. The Services provided by Provider under each Statement of Work shall meet or exceed the Service Levels set forth for such

Services in the Statement of Work. Provider will provide the Agency with reports sufficient to measure and report on each Service Level set forth in each Statement of Work in the form annexed thereto.

6.2 Acceptance Criteria for Deliverables.

6.2.1 The Deliverables shall be subject to acceptance testing by the Agency to verify that such Deliverables satisfy the acceptance criteria mutually agreed to by the Agency and Provider (the “**Acceptance Criteria**”).

6.2.2 The Acceptance Criteria, which shall be included in, or incorporated by reference to, the applicable Statement of Work, shall be jointly developed and mutually agreed to by the Agency and Provider, provided, however, that, if the Agency and Provider cannot, after a reasonable period of time, agree on Acceptance Criteria with respect to any Deliverable, such Acceptance Criteria shall be as reasonably determined by the Agency. The Acceptance Criteria shall demonstrate to the Agency’s reasonable satisfaction that, for software Deliverables, (i) all of the functions of and requirements for the software Deliverables set forth in the applicable Statement of Work have been provided and the software Deliverable is in conformity with the Specifications therefor; (ii) all performance standards for the software Deliverables set forth in the applicable Statement of Work or the Specifications have been met or exceeded; and (iii) volume and capacity testing meets or exceeds the Agency’s requirements and, with respect to all other Deliverables, such Deliverables are compliant with all applicable requirements set forth in the applicable Statement of Work and this Agreement.

6.3 Acceptance Testing for Deliverables. If Provider is required to submit any Deliverables under a Statement of Work, then, unless otherwise set forth in such Statement of Work:

6.3.1 Acceptance testing for all the Deliverables shall commence within ten (10) working days of the date on which Provider notifies the Agency Project Manager, in writing, that all such Deliverables have been satisfactorily completed, in Provider’s opinion, have been delivered, and are ready for acceptance testing by the Agency. Unless otherwise set forth in a Statement of Work, acceptance testing shall continue for a period of fourteen (14) consecutive days (the “**Acceptance Period**”).

6.3.2 In the event that the Deliverables do not conform to the Acceptance Criteria during the Acceptance Period, the Agency shall give Provider written notice thereof. The Agency shall cooperate with Provider in identifying in what respects the Deliverables have failed to conform to the Acceptance Criteria. Provider shall, at no cost to the Agency, promptly correct any deficiencies which prevent such Deliverables from conforming to the Acceptance Criteria and correct such deficiency and the effects of such deficiency in any prior affected Deliverables or Services. Upon completion of the corrective action by Provider, and at no additional cost to the Agency, the acceptance test will be repeated until all the Deliverables have successfully conformed to the Acceptance Criteria.

- 6.3.3 If any Deliverable does not conform to the Acceptance Criteria within thirty (30) days after the end of the Acceptance Period described above, the Agency may (reserving all other remedies and rights under this Agreement and at law and in equity including the right to suspend Provider Services and contract with a third party for substitute services): (i) immediately terminate either this Agreement or the applicable Statement of Work, in whole or in part, pursuant to Section 11.2.1 and, at the Agency’s option, seek an alternative, or (ii) require Provider to continue to attempt to correct the differences, reserving the right to terminate as aforesaid at any time.

ARTICLE 7
PROVIDER PERSONNEL AND SERVICE LOCATION

7.1 Provider Personnel; Offers of Employment to the Agency Employees.

7.1.1 For each Statement of Work, Provider shall appoint sufficient appropriately qualified and trained staff to provide the Services and meet the Service Levels and the other requirements of this Agreement, consistent with the level of skills and qualifications specified by Provider in the Proposal (the “**Provider Personnel**”). The size of the Provider Personnel and a description of its responsibilities will be set forth in the applicable Statement of Work. For each Statement of Work, Provider and the Agency shall agree on the designation of certain Provider positions and/or named individuals as “**Dedicated Provider Personnel**”, who shall be personnel dedicated by Provider to perform the Services solely for the Agency. Dedicated Provider Personnel shall include agents, supervisors and middle management personnel dedicated to the performance of the Services. For each Statement of Work, based on a scale of Services, the parties may also designate certain personnel as “**Key Provider Services Center Personnel**”, who shall be management-level personnel related to operations that are dedicated solely to the Agency, as well as shared senior management resources representing shared functions such as technology, quality, human resources and administration that are dedicated by Provider to provide the Services. The Agency may from time to time change the positions and/or named individuals designated as Dedicated Provider Personnel or Key Provider Services Center Personnel. Subject to the provisions of Section 23.7 hereof, Provider shall not subcontract any Services hereunder, or perform such Services by individuals who are not bona fide employees of Provider, without the prior written approval of the Agency in each instance.

7.2 Qualifications. The Agency and Provider shall agree on skills and competencies for Provider Personnel in each Statement of Work based on the skills and competencies of Provider Personnel described in the Proposals. Prior to hiring or otherwise engaging any Provider Personnel, including any person who is designated as Dedicated Provider Personnel or Key Provider Services Center Personnel (each, a “**Candidate**”), Provider shall provide the Agency with (a) a summary of the Candidate’s qualifications and a resume, (b) a description of the tasks the Candidate is to perform, (c) an opportunity to consult with Provider regarding the Candidate, and (d) upon the Agency’s request, an

opportunity to interview the Candidate. Upon review of the Candidate's qualifications, the Agency may reasonably reject the Candidate on the grounds that the Candidate is not sufficiently qualified to perform the contemplated tasks.

a. Continuity.

- 7.2.1 Provider acknowledges and agrees that the success of each project is dependent upon the continuity of personnel assigned to the Provider Personnel because such continuity will contribute to the timely delivery and successful completion of such project. Therefore, any removal or reassignment by Provider of the Provider Project Manager or those of its Dedicated Provider Personnel or Key Provider Services Center Personnel assigned to perform Services hereunder must be with one (1) month's prior written notice to the Agency and with the Agency's prior written consent (which shall not unreasonably be withheld for reasons such as, but not limited to, disability, promotion, determination by the Agency or Provider that such Key Provider Services Center Personnel are not qualified) as to the removal or reassignment and as to any replacement personnel, provided, however, that Provider shall not replace or reassign the Provider Project Manager or any Dedicated Provider Personnel or Key Provider Services Center Personnel for two (2) years from the date such individual has been assigned to the Agency's account unless the Agency has requested such replacement or reassignment or the Provider Project Manager or any Dedicated Provider Personnel or Key Provider Services Center Personnel: (i) voluntarily resigns from Provider, (ii) is dismissed by Provider for misconduct (e.g., fraud, drug abuse, theft), (iii) materially fails to perform his or her duties and responsibilities pursuant to this Agreement, or (iv) is unable to work due to his or her disability. Further, to the maximum extent permitted by law, Provider shall not reassign the Provider Project Manager or any Dedicated Provider Personnel or Key Provider Services Center Personnel to the account of any the Agency or Agency Affiliate competitor for the duration of the Term and for a period of two (2) years thereafter.
- 7.2.2 Provider shall have in place a contingency plan in the event that any person designated as the Provider Project Manager or any Dedicated Provider Personnel or Key Provider Services Center Personnel is no longer available to staff such position. Provider shall submit its employee retention strategy to the Agency for the Agency's review and written approval. With respect to Provider personnel who are not Dedicated Provider Personnel or Key Provider Services Center Personnel, Provider shall use commercially reasonable efforts to ensure the continuity of such personnel. Provider shall notify the Agency of the resignation of any personnel providing Services within five (5) days of such resignation. In the event Provider replaces any personnel with the Agency's written consent, Provider will promptly provide said replacement.
- 7.2.3 To the extent permitted by law, Provider shall cause, by introducing appropriate wording in the employment agreements and paying adequate compensation, that after termination of the employment agreement of any Provider Personnel, such individual shall not allow himself or herself to be solicited or hired by the Agency

or Agency Affiliate competitor during the Term and for a period of one (1) year thereafter without the express written approval of a designated officer of the Agency.

- 7.3 Removal. If the Agency decides, in its sole discretion, that any Provider Personnel providing any portion of the Services should not continue in his or her position, the Agency may request removal of such personnel by giving Provider notice of the request and Provider shall immediately remove said personnel and, if requested by the Agency, provide a replacement acceptable to the Agency, within five (5) days of said notice. The Agency shall be the sole judge as to performance capability of any replacement. Provider shall also remove and provide a replacement for any other Provider Personnel if the work product delivered by such personnel is unsatisfactory to the Agency.
- 7.4 Replacements. Any replacement personnel shall have substantially equivalent or better qualifications than the personnel being replaced. There will be no charge to the Agency for any replacement provided in accordance with the above Sections while the replacement personnel acquires the necessary orientation and training, which shall not exceed five (5) working days.
- 7.5 Service Level Failures. If Provider fails to meet the Service Levels persistently or continuously and if the Agency reasonably believes such failure is attributable in whole or in part to Provider's reassignment, movement, or other changes in the personnel allocated by the Agency to the performance and delivery of the Services and/or to the Provider subcontractors assigned to the Agency service team, the Agency will notify Provider of such belief. Upon receipt of such notice from the Agency, Provider (i) will promptly provide to the Agency a report setting forth Provider's position regarding the matters raised by the Agency in its notice; (ii) will meet with the Agency to discuss the matters raised by the Agency in its notice and Provider's positions with regard to such matters; and (iii) will diligently work to eliminate with respect to the Services any such Provider personnel practices and/or processes identified and agreed to by the parties as adversely impacting the performance and delivery of the Services by Provider.
- 7.6 Service Location. All Provider Personnel who are performing Services shall initially be located at the Provider Services Centers set forth in Section 2.3. Provider shall not perform Services from any other location without the Agency's prior written consent, which consent shall not be unreasonably withheld.
- 7.7 Visas. Provider will pay for and be solely responsible for obtaining and maintaining such visas as may be required for any personnel providing Services to enter and remain in the country in which Services are rendered in connection with this Agreement.
- 7.8 Specialized Personnel. As part of the Services, Provider shall, upon the Agency's request, provide to the Agency equal access to Provider's specialized personnel and resources consistent with Provider's other commercial customers receiving substantially similar goods and services.

- 7.9 Compliance by Provider Personnel. Provider shall advise personnel supplied hereunder of their obligation to comply with the rules, regulations, policies, and procedures of the Agency, including the Agency's Code of Conduct referred to in Section 9.2 hereof.
- 7.10 Labor Harmony. Provider shall conduct its activities in such a manner as to seek to avoid (a) any labor-related disruption of work or material non-compliance in the provision of any Services, and (b) any interference with the work or activities of the Agency or other persons. Whenever Provider has knowledge of any actual labor dispute involving the employees of Provider, Provider's permitted subcontractors, or others that may materially affect the provision of Services, Provider shall so inform the Agency and the parties shall cooperate to minimize the effect of such dispute on the provision of Services, whether or not such labor dispute occurs at an Provider location, the Agency location or otherwise.
- 7.11 Employment Status. Provider or its respective subcontractors shall be the employer in law and in fact of all persons assigned to perform the Services. Provider shall take all necessary efforts and precautions to protect the Agency from co-employment status including, but not limited to: (i) establishing, maintaining and ensuring Provider's employer status with all of its employees through proactive measures; (ii) incorporating protective co-employment provisions into all of its employment and subcontracting agreements; (iii) monitoring all hours worked by persons performing the Services so as to avoid any potential finding of liability against the Agency; and (iv) taking any and all other steps necessary or prudent to ensure compliance with any other laws, rules or regulations regarding co-employment so as to protect the Agency from being found to be a co-employer of any person performing the Services. Provider will be responsible for payment of all salaries and benefits, including but not limited to social contributions, for the Provider Personnel and, in the case of discontinuance of their employment for any reason, the payment of any severance payments that may be due to such personnel. Provider shall also take all the required measures in order to avoid the claim by any Provider Personnel regarding any Intellectual Property Rights owned or otherwise used by Provider or the Agency hereunder.
- 7.12 Personnel Records. Provider shall maintain records relating to all personnel provided pursuant to this Agreement, which records shall include, at a minimum, verification of qualifications, licenses, certifications, and references, verifying that such personnel are qualified in light of applicable law, industry standards, and this Agreement, to perform the work contracted for herein. Provider shall also maintain records of in-service training and records of assignments. Upon the Agency's request, Provider shall promptly provide to the Agency copies of the records described herein. Upon the Agency's request, Provider shall also perform background checks (including criminal background checks and drug testing) on some or all of the Provider Personnel, and will provide the Agency with a description and the results of such background checks.

ARTICLE 8 PROJECT MANAGEMENT

- 8.1 Agency Project Manager. The Agency shall designate a project manager for each Statement of Work ("**Agency Project Manager**") who shall act as a liaison between the

Agency and Provider. The initial Agency Project Manager shall be listed in the additional provisions on Governance annexed hereto as Schedule 8.

- 8.2 Provider Project Manager. In addition to the Provider Personnel, the Dedicated Provider Personnel and the Key Provider Services Center Personnel, Provider will appoint a qualified member of its staff to act as project manager for each Statement of Work (the “**Provider Project Manager**”) who will: (i) have overall managerial responsibility for the Services; (ii) act as primary liaison between the Agency and Provider; and (iii) coordinate, oversee and monitor the Provider Personnel. Provider’s appointment of the Provider Project Manager shall be subject to the Agency’s prior written consent. The initial Provider Project Manager shall be listed in the additional provisions on Governance annexed hereto as Schedule 8.
- 8.3 Role of Project Managers. The Project Managers shall (i) have overall responsibility for managing and coordinating the performance of their respective parties under this Agreement; (ii) be authorized to act for and on behalf of their respective parties under this Agreement; and (iii) attempt to resolve Disputes in accordance with this Agreement. The Project Managers shall have no authority to amend the terms of this Agreement which can only be done by written agreement of the parties.
- 8.4 Steering Committee. For the entire term of this Agreement, the parties shall maintain a management steering committee (the “**Steering Committee**”). The Steering Committee shall include each Agency Project Manager, each Provider Project Manager, one individual from each party at the management level or higher, and such other persons as may be reasonably acceptable to the Agency. The Agency shall designate one of its representatives on the Steering Committee to act as the chairperson of the Steering Committee. The initial Steering Committee members are listed in the additional provisions on Governance annexed hereto as Schedule 8. The initial chairperson of the Steering Committee is listed in the additional provisions on Governance annexed hereto as Schedule 8. The Steering Committee will either meet in person (in New York City) or by conference call or other similar method to discuss the operation of the arrangement under this Agreement, and to make changes whenever necessary. The Steering Committee shall be authorized and responsible for advising with respect to the Agency’s decisions with respect to the Services. A party may change any of its representatives on the Steering Committee, other than the Project Managers, upon notice to the other party. Prior to the Commencement Date, the Steering Committee will establish an appropriate escalation matrix and resolution process for issue resolution and monitoring of Provider’s provision of the Services.
- 8.5 Frequency of Steering Committee Meetings. During the Transition Phase, the Steering Committee shall meet in the manner described in Section 8.4 above at least once a week. Such meetings shall include discussions relating to the progress of the Transition and to resolve any disputes. On and after the Commencement Date for the balance of the Term, the Steering Committee shall meet at a mutually agreed frequency.

ARTICLE 9
FACILITIES

- 9.1 Use of the Agency's Equipment and Facilities. As a general rule, Provider shall use its own equipment and facilities in the provision of any Service, which shall be at Provider's sole cost. The Agency shall provide to Provider the use of those equipment and facilities specifically set forth in the applicable Statements of Work ("**the Agency's Equipment and Facilities**"). Provider shall use the Agency's Equipment and Facilities for the sole and exclusive purpose of providing the Services. Use of such facilities by Provider does not constitute a leasehold interest in favor of Provider. Provider and its subcontractors and its and their employees and agents shall keep the Agency's Equipment and Facilities in good order, not commit or permit waste or damage to such facilities, nor use such facilities for any unlawful purpose or act. Provider shall not make any improvements or changes involving structural, mechanical or electrical alterations to the Agency's Equipment and Facilities without the Agency's prior written approval. When the Agency's Equipment and Facilities are no longer required for performance of the Services, Provider shall return same to the Agency in substantially the same condition as when Provider began use thereof. Provider shall permit the Agency and their agents, employees, and representatives to enter into those portions of the Agency facilities occupied by Provider personnel at any time. Schedule 9.1 sets forth the software and tools of the Agency and Provider.
- 9.2 Access and Security. To the fullest extent permitted by applicable law, Provider agrees to comply (and to cause its personnel to comply) with the Agency employment and personnel policies, including the Agency's Code of Conduct attached hereto as Schedule 9.2, and all safety and security procedures and other applicable rules and regulations regarding personal and professional conduct which are in effect, and policies and procedures regarding access to and use of the Agency's Equipment and Facilities, including procedures for physical security and procedures for the security of the Agency's computer network, and otherwise to conduct itself and themselves in a businesslike manner. Provider and its subcontractors and its and their employees shall not attempt to access the Agency information not required for performance hereunder.
- 9.3 Provider Sites. As part of the Services, Provider shall maintain and enforce at the Provider Sites safety and security procedures for the Agency's system environment and telecommunications infrastructure which protect the data and information of the Agency from unauthorized access. The Provider Services Center shall have physical and logical security measures in place to manage security and confidentiality concerns.
- 9.4 Shared Sites. If Provider provides the Services to the Agency from a Provider Site that is shared with a third party or third parties and any part of the business of Provider or any such third party is now or in the future competitive with the Agency's or any Agency Affiliate's business, then Provider, at the Agency's request, shall develop a process, subject to the Agency's written approval, to restrict access in any such shared environment to the Agency's Confidential Information so that Provider or Provider subcontractors providing services to such competitive business shall have no access to the Agency's Confidential Information.
- 9.5 Telecommunications Connection. The Agency and Provider shall establish a telecommunications connection to provide Provider remote access to the mutually agreed

upon portions of the Agency's computing systems and/or networks for purposes of downloading and uploading necessary files and software if required under a Statement of Work. Each party's responsibilities for establishing and maintaining such connection are defined in Schedule 9.5. Provider represents and warrants that: (a) all Provider interconnectivity to the Agency's computing systems and/or networks and all attempts at same shall be only through the Agency's security gateways/firewalls; (b) it will not access, and will not permit unauthorized persons or entities to access, the Agency's computing systems and/or networks without the Agency's express written authorization, and any such actual or attempted access shall be consistent with any such authorization; (c) it will use the latest available, most comprehensive virus detection/scanning programs prior to any attempt to access any of the Agency's computing systems and/or networks, and upon detecting a virus, shall immediately cease all attempts to access the Agency's computing systems and/or networks and shall not resume such attempts until any such virus has been eliminated.

- 9.6 Unauthorized Access. In the event Provider discovers or is notified of (a) a breach or potential breach of security involving the Agency's computing systems, facilities and/or networks, or (b) actual or potential unauthorized or illegal activities by personnel of Provider to obtain money or information from or through the Agency's computing systems, facilities and/or networks, Provider will immediately notify the Agency, will assist in ascertaining and containing any damage, and will cooperate fully with the Agency and its designees in any investigation or action relating to such breach or potential breach.

ARTICLE 10
CONTINUED PROVISION OF SERVICES AFTER
DISASTER

- 10.1 Disaster Recovery Plan (“DRP”) and Business Continuity Plan (“BCP”). The Services shall include and shall support the DRP and the BCP furnished by Provider as described in Schedule 10.1. Provider will update the DRP and the BCP within thirty (30) days of each SOW Services Commencement Date, such update to reflect the new Service commencing as well as any necessary updates to the DRP and/or BCP with respect to existing Services. Notwithstanding the foregoing, the DRP and the BCP shall in no case be updated less than once every six (6) months during the term of this Agreement. In addition, Provider shall:
- (a) annually confirm the operability of the DRP and BCP during every calendar year;
 - (b) certify to the Agency at least once during each such calendar year that the DRP and BCP are fully operational following an annual test of each of the DRP and the BCP, which tests shall be observed by a designated representative of the Agency; and
 - (c) implement the DRP and/or BCP upon the occurrence of a disruption in the Services or a disaster (as such term is defined in the DRP and BCP), at

Provider's sole cost and expense. In the event of a disruption or a disaster (except as agreed by the Agency in the DRP and BCP), Provider shall not increase its charges under this Agreement or charge the Agency any additional fees (including any fees payable by Provider to any third party disaster recovery vendors) other than those already payable under Article 4 hereof.

- 10.2 Disaster or Force Majeure Event. If in the event of a disaster or a Force Majeure Event affecting the performance of the Services at the Provider Services Center, and the implementation of the DRP and BCP, the Provider Services Center is still Non-Operational, the terms of Section 11.2.3(e) shall apply. "**Non-Operational**" shall mean an environment where the Provider Services Center is not able to conduct normal business processes for 15% (fifteen percent) or more of the Services for a duration of twenty-four (24) hours or more, and there is no reasonable expectation that delivery of such Service will resume in the subsequent twenty-four (24) hour period through execution of the DRP or BCP or otherwise.
- 10.3 Allocation of Resources - First Priority. Whenever a Force Majeure Event or a disaster causes Provider to allocate limited resources between or among Provider, Provider's customers or the Agency at the affected service locations, the Agency shall receive no less priority in respect of such allocation than that provided by Provider to similar customers.

ARTICLE 11 TERM AND TERMINATION

- 11.1 Term. The term (the "**Term**") of this Agreement shall commence on the Effective Date and shall continue for an initial period of five (5) years, unless terminated earlier in accordance with this Agreement. Thereafter, Term shall continue for successive one (1) year renewal terms, subject to the annual approval by the Agency's Board of Directors, unless terminated by the Agency upon written notice delivered not less than thirty (30) days prior to the last day of the then current term..
- 11.2 Termination. Notwithstanding any provision of Section 11.1 to the contrary, this Agreement may be terminated as follows:
- 11.2.1 the Agency may terminate this Agreement, in whole or in part, without payment of any termination charges, if Provider fails to achieve the Exit Criteria during the Transition Phase.
- 11.2.2 (a) the Agency may terminate this Agreement, in whole or in part, for convenience upon ninety (90) days prior written notice to Provider in the event that the Board of Directors of the Agency determines that the continuation of this Agreement is not in the best interest of the Agency. Upon termination pursuant to this paragraph, the Agency shall be under no further obligation to Provider other than to pay an amounts due for Services performed as of the effective date of such termination.

- (b) the Agency may terminate this Agreement at any time upon thirty (30) days prior written notice in the event that there are no Statements of Work currently in effect.
- 11.2.3 (a) For any material breach, or failure of performance, by Provider of this Agreement (including Provider's failure to perform any work in a skilled, professional-like and expeditious manner) or any failures which in the aggregate are material, including material failures to conform to the Service Levels, the Agency shall have the right to (reserving all other remedies and rights under this Agreement and at law and in equity), terminate this Agreement in whole or in part, if within thirty (30) days after the giving of written notice to Provider, Provider has not cured such failure, or if such failure is incapable of being cured, termination shall be effective upon receipt of notice.
- (b) In the event (i) of slippage of a Milestone by more than thirty (30) days or (ii) the Deliverables (or any portion thereof) fail to conform to the Specifications or Exit Criteria within the time period set forth in the Transition Plan or to the Specifications or Acceptance Criteria within the time period set forth in the applicable Statement of Work, the Agency may (reserving all other remedies and rights under this Agreement and at law and in equity), terminate this Agreement or the applicable Statement of Work in whole or in part, if within thirty (30) days after the giving of written notice to Provider, Provider has not cured such failure.
 - (c) In the event that Provider (i) fails to perform in accordance with the Service Levels for a period of three (3) consecutive calendar months, or (ii) a Catastrophic Failure occurs, the Agency may (reserving all other remedies and rights under this Agreement and at law and in equity), immediately terminate this Agreement or the applicable Statement of Work in whole or in part.
 - (d) The Agency shall have the right to terminate this Agreement, in whole or in part, on thirty (30) days written notice, in the event that Provider shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Provider or any of its affiliates seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of its or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or debtors, or seeking the entry of an order or relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property; or Provider shall take any corporate action to authorize any of the actions set forth above in this paragraph.
 - (e) Without limiting Provider's obligations with respect to disaster recovery contained in this Agreement, in the event the Provider Services Center is

Non-Operational because of a Force Majeure Event or otherwise, the Agency may, at any time, terminate the affected portion of this Agreement and either perform the affected Services itself or, at any time, contract with a third party for substitute services. The Agency shall not be obligated to pay Provider for the Services not performed by Provider and Provider shall reimburse the Agency for all costs related to transitioning the affected Services to the Agency or a third party and the difference between the charges for the affected Services and the Agency's costs to obtain the substitute services, whether performed by the Agency or a third party.

- (f) the Agency shall have the right to terminate this Agreement, in whole or in part, upon thirty (30) days written notice, in the event there has been a material adverse change in the financial condition of Provider which affects the ability of Provider to perform the Services.
- (g) In the event (i) of a change in Control of Provider where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions by an entity that the Agency believes would adversely affect the Agency's or any Agency Affiliate's public mission or the Services, (ii) that all or substantially all of the assets of Provider are acquired by any entity, or (iii) that Provider is merged with or into another entity to form a new entity, then at any time within six (6) months after the last to occur of such events, the Agency may terminate this Agreement, in whole or in part, by giving Provider at least thirty (30) days prior written notice. For purposes of this paragraph, "**Control**" shall mean the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest, if not a stock corporation) of Provider.
- (h) If Provider shall or shall attempt to assign or transfer in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of this Agreement (other than pursuant to subcontractors that are approved in writing by the Agency) or any interest therein without, in any such case, the prior written consent of the Agency in accordance with Section 23.5, or Provider shall encumber in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of this Agreement, or any interest herein without, in any such case, the prior written consent of the Agency, the Agency may terminate this Agreement, in whole or in part, by giving Provider at least thirty (30) days prior written notice.
- (i) If Provider or any of its affiliates, officers or controlling owners shall become the subject of any investigation by any governmental authority for violation of any law or regulation or shall commit any act that the Agency believes will reflect badly on the standing of the Agency or any Agency Affiliate or cause negative media attention on the Agency, any Agency

Affiliate or its or their employees via acts or omissions arising from Provider activities, whether or not related to Services to be performed under this Agreement, the Agency may terminate this Agreement, in whole or in part, by giving Provider at least thirty (30) days prior written notice.

- (j) If any change in law or regulation results in circumstances that adversely affect (i) Provider's ability to provide the Services for the Fees, or (ii) Provider's performance of the Services, then the Agency shall have the right to terminate this Agreement, in whole or in part, on thirty (30) days prior written notice.
- (k) Provider shall have the right to terminate a Statement of Work solely in the event of a failure by the Agency to make timely payment of any Fees in excess of One Million U.S. Dollars (USD 1,000,000), due and payable under such Statement of Work and not subject to good faith dispute by the Agency, which breach is not cured within ninety (90) days of written notice thereof, which notice expressly states Provider's intention to so terminate.
- (l) Due to the impact any termination of this Agreement, in whole or in part, would have on the Agency's business, the Agency's failure to perform its responsibilities set forth in this Agreement (other than as provided in Section 11.2.3(k) above) shall not be deemed to be grounds for termination by Provider. PROVIDER ACKNOWLEDGES THAT THE AGENCY WOULD NOT BE WILLING TO ENTER INTO THIS AGREEMENT WITHOUT ASSURANCE THAT IT MAY NOT BE TERMINATED BY PROVIDER AND THAT PROVIDER MAY NOT SUSPEND PERFORMANCE EXCEPT, AND ONLY TO THE EXTENT, PROVIDER TERMINATES PURSUANT TO SECTION 11.2.3(k). The Agency's failure to perform any of its responsibilities set forth in this Agreement (other than as provided in subsection 11.2.3(k) above) shall not be deemed to be grounds for termination by Provider; however, Provider's nonperformance of its obligations under this Agreement shall be excused if and to the extent (i) such Provider nonperformance results from the Agency's failure to perform its responsibilities, and (ii) Provider provides the Agency with reasonable notice of such nonperformance and uses commercially reasonable efforts to perform notwithstanding the Agency's failure to perform.

11.3 Effects of Termination.

- 11.3.1 Termination of this Agreement in part (including termination of less than all Statements of Work) shall not affect the rights of the Agency and the obligations of Provider with respect to those portions of this Agreement not terminated. After receipt of a notice of termination and except as otherwise directed by the Agency, Provider shall:

- (a) stop work on the date and to the extent specified in the notice of termination;
- (b) transfer title or license to the Agency (to the extent that transfer of title or license is contemplated hereby and has not already been transferred), and deliver in the manner, at the times, and to the extent directed thereby the Deliverables, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect to the performance of, the work terminated by the notice of termination. Upon such transfer, the Agency shall pay such amounts for such title or license not already paid hereunder;
- (c) deliver to the Agency, and cause its subcontractors and its and their employees and agents to deliver to the Agency, all materials relating to the Agency or this Agreement, or obtained or developed in the course of performance of this Agreement, or containing or derived from any the Agency Confidential Information (as defined in Section 13.1) (a certificate evidencing compliance with this provision shall, if requested by the Agency, accompany such material) not needed for the non-terminated portion of the Services; and
- (d) continue performance of such part of the work as shall not have been terminated by the notice of termination.
- (e) If the Agency chooses to terminate this Agreement in part, the Fees payable under this Agreement will be equitably adjusted to reflect those services that are not terminated.

11.3.2 In addition to the other requirements of this Section 11.3, Provider hereby grants to the Agency at no cost a perpetual, fully paid, non-exclusive, enterprise-wide and royalty free license to use, reproduce, distribute, perform and display, disclose and otherwise use and exploit all or any part of the Developer Tools (as defined below) and deliver such Developer Tools to the Agency. In addition, the Agency shall have the right to transfer such license to a designated third party that the Agency selects to perform services covered by this Agreement. At the Agency's option, Service Provider shall place the Developer Tools into escrow with a third party escrow agent acceptable to the Agency. "**Developer Tools**" shall mean any and all tools used by Provider as part of the process of creating the Deliverables and any such tools embedded or to be embedded in the Deliverables or which are necessary to install, use, support, create, revise, complete, modify or enhance the Deliverables, including without limitation, methodologies, tools, knowledge, data, configuration data, specifications, listings, printouts, documentation, documents, notes, flow charts and programming techniques commonly employed by programmers.

ARTICLE 12
TERMINATION ASSISTANCE

12.1 Termination/Expiration Assistance. Unless otherwise specifically set forth in a Statement of Work, at the Agency's request, commencing six (6) months prior to expiration of this Agreement or a Statement of Work, or on such earlier date as the Agency may request, or commencing upon any notice of termination (in whole or in part) or of non-renewal of this Agreement (including notice based upon default by the Agency), and continuing for a period of at least six (6) months after such termination or expiration, as applicable (the "**Termination/Expiration Assistance Period**"), Provider will provide to the Agency, or at the Agency's request to the Agency's designee, at no additional charge, the reasonable termination/expiration assistance requested by the Agency to allow the terminated or expired Services to continue without interruption or adverse effect and to facilitate the orderly transfer of such Services or the Deliverables thereof to the Agency or its designee ("**Termination/Expiration Assistance**"). Provider shall not increase the charges for such Services and Deliverables during any Termination/Expiration Assistance Period and shall reduce such charges to the extent Services are reduced during such Termination/Expiration Assistance Period. The quality and level of the Services shall not be degraded during the Termination/Expiration Assistance Period. After the expiration of the Termination/Expiration Assistance Period, Provider shall answer questions from the Agency regarding the Services on an "as needed" basis at Provider's then standard commercial billing rates.

12.1.1 Termination/Expiration Assistance will include the following (but solely as it relates to that part of this Agreement or the applicable Statement of Work that expires or is terminated):

- (a) Within thirty (30) days after the commencement of Termination/Expiration Assistance, Provider will provide a complete plan for turnover that enables a smooth transition of the Services to the Agency or a successor to Provider (such plan, the "**Turnover Plan**"). The Turnover Plan will be provided to the Agency in both hardcopy and in an electronic format capable of being utilized by the Agency. Upon the Agency's written approval of the Turnover Plan, Provider will provide Termination/Expiration Assistance in accordance with such Turnover Plan. Provision of Termination/Expiration Assistance will not be complete until the Agency Project Manager agrees that all tasks and deliverables set forth in the Turnover Plan have been completed.
- (b) Provider will attend periodic review meetings called by the Agency, during which the parties at a minimum will review Provider's performance of Termination/Expiration Assistance, including the completion of tasks and deliverables set forth in the Turnover Plan.
- (c) Provider will provide sufficient personnel with current knowledge of the Services to work with the appropriate staff of the Agency and, if applicable, the successor Provider to perform the turnover tasks defined in the Turnover Plan. Provider will cooperate with the Agency and any successor to Provider in transitioning the functions performed by Provider

under this Agreement in the same manner as described in Section 3.3 for third parties performing the Services.

- (d) Provider will promptly cooperate and provide any information that is necessary to effectuate a smooth transfer of the Services performed and Deliverables delivered by Provider under this Agreement to the Agency or a successor to Provider, including as necessary for the Agency to prepare a request for proposal.
- (e) Provider shall identify and assist the Agency in procuring suitable functionally equivalent replacements for any shared hardware or software then used by Provider in providing the Services and shall provide a listing and detailed written description of all support and development tools and methodologies used in performing the Services.
- (f) Provider will obtain any necessary rights and thereafter make available to the Agency or its designee, pursuant to reasonable terms and conditions, any third party services then being utilized by Provider in the performance of the Services including services being provided through subcontractors.

12.1.2 Upon the latter of the expiration or termination of this Agreement, in whole or in part, and the last day of the applicable Termination/Expiration Assistance Period, the rights granted to Provider in Section 14.4 and 14.6 shall immediately terminate to the extent no longer reasonably necessary by Provider to provide the Services, and Provider shall (a) deliver to the Agency, at no cost to the Agency, a current copy of all of the Agency Furnished Materials in the form in use as of that time, (b) destroy or erase all other copies of the Agency Furnished Materials in Provider's care, custody or control, and (c) cease all use of the Agency Systems.

12.1.3 Upon the latter of the expiration or termination of this Agreement, in whole or in part, and the last day of the applicable Termination/Expiration Assistance Period, Provider shall deliver to the Agency a copy of all of the Deliverables (including Source Code) and related documentation relating to the terminated portion of this Agreement in whatever form exists as of that time.

12.1.4 Upon the latter of the expiration or termination of this Agreement, in whole or in part, and the last day of the applicable Termination/Expiration Assistance Period, at the Agency's request, Provider shall deliver all Pre-Existing Materials, Third Party Content and Third Party Technology relating to the terminated portion of this Agreement, to the Agency or its designee.

12.1.5 Provider will provide the Agency with all documentation, policies, procedures and tools used to provide the Services.

12.1.6 the Agency may extend offers of employment to Provider's and its subcontractors' employees and agents, and Provider shall waive and cause its subcontractors and its and their employees and agents to waive, any prohibitions in any employment agreements with such individuals that may restrict such

individuals from accepting such offers of employment from the Agency. Provider or its subcontractors shall not make counter-offers to such employees or agents, or otherwise interfere with the forgoing rights of the Agency.

- 12.2 Requested Services. For a period of twelve (12) months following the effective date of termination/expiration of a Statement of Work, Provider shall provide, at the Agency's request, Services related to the termination and not set forth in Section 12.1 at Provider's direct cost plus ten percent (10%). Such Services shall be New Services.
- 12.3 Extension of Services. The Agency may elect once to extend this Agreement for up to twelve (12) months beyond the then-effective date of the expiration or termination of this Agreement (a "**Temporary Extension of Services**") by notifying Provider in writing of such election at least ninety (90) days prior to such effective date and paying Provider the Fees otherwise payable under this Agreement as set forth in the payment schedule to the applicable Statement of Work. If the Agency elects to extend only a portion of the Services, the Fees for such services will be subject to good faith negotiations of the parties.

ARTICLE 13 CONFIDENTIAL INFORMATION

- 13.1 Confidential Information Defined. During the Term, the Agency may disclose to Provider or Provider may acquire or have access to certain Agency confidential information ("**Agency Confidential Information**"). Agency Confidential Information shall mean any information of the Agency, any Agency Affiliate, its and their employees and customers, and other third party licensors and contractors that is not generally known to the public and at the time of disclosure is identified, or would reasonably be understood by Provider, to be proprietary or confidential, whether disclosed in oral, written, visual, electronic or other form, and which Provider (or its contractors or agents) observes or learns in connection with this Agreement. The Agency Confidential Information includes (i) business plans, strategies, forecasts, projects and analyses; (ii) financial information and fee structures; (iii) business processes, methods and models; (iv) employee and Provider information; (v) the Agency Furnished Materials and the Agency Systems; (vi) Specifications; (vii) manufacturing, purchasing, logistics, sales, technical, product and marketing information; (viii) Work Product; (ix) Data, Customer Information and Employee Information; and (x) the existence, terms and conditions of this Agreement. The Agency Confidential Information shall be proprietary to the Agency. Provider may disclose to the Agency technical products and information concerning Provider business activities specifically identified in Schedule 13.1 ("**Provider Confidential Information**"). Provider Confidential Information and the Agency Confidential Information may be referred to as "**Confidential Information**")
- 13.2 Nondisclosure. Provider will not, without the prior written consent of the Agency, remove from the Agency's or any Agency Affiliate's premises or disclose the Agency Confidential Information to any third party, other than those of Provider's and its approved subcontractors' employees and agents with a need to know for performance hereunder, or otherwise jeopardize the confidential nature of the Agency Confidential

Information, and Provider shall not use such the Agency Confidential Information other than for the purposes of this Agreement. Provider agrees that all the Agency Confidential Information will be held in strictest confidence by Provider and that such the Agency Confidential Information will not be copied, reproduced or altered either in whole or in part by any method whatsoever, unless agreed upon in writing by the Agency, and Provider hereby agrees to maintain the confidentiality thereof using at least as great a degree of care as Provider uses to maintain the confidentiality of Provider's own most confidential information, but in no event less than a reasonable degree of care. Provider shall cause its subcontractors and its and their employees and agents to whom the Agency Confidential Information is disclosed to be informed of and agree to be bound by the restrictions upon disclosure and use of the Agency Confidential Information as contained in this Agreement and to sign an agreement containing the terms set forth in Schedule 13.2 hereto. The Agency agrees that it will not, during or after the Term, permit the duplication or disclosure of any Provider Confidential Information to any person (other than an employee, agent or representative of the Agency or an Agency Affiliate who needs such information for the performance of the obligations or for the exercise of the rights granted hereunder), unless such duplication, use or disclosure is specifically authorized by Provider in writing.

- 13.3 Exceptions. The parties' obligations set forth in Section 13.2 shall not apply to information to the extent such information:
- 13.3.1 has been legally in the recipient party's possession prior to disclosure by the disclosing party and is not subject to any non-disclosure obligations;
 - 13.3.2 has become part of the public domain through no fault of the recipient party;
 - 13.3.3 has been developed subsequent to, and independent of, disclosure to the recipient party; or
 - 13.3.4 has been released in writing by the disclosing party so that the recipient party may make public disclosure, or is otherwise deemed by the disclosing party, in writing, to no longer be confidential.
- 13.4 Required Disclosure. Notwithstanding anything to the contrary in this Section, if the recipient party learns that it is or may be required by applicable court order, law or regulation to disclose any Confidential Information, then the recipient party shall: (a) as promptly as possible after learning of a possible disclosure requirement, and in any case prior to making disclosure, notify the disclosing party of the disclosure requirement, in writing, so that the disclosing party or the appropriate party may seek a protective order or other appropriate relief, (b) provide such cooperation and assistance as the disclosing party may reasonably request in any effort by the disclosing party or the appropriate party to obtain such relief, and (c) take reasonable steps to limit the amount of Confidential Information so disclosed and to protect its confidentiality.
- 13.5 Injunctive Relief. Provider acknowledges that breach of this Section or disclosure of other information which, at law or in good conscience or equity, ought to remain

confidential, will give rise to irreparable injury to the Agency, Agency Affiliates, and/or the owner of such information, inadequately compensable in damages. Accordingly, the Agency, such Agency Affiliate or such other party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available. Provider acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests of the Agency and Agency Affiliates and are reasonable in scope and content.

- 13.6 No License. Nothing contained in this Agreement shall be construed to grant to Provider any right or license under any Intellectual Property Right of the Agency or any Agency Affiliate, except as expressly set forth in Section 14.4 hereof.
- 13.7 Return of Confidential Information. Upon the earlier of (i) a request of the disclosing party; or (ii) the expiration or termination of this Agreement or the applicable Statement of Work, the recipient party will return all Confidential Information no longer reasonably required to provide or receive Services that are still in effect as of such expiration or termination, in whatever form or media, retaining no copies of the same in any form whatsoever, or shall destroy such Confidential Information and certify in writing to the disclosing party that such destruction has been effected. Recipient party's obligations hereunder regarding Confidential Information shall survive the return or destruction of such Confidential Information or termination of this Agreement or completion of the Services.
- 13.8 Confidentiality Pledge. All Provider personnel, and personnel of Provider's subcontractors, shall be required to complete and submit to the Agency a Confidentiality Pledge substantially in the form attached hereto as Exhibit A.

ARTICLE 14 TITLE; PROPRIETARY RIGHTS

- 14.1 Work For Hire. All work performed hereunder, including but not limited to, the Services, business methods or processes, programs, systems, processes, data development, modification and enhancement of systems, computer programs, operating instructions, ideas, designs, concepts and all other documentation developed for or relating to the Agency, any Agency Affiliate and all documents, data and other information of any kind, including information incorporating, based upon, or derived from the foregoing, including reports and notes prepared by Provider, its subcontractors, or its or their employees and agents, and all software Deliverables and other Deliverables developed, prepared, produced or created for the Agency by Provider hereunder (whether or not completed) together with all modifications, revisions, changes, copies, partial copies, translations, compilations, partial copies with modifications and derivative works of the foregoing (collectively, the "**Work Product**") are, shall be and shall remain the property of the Agency and may not be used by Provider, its subcontractors, or its and their employees and agents for any other purpose except for the benefit of the Agency. Provider shall not sell, transfer, publish, disclose, display, rent, lease, loan, license or otherwise make available to others any part of the Work Product, or copies thereof and Provider shall treat the same as the Agency Confidential Information. All applicable

Intellectual Property Rights (as defined below) in and to the Work Product are, shall vest and shall remain in the Agency, and neither Provider, its subcontractors, nor its or their employees or agents shall have any property interest in the Work Product, and same are to be considered works made for hire. Provider will be responsible for providing, acquiring, operating and maintaining all hardware, equipment and software required for performance of the Services hereunder. “**Intellectual Property Rights**” shall mean copyright rights (including, without limitation, the exclusive right to use, make recordings of, reproduce, modify, adapt, edit, enhance, maintain, support, market, sell, rent, sell for rental, sublicense, distribute copies of, publicly and privately display and publicly and privately perform, exploit, exhibit, the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including, without limitation, trade names, trademarks, service marks and trade dress), trademark and service mark registrations and applications, patent rights (including without limitation the exclusive right to make, use and sell), patent registrations and applications, mask-work rights, trade secrets, moral rights, author’s rights, right of publicity, contract and licensing rights, rights in packaging, goodwill and other intellectual property rights, as may exist now and/or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the U.S or any other state, country or jurisdiction.

- 14.2 Assignment of Rights. To the extent the Work Product or any materials contained therein or prepared therefor or the Intellectual Property Rights therein do not vest in the Agency by reason of the same being a work made for hire, Provider hereby grants, assigns and transfers to the Agency all right, title and interest in and to the Work Product and all Intellectual Property Rights thereto and Provider shall not retain any such rights therein. The Agency shall have all authorship rights therein. All Work Product shall belong exclusively to the Agency, with the Agency having the exclusive right to obtain and to hold in its own name, patents, copyright registrations or trademark registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof, unencumbered by any claim by Provider, its subcontractors, or its or their officers, directors, employees, agents or subcontractors. Provider agrees, at the Agency’s reasonable cost, to give the Agency and/or any person designated by the Agency, reasonable assistance required to perfect the rights defined in this Section including execution and delivery of all documents required by the Agency to document or protect the Agency proprietary rights (including Intellectual Property Rights) in the Work Product or assistance in filing applications for patent or copyright registration of such materials in the name of the Agency and/or any person designated by the Agency, and in making all other necessary or appropriate filings with governmental entities so as to secure and maintain maximum protection for the Work Product. Unless otherwise requested by the Agency, upon the completion of the Services to be performed hereunder, or upon the earlier termination of this Agreement, in whole or in part, Provider shall immediately turn over to the Agency all such materials and the Work Product developed pursuant hereto and no copies thereof shall be retained by Provider, its subcontractors, or its or their employees or agents without the prior written consent of the Agency. Without limiting the foregoing, Provider hereby waives any and all claims that Provider may now or hereafter have in any jurisdiction to so-called “**moral rights**” or rights of “**droit**

moral” with respect to the results and proceeds of the Work Product and Provider’s services hereunder.

- 14.3 Inventions. During the Term, Provider shall disclose promptly to the Agency any inventions or improvements made or conceived by Provider that result from work done under this Agreement or as a result of information supplied to Provider, directly or indirectly, by the Agency. At the Agency’s request, Provider shall assign, and shall cause Provider, its subcontractors and its and their employees and agents to assign, all right, title, and interest in and to any and all such inventions and improvements and to execute such documents as may be required to file applications and to obtain patents in the name of the Agency or its nominees, in any countries, covering such inventions or improvements. Provider represents it does not have any commitments to others under which Provider is obligated to assign to such others inventions or improvements or rights therein in conflict with Provider’s obligations to the Agency pursuant to this Agreement.
- 14.4 the Agency Furnished Materials. Any materials, including any third party materials, furnished by the Agency in connection with this Agreement (and as further described in this Section 14.4, the “**the Agency Furnished Materials**”) are provided to Provider as the Agency Confidential Information, solely for the use by Provider to provide the relevant Services in furtherance of this Agreement for the duration of the applicable Statement of Work, on a non-exclusive, non-transferable and non-sublicensable basis (except to authorized subcontractors who have a need to use the same for performance of this Agreement) and all rights, title and interest thereto shall, as between the parties, at all times remain in the Agency. All the Agency Furnished Materials are provided to Provider solely on an as-is, where-is basis without any warranty. All the Agency Furnished Materials, including drawings, forms, models, parts, drafts, reports, documentation, contents of computers, work stations and network-related devices, computer equipment, office equipment, software, data storage media, whether machine readable or otherwise, any Intellectual Property Rights and/or any other property acquired by Provider from the Agency or any Agency Affiliates in the rendition of Services hereunder, and all copies thereof, shall be the property of the Agency and shall be, at such times as may be specified by the Agency or the termination/expiration of the applicable Statement of Work, delivered to the Agency. Provider shall use all the Agency Furnished Materials that are obtained by the Agency from third parties in accordance with the terms and conditions set forth in the applicable third party licenses. Provider acknowledges that the Agency may revoke the licenses granted to Provider with respect to such third party the Agency Furnished Materials at any time if such third party the Agency Furnished Materials are not necessary to Provider’s performance of the Services hereunder, and in any case, if the third party licensor terminates the Agency’s right to use or to sublicense such third party the Agency Furnished Materials. Provider will be responsible for all consents and fees, if any, required to permit its authorized subcontractors to access the Agency Furnished Materials that are owned by third parties. Provider will be responsible for all consents and fees, if any, required to permit the Dedicated Provider Personnel to access the Agency Furnished Materials that are owned by third parties.

- 14.5 Pre-Existing Materials. To the extent that any pre-existing materials or information owned by Provider or any third party are contained in the Deliverables or are necessary for the use of the Deliverables or for the performance of any Services (“**Pre-Existing Materials**”), Provider shall obtain the Agency’s written consent before using such Pre-Existing Materials hereunder. Further, Provider warrants that it has or will acquire the right to grant and will grant to the Agency, before delivery of the Deliverables, and at no present or future cost to the Agency, a perpetual, irrevocable, non-exclusive, worldwide, enterprise-wide, royalty-free license to: (i) use, execute, display, copy, perform, modify and prepare derivative works of the Pre-Existing Materials, and (ii) authorize others (including without limitation Agency Affiliates) to do any, some, or all of the foregoing. Provider shall be responsible for all payments in connection with such licenses of Pre-Existing Materials, and the Agency shall have the right to review all such Provider agreements with third parties to ensure their acceptability, and Provider shall deliver such agreements to the Agency within five (5) days of the Agency’s request therefor. Also, upon the Agency’s request, Provider shall provide a copy of the Source Code for any Pre-Existing Materials as well as any Developer Tools, and ongoing support and maintenance services with respect thereto.
- 14.6 The Agency Systems. Commencing on the Commencement Date and for the duration of each Statement of Work, the Agency will provide to Provider, the right to use and access the software and hardware currently used by the Agency, or necessary for Provider to perform the functions to be performed by Provider hereunder, on a non-exclusive, non-transferable basis, including the Software, and any successor systems, as listed in the applicable Statements of Work (the “**Agency Systems**”) for use in performing Services thereunder, and all reasonably necessary support for Provider’s continued use and access thereof. Provider shall be responsible, at Provider's expense, for obtaining any necessary consents or assignments from any third party licensors of the Agency Systems prior to the date on which such use and access is necessary to enable Provider to use the Agency Systems in accordance with this Section. Provider shall be solely responsible for any fees and other amounts payable to any third party for the performance of Provider’s obligations under this Agreement, unless the parties specifically agree to the contrary in the applicable Statement of Work. Provider shall use the Agency Systems only for the purposes of this Agreement and in accordance with any restrictions on such use which may be stated in the applicable Statement of Work or provided by the Agency to Provider from time to time. Provider shall not modify, decompile, translate or adapt, by reverse engineering or otherwise, the Agency Systems in any way or use the Agency Systems to create a derivative work or attempt to create the source code from the object code except as set forth in a Statement of Work. Provider acknowledges that the Agency Systems are the sole and exclusive property of the Agency or its licensors, including all applicable Intellectual Property Rights inherent therein and appurtenant thereto. Title in and to the Agency Systems and any copies thereof shall be and remain the sole and exclusive property of the Agency or its licensors. Provider shall not sell, transfer, publish, disclose, display, rent, lease, loan, license, or otherwise make available any portion of the Agency Systems to others, and shall not permit any other party access or use of such the Agency Systems, other than the employees and agents of Provider and its approved subcontractors who have a need to access or use such Systems for performance of this Agreement. Provider agrees to secure and protect the Agency Systems in a manner

consistent with the maintenance of the Agency's or its licensors' rights therein and to take appropriate action by instruction or agreement with all persons who are permitted access to the Agency Systems to satisfy its obligations hereunder. Provider shall comply with the terms of any third party agreements with respect to the Agency Systems and shall be responsible for breaches thereof by the Agency employees or subcontractors. Provider acknowledges that the Agency Systems are the Agency Confidential Information and contain proprietary trade secrets of the Agency or its licensors. Provider agrees to comply with the terms of any agreement required by any third party licensor of the Agency Systems which Provider is required to execute by such third party.

14.7 Use of Third Party Content or Technology. Provider shall not use any Third Party Content or Third Party Technology in the Deliverables without the Agency's prior written approval, and in no event shall Provider use any Third Party Content or Third Party Technology in the Deliverables or the provision of Services unless: (a) Provider is expressly permitted to use such Third Party Technology or Third Party Content pursuant to written agreements with all third party rights holders; and (b) Provider has acquired for Provider and the Agency, without present or future cost to the Agency, all rights, permissions, clearances, releases or other authorizations necessary to use such Third Party Technology or Third Party Content, as contemplated by this Agreement and a perpetual, irrevocable, worldwide, enterprise-wide, royalty free license therefor for the Agency to: (i) use, execute, display, copy, perform, modify and prepare derivative works thereof, and (ii) authorize others, including without limitation Agency Affiliates to do any, some, or all of the foregoing, as well as an obligation of the owner or licensor thereof to provide ongoing support and maintenance therefor to the Agency. Provider shall be responsible for all payments in connection with such licenses of Third Party Technology or Third Party Content, and the Agency shall have the right to review all Provider agreements with third parties to ensure their acceptability, and Provider shall deliver such agreements to the Agency within five (5) days of the Agency's request therefor. For purposes of this Agreement, "**Third Party Content**" shall mean all content, if any, for which rights, licenses, permissions, or other clearances need to be obtained from any persons other than the parties hereto for the use of such content in the Deliverables as contemplated herein. "**Third Party Technology**" shall mean all systems, tools and/or software, if any (including, without limitation, documentation, source code, compilers, diagnostics and data base products) (i) which are required to be licensed from persons other than the parties hereto if the Deliverables require the use of such Third Party Technology, (ii) with which the Deliverables are designed or are based on, or (iii) which are required for or used in the provision of the Services. Third Party Content and Third Party Technology shall not include any content or technology that the Agency expressly undertakes to obtain from the Agency's licensors, as set forth in Section 14.6 above.

14.8 Residuals. Nothing in this Agreement shall prevent the Agency from using the Residuals (defined below) resulting from the receipt or use of the Services hereunder. As used herein, "**Residuals**" shall mean information in non-tangible form, which may be developed or retained by persons who have provided or received the Services, including ideas, concepts, know-how or techniques. The term "Residuals" shall not include any Provider Confidential Information.

ARTICLE 15
PRIVACY AND DATA SECURITY

15.1 Certain Definitions.

- (a) “**Customer Information**” shall mean all information and data pertaining to a prospective, current or past customer, applicant, agent, eligible, or other intermediary of the Agency or any Agency Affiliate, including but not limited to such person’s address, telephone number and other contact information, image, gender, age, account or other identifying numbers or attributes, and financial, health and insurance information, and other information about an individual, including the fact that the individual is or was a customer or applicant of the Agency or any Agency Affiliate.
- (b) “**Data**” shall mean any and all data in any form, that is collected, copied, processed, transferred or otherwise used by or on behalf of Provider in performing the Services, including without limitation, Customer Information, Employee Information, Personal Data, trade secrets or corporate proprietary information of any kind whatsoever, which is made available directly or indirectly to Provider in connection with the performance of the Services.
- (c) “**Data Privacy and Security Laws**” shall mean: (a) all national and New York State privacy, security and data protection laws, rules and regulations, including without limitation, U.S. and New York State laws applicable to data privacy and security, as well as applicable security breach and identity theft notification laws of any applicable jurisdiction (including without limitation, the European Union), and all then-current industry standards, guidelines and practices with respect to privacy, security and data protection including the collection, processing, storage, protection, use and disclosure of Data, forensic imaging and, electronic server and system data extraction; and (b) the applicable privacy policies of either party as well as the Agency’s policies and guidelines applicable to any of the foregoing which are provided to Provider in written form from time to time or posted on the Agency’s web site.
- (d) “**Employee Information**” shall mean all information and data pertaining to a prospective, current or past employee or contractor of the Agency or any Agency Affiliate and Dedicated Provider Personnel, including but not limited to such person’s address, telephone number and other contact information, image, gender, age, account or other identifying numbers or attributes, information regarding compensation, benefits and other terms of employment, financial, health and insurance information, and other information about such person, including the fact that the person is or was an employee or contractor of the Agency or any Agency Affiliate.

- (e) **“Personal Data”** shall mean any information that, alone or in combination with other information, relates to a specific, identifiable individual person. Personal Data includes without limitation, individual names, social security numbers, telephone numbers, home address, driver’s license number, account number, email address, and vehicle registration number. Any information that can be associated with Personal Data shall also be Personal Data. For example, an individual’s age alone is not Personal Data, but if such age were capable of being associated with one or more specific identifiable individuals then such age would be deemed Personal Data.

15.2 Restrictions on use of Data. Provider agrees that (i) at all times during the Term and thereafter, it will comply with its obligations under all applicable Data Privacy and Security Laws, (ii) Data will not be utilized by Provider or any Provider Personnel for any purpose other than for the purpose of rendering the Services to the Agency under this Agreement, and shall be accessible by Provider Personnel on a need-to-know basis only, (iii) the Agency is solely responsible for determining the purposes for which and the manner in which Data is or is to be processed under this Agreement, and (iv) Provider shall treat all Data as the Agency Confidential Information subject to Provider’s other obligations pursuant to this Agreement. The Agency reserve the right to review the Provider policies, procedures and practices used to maintain the privacy, security and confidentiality of Data.

15.3 Security Measures. Without limiting Provider’s other obligations under this Article 15, Provider shall, and shall contractually require and cause Provider Personnel to: (i) implement and maintain reasonable technical and organizational security measures, procedures and practices appropriate to the nature of the Data and take such other actions as are necessary to maintain conformance with high industry standards of security and to ensure the security and confidentiality of the Data, protect against any anticipated or actual threats or hazards to the security or integrity of the Data and prevent unauthorized and unlawful access to, processing or destruction, damage, loss, use, modification and disclosure of Data, and (ii) otherwise keep the Data confidential in accordance with the terms of this Agreement and any applicable Data Privacy and Security Laws. Without limitation of the above, Provider shall (and shall cause Provider Personnel to) take all precautions and adopt all safety measures to avoid the foregoing risk, through: (a) proactive monitoring of known vulnerability reporting services, (b) engaging qualified, independent and reliable third parties to regularly audit and validate the applicable safety measures, (c) subject to Section 15.7(f) below, encrypting Data consisting of, without limitation, financial account information, social security number, driver’s license or non-driver identification card number, mother’s maiden name, date of birth, passwords, biometrics, electronic serial number, personal identification number or code and/or any other account information and/or account activity information or other information or data that can be used for identity theft (even that which is not personally identifiable) and other sensitive information with industry standard encryption levels at all times while in transit or stored, (d) prohibiting Provider Personnel from bringing, transporting or transmitting Data to their homes or personal computers, e-mail accounts, devices or media, and (e) adopting up-to-date and leading edge technologies in consultation with, or

otherwise at the request of, the Agency for the safe, secure and accurate collection, processing, storage, and distribution of all Data, including but not limited to by changing default security settings (including, without limitation, passwords) and promptly installing all updates, patches and security enhancements made available by the vendors of any of the third party products used in connection with such collection, processing, storage and distribution.

- 15.4 Requests for Data and Information. If Provider should receive any legal request or process in any form seeking disclosure of Data, Provider shall provide the Agency with prompt prior notice of such request so that the Agency may seek a protective order or pursue other appropriate remedies to protect the confidentiality of such information. Provider agrees to furnish only that portion of the information which is legally required to be furnished and, in consultation with the Agency, to use all reasonable efforts to assure that the information is maintained in confidence by the party to whom it is furnished. Provider shall: (i) upon the request of the Agency or any regulatory entity, promptly provide the Agency or such regulatory entity with information regarding its security measures; (ii) immediately provide the Agency or any such regulatory entity with detailed information regarding any failure or breach of its security measures including, without limitation, how and when such failure or breach occurred and what actions Provider is taking to remedy such failure or breach; (iii) cooperate in the investigation of the failure or breach of such security measures at the Agency's or any regulatory entity's request; and (iv) reimburse the Agency for its costs of notifying any individuals of the security breach if the Agency or any regulatory entity considers notification necessary or appropriate, as described in greater detail in Section 15.5 below.
- 15.5 Notification of Security Breach and Incident Response. Without limitation of the foregoing, Provider shall immediately advise the Agency in the event that it learns or has reason to believe that there has been unauthorized access to or use of, or any security breach relating to or affecting, Data, or that any person who has had access to Data has violated or intends to violate the terms of this Agreement, and Provider shall, at its own expense, cooperate with the Agency in investigating and responding to the foregoing, notifying customers or other affected individuals as required by law, and seeking injunctive or other equitable relief against any such person or persons who have violated or attempted to violate the security of Data. Provider bears the full and complete risk and liability for all loss, theft or destruction to any Data including, without limitation, whilst in transit to the Agency, and shall implement the BCP and DRP that enable Provider to take appropriate actions to address incidents of unauthorized access or misuse of Data. In the event any Data is modified, lost or destroyed due to any act or omission of Provider, or Provider Personnel, including without limitation, any breach of the security procedures described in this Article 15, Provider shall be responsible for the prompt regeneration or replacement of such Data. If Provider fails to correct or regenerate the lost or destroyed Data within the time reasonably set by the Agency, then the Agency may obtain data reconstruction services from a third party, and Provider shall cooperate with such third party as requested by the Agency. In addition to any other damages incurred by the Agency, Provider will be responsible for the actual costs incurred by the Agency for the reconstruction of Data by a third party. In the event it is determined that Data has been modified, lost or destroyed as a result of the willful conduct or negligence of Provider or

Provider Personnel, the Agency may, in addition to and not in lieu of any other remedies afforded to it hereunder or at law or in equity, terminate this Agreement for cause pursuant to Section 11.2 of this Agreement.

In the event that applicable law requires that the Agency's customers or other affected persons be notified of a security incident involving Data, and applicable law does not establish whether such notice must come from the Agency or Provider, the Agency shall have the discretion of determining whether such notice shall come from the Agency or Provider. In any event, the content, timing and other details of such notice shall be subject to the Agency's approval, in the Agency's sole discretion. Provider shall be responsible for reimbursing the Agency for the costs of such notifications and fielding feedback and questions from those notified, and any other associated costs that the Agency may incur in connection with responding to or managing a breach of the security of Data in Provider's or Provider Personnel's possession, or that is stored or transmitted by Provider or Provider Personnel on the Agency's behalf (for example, without limitation, costs of credit monitoring services, call center services and forensics services, fines imposed by credit card associations, merchant banks or financial account institutions, and costs passed on by individual card companies, banks and other financial institutions, such as the costs of issuing replacement cards, fraud liability, chargebacks, compromise fees and other remediation costs). The remedies set forth herein shall be in addition to any other remedies available to the Agency at law or in equity, including but not limited to Provider's indemnification obligations set forth in Section 15.7(e) and Article 17 below.

15.6 Disposal.

As soon as possible after any Data (or a portion thereof) is no longer needed by Provider to fulfill its obligations under this Agreement, and in any event upon termination of this Agreement, as applicable, for any reason: (a) such Data shall be returned to the Agency by Provider, or at the Agency's request destroyed (including without limitation, with respect to any hard copy, cross-shredded), (b) all electronic copies of the Data in Provider's or Provider Personnel's possession or control shall be deleted in a manner that makes the Data non-readable and non-retrievable, and (c) Provider will certify to the Agency, in writing, that Provider has complied with its obligations under this Paragraph. Upon disposal under any circumstances, unencrypted personal identifying information contained in print or electronic media is required to be shredded, destroyed, or modified so that it is unreadable.

15.7 Other Provider Obligations.

Provider shall:

- (a) and shall procure that all Provider Personnel shall, comply with any written request by the Agency to:
 - (i) provide information about Provider's or Provider Personnel's processing of Data;
 - (ii) otherwise provide reasonable assistance to the Agency as necessary to allow the Agency to comply with applicable Data

Privacy and Security Laws or the requests of a competent supervisory authority;

- (iii) cooperate with any competent supervisory authority in the course of its enquiries and abide by the advice of the supervisory authority with regard to the processing, collection or use of any Data;
- (b) promptly notify the Agency in writing if any complaints are received about the processing of Data from third parties and Provider shall not make any admissions or take any action which may be prejudicial to the defense or settlement of any such complaint and provide to the Agency such reasonable assistance as it may require in connection with such complaint;
- (c) only process Data in accordance with written instructions given by the Agency and correct or delete inaccurate Data as requested by the Agency;
- (d) hold in its possession such Data as is required for performance of its obligations hereunder only for such time as is required for performance of its obligations hereunder or as instructed by the Agency;
- (e) without limitation of the indemnification obligations set forth in this Agreement, Provider hereby agrees to indemnify, defend and hold harmless the Agency Indemnitees from and against any and all third party claims, including any Losses arising from any such third party claims (collectively, “**Claims**”), including without limitation actions by regulatory agencies and private Claims, where such Claims arise out of a Security Event (as defined below). For purposes of this Paragraph, a “**Security Event**” is an event where Data is accessed or received by an individual or entity who is not authorized to access or receive such information;
- (f) ensure that any Data is encrypted at the level that the Agency can accept (or split into two or more physical or data files, as applicable, with identifying keys provided to the Agency such that neither file on its own contains readable Data) prior to the transmission or delivery of such Data to the Agency over a public network or on physical media;
- (g) use such shipping company or other method of transportation for delivery of Data, as the Agency shall instruct, and procure appropriate insurance from insurers as stipulated by the Agency;
- (h) take reasonable steps to ensure the credentials, qualifications and reliability of those Provider Personnel that have access to Data, by performing background checks as appropriate;
- (i) ensure that all Provider Personnel who have access to Data execute the Agency’s applicable confidentiality agreement; and ensure that each

contract that Provider executes with Provider Personnel shall reflect the terms of this Agreement to the extent that they apply to the Services to be supplied by Provider Personnel or to the extent that Provider Personnel have access to Data, and shall include provisions in favor of the Agency which are no less onerous than those in this Agreement, including this Section; and

- (j) ensure that all Provider Personnel who have access to Data have undergone (and continue to undergo) reasonably adequate training in the care and handling of Data.

ARTICLE 16 WARRANTIES

- 16.1 Provider Warranties. Provider represents and warrants that: (a) Provider will perform the Services with qualified personnel using due care and skill, diligence, in accordance with the requirements set forth in this Agreement and at a level equivalent to international industry best standards and practices; (b) Provider has, or will have at the relevant time, the resources, capacity, expertise and ability in terms of equipment, software, know-how and personnel to provide the Services; (c) in rendering the Services, it and its personnel have all necessary rights, authorizations, licenses and Permits (as defined herein) to provide the Services hereunder and to provide all related materials and services required under this Agreement; (d) each individual assigned to perform the Services shall have the proper skill, training, education, experience and background so as to be able to perform Services in a competent, professional and ethical manner; (e) the Agency shall receive free, good and clear title to all Deliverables delivered under this Agreement; (f) due care and its best efforts will be utilized by Provider in the performance of this Agreement; (g) the Deliverables shall be new, of original manufacture, delivered in a manner consistent with good commercial practice, free from defects in material and workmanship, and shall conform to the Specifications for same and shall meet the functional, performance and reliability requirements of the Agency as set forth in the applicable Statement of Work or Specifications; and (h) Provider will perform the Services in line with the ethics codes and best practices rules applicable to the Agency and its Providers and that shall be in force from time to time.
- 16.2 Continuous Improvement and Cost-Effectiveness. Provider represents, covenants and warrants that it shall meet the continuous process improvement requirements set forth in Section 3.13 and that it will use commercially reasonable efforts to use efficiently the resources or services necessary to provide the Services in the most cost-effective manner consistent with the required level of quality and performance.
- 16.3 Warranty Period. Unless otherwise specifically set forth in a Statement of Work, until one (1) year after Acceptance of a Deliverable (the “**Warranty Period**”), Provider will, at no charge to the Agency, furnish such materials and services as shall be necessary to correct any defects in the Deliverables, promptly correct any deficiencies which prevent such Deliverables from conforming or the Acceptance Criteria or Specifications or operating fully and correctly in conformance with the Specifications for same on the

combination of the computer hardware, telecommunications equipment, the programming language and/or operating system environment specified in this Agreement or the Statement of Work, and correct such deficiency and the effects of such deficiency in prior affected Deliverables.

- 16.4 Additional Warranties. Provider represents and warrants that it will provide the Services using proven, current technology that will enable the Agency to take advantage of technological advancements in its industry and support the Agency's efforts to maintain competitiveness in the markets in which it competes.
- 16.5 Non-Infringement. Provider represents, covenants and warrants that it will perform this Agreement and provide the Services and the Deliverables in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property Right or other proprietary rights of the Agency or any third party.
- 16.6 Viruses. Provider represents and warrants that it will ensure that no Viruses are coded or introduced into the Agency Systems or the Deliverables. Provider agrees that, in the event a Virus is found to have been introduced into the Agency Systems or the Deliverables, Provider shall use its best efforts at no additional charge to assist the Agency in eradicating the Virus and reducing the effects of the Virus, and if the Virus causes a loss of operational efficiency or loss of data, assist the Agency to the same extent to mitigate and restore such losses. If a Virus is found to have been introduced into the Agency Systems or the Deliverables by virtue of Provider's breach of the foregoing representation or warranty, Provider shall reimburse the Agency for all Losses (as defined herein) incurred by the Agency as a result of such breach. "**Virus**" shall mean: (i) any program code, programming instruction or set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations; or (ii) any other code typically designated to be a virus.
- 16.7 Disabling Code. Provider represents and warrants that, without the prior written consent of the Agency, Provider will not insert into Deliverables or the Agency Systems any code which would have the effect of disabling or otherwise shutting down all or any portion of the Deliverables or the Agency Systems ("**Disabling Code**"). Provider further represents and warrants that Provider will not invoke such Disabling Code at any time. If any Disabling Code is found to have been included in the Deliverables or the Agency Systems by virtue of Provider's breach of the foregoing representation or warranty, Provider will indemnify the Agency for Losses incurred as a result of such breach.
- 16.8 Certifications. Provider represents and warrants that Provider shall perform the Services in such a manner so as to ensure that the Agency, at all times during the Term of this Agreement, maintain or exceed the level of ISO 9000-2000, ISO 27001, SEI-CMM Level 5, SEI-CMMI Level 5, SSAE 16 and PCMM Level 5 certifications as applicable to the Services prior to the Transition.

- 16.9 Productivity Improvements. Provider acknowledges that the Agency has an annual goal of twenty percent (20%) improved productivity. Provider represents and warrants that it shall use best efforts to meet or exceed this goal during the Term of this Agreement.
- 16.10 Permits. The parties acknowledge that the Services and certain software and technical data to be provided under this Agreement and certain transactions under this Agreement may be subject to export controls under the laws and regulations of the U.S. and other jurisdictions. Provider will be responsible, as part of the Services, for securing all permits, licenses, regulatory approvals and authorizations, whether domestic or international, and including all applicable import/export control approvals (collectively, “**Permits**”) required for Provider to provide the Services to the Agency or its designees and will take all lawful steps necessary to maintain such Permits during the Term. Provider will have financial responsibility for, and will pay, all fees and taxes associated with obtaining such Permits. The Agency will cooperate with Provider in securing such Permits. If Provider is not able to secure the Permits in its own name, the Agency will undertake to secure such Permits at the reasonable direction of Provider and at Provider’s expense. Provider shall be solely responsible for compliance with all laws and regulations relating to data protection and privacy and/or trans-border data flow, as described in greater detail in Article 15.
- 16.11 Additional Warranties. In a Statement of Work, the parties may agree upon warranties which will apply to the Services and Deliverables to be provided under that Statement of Work, in addition to those set forth in this Article 16 (“**Additional Warranties**”). The warranties required by this Article 16 shall apply to all Statements of Work, whether or not a Statement of Work sets forth Additional Warranties.
- 16.12 Remedies for Breach of Warranties. In the event that the Deliverables or Services do not meet the above warranties or any warranties in a Statement of Work, Provider shall provide, at no charge, the necessary Deliverables and Services required to attain the levels or standards set forth in said warranties.
- 16.13 Notice of Problem. In the event that during the Term Provider becomes aware of an event, occurrence, error, defect or malfunction which Provider reasonably and in good faith anticipates would adversely and materially affect the Agency, then Provider will promptly provide the Agency with written notice of the event, occurrence, error, defect or malfunction and the adverse effect anticipated by Provider, as well as a proposed remedy therefor.
- 16.14 Business Disruption. In performing its Services hereunder, Provider will use diligent efforts to perform such services in a manner that minimizes the risk of undue disruption to the normal business operations of the Agency.
- 16.15 Duly Authorized. Provider makes the following representations:
- 16.15.1 Provider is a corporation registered and in good standing under the laws of _____ and is qualified and in good standing as a foreign corporation under the laws of any jurisdiction where the ownership of its assets or the conduct of its

business require Provider to be so qualified, or if Provider is not so qualified, the failure to so qualify will not have a material adverse effect on the ability of the Agency to enforce this Agreement;

16.15.2 There is no action, suit or proceeding pending or threatened against or affecting Provider before or by any court, administrative agency or other governmental authority which in any way will impair Provider's ability to perform all of its obligations under, or which otherwise brings into question the enforceability or validity of the transactions contemplated by this Agreement;

16.15.3 Provider's execution, delivery, and performance of this Agreement has been duly authorized by all appropriate corporate action on the part of Provider and this Agreement constitutes the valid and binding obligation of Provider enforceable against Provider in accordance with the terms thereof and hereof;

16.15.4 Neither the execution and delivery by Provider of this Agreement, nor the consummation by Provider of the transactions contemplated hereby, nor compliance by Provider with the provisions hereof, conflicts with or results in a breach of any of the provisions of the certificate of or articles of incorporation or by-laws of Provider or any amendments thereto, or any applicable law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or of any agreement or other instrument to which Provider is a party or by which it is bound, or constitute a default under any provision thereof;

16.15.5 Provider is under no obligation or restriction that would conflict with the Services required to be furnished by Provider and its other obligations under this Agreement, or that otherwise would in any manner prevent the full performance by Provider of the terms, conditions and requirements of this Agreement, and Provider will immediately disclose to the Agency any actual or potential conflict of interest that may arise during Provider's performance of this Agreement.

ARTICLE 17 INDEMNIFICATION

17.1 Losses Defined. For purposes of this Agreement, "**Losses**" means all claims, actions, losses, liabilities, damages and costs (including taxes) and all related costs and expenses (including reasonable attorney's fees and disbursements and costs of investigation, litigation and settlement).

17.2 Indemnification and Defense.

17.2.1 Provider will indemnify, defend and hold the Agency, Agency Affiliates and its and their officers, directors, employees, agents, successors and assigns (each, a "**the Agency Indemnitee**") harmless from and against, and pay all court awards relating to, any and all Losses of the Agency or a third party arising out of or relating to any claim or allegation:

- (a) that any of the Services, Work Product , Deliverables, Developer Tools, Pre-Existing Materials, Third Party Content or Third Party Technology provided to the Agency or designees by Provider infringe upon the Intellectual Property Rights of any the Agency Indemnitee or a third party;
- (b) alleging a violation of laws or regulations, including any applicable U.S. or New York State employment and labor laws, or a failure by Provider to obtain required permits, rights or licenses or otherwise, including as set forth in Section 16.10;
- (c) alleging a breach by Provider of any obligation, representation or warranty made by Provider in this Agreement or Provider's, its subcontractors' or its or their employees' or agents' obligations with respect to any the Agency Confidential Information, and in particular, breach of Provider's obligations under Section 14.6 or Article 15;
- (d) alleging a breach by Provider, its subcontractors or its or their employees or agents of the Agency policies or procedures in effect at any Site;
- (e) arising out of or in connection with the injury of or damage to any person or real or tangible personal property to the extent such injury or damage is proximately caused by the negligence or willful misconduct of any person for whose conduct Provider is liable;
- (f) arising out of or in connection with any claim for payment of compensation, salary or benefits, including social contributions and severance payments, asserted by an employee or agent of Provider or its subcontractors, or arising out of removal of any personnel under Section 7.3 or any other claims or demands made, or actions brought, by an employee or agent of Provider or its subcontractors in connection with his or her employment.
- (g) arising out of or related to occurrences Provider is required to insure against pursuant to Article 19;
- (h) for payment of compensation (including benefits) or salary asserted by any employee or agent of Provider or its subcontractors associated with a determination by any federal, state or local governmental agency, any court or any other applicable entity that the employees or agents of Provider or its subcontractors are employees of the Agency for any purpose or that the Agency is a co-employer of such personnel;
- (i) for premiums, contributions, or taxes payable under any workers' compensation, unemployment compensation, disability benefit, old age benefit, or tax withholding or failure to withhold for which the Agency may be adjudged liable as an employer with respect to any employee or agent of Provider or any Provider subcontractor or for taxes, interest and penalties for which Provider is liable;

- (j) made based on acts or omissions, events, matters or circumstances of Provider or any Provider subcontractor or its or their employees or agents thereof or failure of Provider to comply with Section 17.3;
- (k) for theft or misconduct by an employee or agent of Provider or its subcontractors;
- (l) of any third party due to acts or omissions of Provider or its subcontractors or its or their employees or agents, including any breach of an agreement between the Agency and a third party to such acts or omissions; or
- (m) asserted against any the Agency Indemnitee but resulting from an act or omission of Provider or its subcontractors in its capacity as an employer or prospective employer of a person, including claims of harassment, discrimination or wrongful discharge.

Furthermore, in the event the Agency should be enjoined in such suit or proceeding from use of any Deliverable, Provider, at its option, shall promptly either (a) at any time, secure termination of the injunction and procure for the Agency the right to use such Deliverable without any obligations or liability, or (b) after a final judicial determination of such infringement, replace such Deliverable with a suitable non-infringing Deliverable or modify the original Deliverable to become non-infringing without affecting its functionality, all at Provider's sole expense.

17.2.2 Provider shall not settle any claim which adversely affects an Agency Indemnitee's rights without the Agency's prior written consent which shall not be unreasonably withheld. Each Agency Indemnitee claiming under this Section 17.2 shall promptly notify Provider of any matters in respect of which the indemnity pursuant to this Section may apply and of which such Agency Indemnitee has knowledge and shall give Provider full opportunity to control the response thereto and the defense thereof, including without limitation any agreement relating to the settlement thereof. Such Agency Indemnitee's failure to promptly give notice shall affect Provider's obligation to indemnify the indemnified party only to the extent Provider's rights are materially prejudiced by such failure. Each Agency Indemnitee may participate, at its own expense, in such defense and in any settlement discussions directly or through counsel of its choice and review all documents prepared in connection therewith.

17.3 Indemnity by Subcontractors. Provider shall cause to be included in each subcontract for Services the provisions of this Article 17 for the benefit and protection of the Agency, except that the wording of such indemnity shall state that the benefits thereof run from the subcontractor to the Agency as a third-party beneficiary.

17.4 No Remedies Exclusive. The remedies of the Agency with respect to any matter under this Agreement shall not be limited to the remedies set forth herein; provided, that the Agency shall not receive a duplicative recovery.

ARTICLE 18
LIMITATIONS OF LIABILITY

- 18.1 Damages. EXCEPT AS SET FORTH IN SECTION 18.3 BELOW, PROVIDER'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY DAMAGES AND COSTS SHALL NOT EXCEED AN AMOUNT EQUAL TO THE [_____]¹. EXCEPT AS SET FORTH IN SECTION 18.3 BELOW, THE AGENCY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY DAMAGES AND COSTS SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE FEES DUE AND OWING BY THE AGENCY TO PROVIDER UNDER THIS AGREEMENT.
- 18.2 No Consequential Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES.
- 18.3 Exclusions. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS SET FORTH IN SECTIONS 18.1 AND 18.2 ABOVE SHALL NOT APPLY TO (a) PROVIDER'S OBLIGATIONS UNDER Article 17 (INDEMNIFICATION), (b) CLAIMS OR CAUSES OF ACTION WHICH ARISE FROM PROVIDER'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, OR THAT OF ITS SUBCONTRACTORS OR ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, (c) BREACH OF ANY PROVIDER COVENANTS, REPRESENTATIONS OR WARRANTIES HEREUNDER, (d) BREACH OF PROVIDER'S OBLIGATIONS UNDER Article 13 (CONFIDENTIAL INFORMATION), (e) BREACH OF PROVIDER'S OBLIGATIONS UNDER Article 15 (PRIVACY AND DATA SECURITY), (f) PROVIDER'S FAILURE TO COMPLY WITH APPLICABLE LAWS OR REGULATIONS, AND (g) WRONGFUL TERMINATION OR ABANDONMENT OF THIS AGREEMENT BY PROVIDER OR REFUSAL OF PROVIDER TO PROVIDE TERMINATION ASSISTANCE. IN ADDITION, THE LIMITATIONS SET FORTH IN SECTIONS 18.1 AND 18.2 ABOVE SHALL NOT APPLY TO (i) THE AGENCY'S OBLIGATIONS UNDER Article 17 (INDEMNIFICATION), (ii) THE AGENCY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (iii) BREACH OF THE AGENCY'S OBLIGATIONS UNDER Article 13 (CONFIDENTIAL INFORMATION). THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION PAID OR TO BE PAID UNDER THIS AGREEMENT.
- 18.4 Further Exclusions. NOTWITHSTANDING ANYTHING TO THE CONTRARY, the following AMOUNTS SHALL not be counted toward Provider's liability cap SET FORTH IN SECTION 18.1 ABOVE: (i) deliverable credits or service level credits; (ii) amounts withheld by the Agency due either to incorrect charges by Provider or non-conforming Services; (iii) amounts paid by the Agency but subsequently recovered from Provider due either to incorrect charges by Provider or non-conforming Services; or (iv)

¹ To be determined by the Agency based on the total contract value.

invoiced charges and other amounts that are due and owing to Provider for Services provided hereunder.

ARTICLE 19
INSURANCE AND FIDELITY BOND

- 19.1 Insurance. Provider agrees, at its own expense, to provide and keep in full force and effect during the term of this Agreement and for a period of five (5) years thereafter, the kinds and minimum amounts of insurance coverages as indicated below or as required by law, whichever is greater, with insurers in good standing, possessing an A.M. Best rating of not less than A VII, and authorized to do business under the laws of the State(s) and/or Countr(y/ies) where performance of the Services occurs, and if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency.
- 19.1.1 Comprehensive General Liability written on an occurrence coverage form, including, without limitation, Bodily Injury and Property Damage Liability, Products and Completed Operations Liability, Contractual Liability and Personal and Injury Liability. The minimum limits are One Million U.S. Dollars (USD 1,000,000) per each occurrence, Two Million U.S. Dollars (USD 2,000,000) aggregate (Products and Completed Operations) and Two Million U.S. Dollars (USD 2,000,000) general aggregate;
- 19.1.2 Workers' Compensation and Employers' Liability with statutory coverage for Workers' Compensation and minimum limits of One Million U.S. Dollars (USD 1,000,000) per accident, One Million U.S. Dollars (USD 1,000,000) disease (each employee), and One Million U.S. Dollars (USD 1,000,000) disease (policy limit) for Employers' Liability or coverage and limits complying with all regional, country, state and local requirements applicable to the Services;
- 19.1.3 Errors and Omissions Liability - Errors and Omissions (or Professional Liability) insurance with limits of not less than \$[_____].²
- 19.1.4 Fidelity Bond - Commercial Blanket Fidelity Bond insurance including a customer protection endorsement, with limits of Ten Million U.S. Dollars (USD 10,000,000). Said bond shall cover, without limitation, computer crime. The Agency shall be named as an additional insured and a loss payee as its interests may appear;
- 19.1.5 Umbrella/Excess Liability with minimum limits of \$[_____]³ each occurrence and aggregate; and
- 19.1.6 Automobile Liability One Million U.S. Dollars (USD 1,000,000) per person One Million U.S. Dollars (USD 1,000,000) per accident covering bodily injury

² This will equal the amount of the contract.

³ This will equal the amount of the contract.

(including death), and property damage for all vehicles that Provider owns, hires or leases.

19.1.7 The Agency , Agency Affiliates, and its and their directors, officers, employees, and agents shall be named as additional insured and/or loss payee under each such policy of insurance obtained by Provider.

19.1.8 The foregoing insurance requirements set forth the minimum amounts and scopes of coverage to be maintained by Provider and are not to be construed in any way as a limitation on Provider's liability under this Agreement. The insurance coverages shall be primary and will not participate with nor will be excess over any valid and collectable insurance or program of self-insurance carried or maintained by the Agency.

19.1.9 Upon request, Provider shall furnish Certificates of Insurance issued by the applicable insurance carriers, not local agents thereof, evidencing all of the foregoing insurance coverages prior to or upon execution of an Agreement. Full copies of the policies required above shall be furnished to the Agency upon request. All of the above-described policies shall provide (through affirmative endorsement to the policies) that no less than thirty (30) days prior written notice of cancellation, modification, reduction in coverage or non-renewal shall be given to the Agency. The failure of Provider to comply with any of the terms of these policies shall not adversely affect the Agency's coverage thereunder. Certificates of Insurance evidencing any modification, renewal or replacement of any of these insurance coverages shall be furnished to the Agency within ten (10) days after such modification, renewal or replacement; *provided, however*, that no such coverage shall be modified or replaced without the prior written consent of the Agency. In the event that any Services under an Agreement are to be rendered by persons other than the Provider's own employees, Provider shall arrange for such persons to forward to the Agency, prior to commencement of Services by them, Certificates of Insurance evidencing such amounts, in such form, and with such insurance companies as are satisfactory to the Agency.

ARTICLE 20 DISPUTE RESOLUTION

20.1 General. Any dispute, claim or controversy between the parties arising out of or relating to this Agreement, including with respect to the validity, performance, interpretation or application of any provision of this Agreement or any Statement of Work or the performance by Provider or the Agency of their respective obligations hereunder or thereunder (each, a **"Dispute"**) shall be resolved as provided in this Article 20. A Dispute shall be deemed to commence as of the date a party informs the other party in writing of the existence of a Dispute (**"Dispute Commencement Date"**).

20.2 Informal Dispute Resolution. The parties shall first attempt to resolve their Dispute informally in the following manner:

- (a) Either party may submit the Dispute to the parties' Project Managers, who shall meet as often as the parties reasonably deem necessary to gather and analyze any information relevant to the resolution of the Dispute. The Project Managers shall negotiate in good faith in an effort to resolve the Dispute.
- (b) If the Project Managers are unable to resolve the Dispute within fifteen (15) days, or otherwise determine in good faith that resolution through continued discussions by the Project Managers does not appear likely, the matter shall be referred to the Steering Committee.
- (c) If the Steering Committee is unable to resolve the Dispute within thirty (30) days, or otherwise determines in good faith that resolution through continued discussions by the Steering Committee does not appear likely, the matter shall be referred to two senior-level executives, one from each party as designated by each such party, to negotiate a resolution of the Dispute.
- (d) During the course of negotiations, all reasonable requests made by one party to the other for non-privileged information, reasonably related to the Dispute, shall be honored in order that each of the parties may be fully advised of the other's position.
- (e) The specific format for the discussions shall be determined at the discretion of the Project Managers or the Steering Committee, but may include the preparation of agreed upon statements of fact or written statements of position.
- (f) Proposals made during the informal proceedings described in this Section 20.2 between the parties shall be privileged, confidential and without prejudice to a party's legal position in any formal proceedings. All such proposals and information, as well as any conduct during such proceedings, shall be considered settlement discussions and proposals, and shall be inadmissible in any subsequent proceedings.

20.3 Failure to Resolve Dispute; Governing Law and Jurisdiction. With respect to any Disputes which are not settled pursuant to the informal dispute resolution procedures set forth in Section 20.2 within sixty (60) days from the Dispute Commencement Date, either party shall have the right to commence legal proceedings in accordance with this Agreement.

20.4 Equitable Relief. Notwithstanding anything to the contrary in this Agreement, (i) the Agency shall be entitled to seek preliminary or final injunctive relief in any court of competent jurisdiction located in the U.S. or any other jurisdiction throughout the world as the Agency may elect in its sole discretion, and (ii) Provider shall be entitled to seek injunctive relief solely in a court of competent jurisdiction located in New York County, New York. Each of the parties waives any objection that it may have based on improper

venue or forum *non conveniens* to the conduct of any such action or proceeding in such court.

- 20.5 Continuity of Services. Provider acknowledges that the performance of its obligations, including without limitation the Services, pursuant to this Agreement is critical to the business and operations of the Agency. Accordingly, in the event of a Dispute between the Agency and Provider, Provider shall continue to perform its obligations, including without limitation the Services, under this Agreement in good faith during the resolution of such Dispute unless and until this Agreement is terminated in accordance with the provisions hereof.

ARTICLE 21
COMPLIANCE WITH LAWS; STANDARD CLAUSES

21.1 Compliance with Laws and Regulations Generally.

21.1.1 Each party shall perform its obligations in a manner that complies with all Applicable Laws (including identifying and procuring required certificates, approvals and inspections). “**Applicable Law**” shall mean any U.S. and other national, state or local law (including common law), statute, ordinance, rule, regulation (including all rules, pronouncements and interpretations issued by self-regulatory authorities), order, decree writ, injunction, judgment, permit, governmental agreement, member advisory bulletins or decree of a government entity applicable to a Party, and in the case of Provider, to its subsidiaries, parents, affiliates, properties, assets, and to its officers, directors, managing directors, employees or agents in their capacity as such and effective during the Term, including as they are changed, amended, supplemented or newly added from time to time.

21.1.2 Without limitation to the above, Provider represents, warrants and covenants that it shall comply with, and shall ensure that all Services comply with all Applicable Laws, including IT Laws, Data Privacy and Security Laws, and export and import laws, rules and regulations, in connection with the Services and otherwise under this Agreement or any Statement of Work then in effect. “**IT Laws**” means Applicable Laws applicable to the provision of data processing, back office operations, call center, other business process outsourcing and other information technology services. Without limitation to the generality of the foregoing, Provider represents and warrants that the Services comply with all Applicable Laws applicable to their use and operation and that the Agency’s and any Agency Affiliate’s use of such Services as contemplated herein will not violate any Applicable Laws and that Provider shall take all necessary actions to ensure that Provider and the Agency are, at all times, in compliance with such Applicable Laws. If a charge of noncompliance with any Applicable Law occurs, Provider will immediately notify the Agency of such charge in writing and, at its own cost, promptly remedy such noncompliance. Provider will be responsible for any fines and/or penalties incurred by the Agency arising from Provider’s noncompliance

with Applicable Laws or the Agency's noncompliance with Applicable Laws due to use by the Agency of any Services.

21.2 Agency's Standard Terms. Provider shall comply in all respects with the Agency's Standard Contract Clauses (the "**Standard Clauses**") set forth in **Appendix I** attached hereto and incorporated by reference herein. In the event of a conflict between the terms of this Agreement and the terms of the Standard Clauses, the terms of the Standard Clauses shall control.

21.3 Liens.

21.3.1 Provider hereby waives and forever releases the Agency and its real and personal property (whether owned or leased) from any past, present, or future lien notices, lien claims, liens, encumbrances, security interests, or other lien rights of any kind based, in whole or in part, on any Services provided under this Agreement. Provider shall obtain and provide to the Agency similar waivers from all of Provider's subcontractors and Providers. Nothing in this Section 21.2 shall apply to, or in any way be deemed to encumber, any of the rights Provider and its subcontractors have in their own tangible personal and intellectual property, nor act as a release of the underlying debt, if any.

21.3.2 Provider shall indemnify and hold the Agency Indemnitees harmless from and against all Losses due to any and all lien notices, lien claims, liens, encumbrances, security interests, or other lien rights of any kind filed by any of Provider's subcontractors or Providers, or by subcontractors or Providers of Provider's subcontractors, which in whole or in part, are based on any work, Services, material, or equipment to be provided hereunder.

21.3.3 If any lien claims or liens are filed against the Agency or any Agency Affiliates or its or their real or personal property (whether owned or leased) by any of Provider's subcontractors or Providers at any tier, which are based on any work, Services, materials, or equipment provided or to be provided hereunder, then at no cost or expense to the Agency, Provider shall promptly (and in any event within ten (10) days of becoming aware thereof) either pay the claimant and obtain a discharge of lien claim from the claimant or cause the lien claim to be discharged by filing a surety bond or making a deposit of funds as required by law, and take all other actions which may be necessary to resolve and discharge as of record any lien claims or liens. If Provider fails to take such actions in a timely manner, without waiving the breach the Agency may do so without notice to Provider and Provider shall be responsible for all costs (including attorney's fees) incurred by the Agency in connection therewith.

21.3.4 At least ten (10) days prior to the performance of any work at the Agency or its designee's premises, Provider shall provide the Agency with an accurate and full list of the names and addresses of each potential lien claimant. Provider shall be under a continuing obligation to promptly update this list as necessary so as to maintain its accuracy and completeness. In those jurisdictions where it is possible

to avoid the imposition of liens by the posting or filing of notices, Provider shall promptly post and/or file such notices.

21.4 Sarbanes-Oxley. Notwithstanding anything to the contrary set forth in this Agreement, at all times during the Term and continuing thereafter until the completion of the audit of the Agency's or any Agency Affiliate's financial statements for the fiscal year during which this Agreement expires or is terminated, Provider shall, and shall cause each of its affiliates and subcontractors to:

- (a) maintain in effect all controls, operations and systems necessary and appropriate to enable the Agency and the relevant Agency Affiliates to comply with its and their obligations under the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated thereunder (collectively, "**SOA**"), including Section 404 of SOA and the rules and regulations promulgated thereunder ("**Section 404**");
- (b) cause an audit to be performed with respect to the Services and the performance of its other obligations under this Agreement, by a certified public accountant registered with the Public Company Oversight Board based on the Statement of Standards for Attestation Engagements (SSAE) No. 16 (or such industry equivalent which was previously a "SAS 70"), and have a Type II Report prepared in connection therewith. With respect to each such audit, Provider shall (i) confer with the Agency as to the scope and timing of each such audit, and (ii) accommodate the Agency's requirements and concerns to the extent practicable. Unless otherwise agreed by the parties, such audit shall be conducted so as to result in a final audit opinion not later than 120 days following the close of Provider's fiscal year. Provider shall provide a copy of such Type II report and any other reports issued as a result of such audit to the Agency and their independent auditors as soon as reasonably possible after the conclusion of such audit, and in all events within thirty (30) days of completion. Further, Provider shall provide any updates to any audit reports to the Agency promptly after they are received by Provider. Provider shall promptly correct any deficiencies identified in any such audit. At the Agency's request, Provider shall confirm in writing that there have been no changes in the relevant policies, procedures and internal controls since the completion of such audit other than the correction of any deficiencies as provided above. If Provider becomes certified in other programs intended to evaluate security, Provider shall also provide information regarding such certification to the Agency consistent with this Section. If Provider is unable to timely deliver the required SSAE 16 report, Provider shall (I) provide the Agency, on or before the date such report is delivered or due to be delivered, a written statement describing the circumstances giving rise to any delay or any qualification, (II) take such actions as shall be necessary to resolve such circumstances as soon as practicable, and (III) permit the Agency and their external auditors, to perform such procedures and testing as are reasonably

necessary for their assessment of the operating effectiveness of Provider's policies, procedures and internal controls.

- (c) provide to the Agency and its auditors access to such of the Provider's and its affiliates' and subcontractors' books and records (in any medium) and personnel as the Agency and/or its auditors reasonably may request to enable: (i) the Agency and/or its auditors to evaluate the controls, operations and systems of Provider as they relate to the Agency and the relevant Agency Affiliates and Provider's compliance with SOA as it relates to the Services and the effectiveness of its internal control structure and proceedings for financial reporting therefor; and (ii) to enable the Agency's auditors to provide the Auditor Attestation; and
- (d) generally cooperate with the Agency and its auditors in any other way that the Agency and/or its auditors may request in order to: (i) enable the Agency and the relevant Agency Affiliates to comply with, and the Agency and its auditors to evaluate whether the Agency and the relevant Agency Affiliates comply with, the SOA as it relates to the Services; and (ii) the Agency's auditors to provide the Auditor Attestation.

For the avoidance of doubt, there shall be a direct connection between the type of Services provided by Provider to the Agency and the contents in the Type II report referred to above, including mainframe platform, distributed systems platforms, network platforms, Internet and Virtual Private Network platforms, and general controls and security practices procedures.

21.5 International Considerations. When Provider provides Services from outside of the United States, without limiting any of Provider's other obligations set forth in this Agreement, Provider shall be responsible for compliance with all Applicable Laws governing the Services in the location(s) from which the Services will be provided and shall be responsible for compliance with all export laws and import laws of the location(s) from which Services will be performed.

21.6 Privacy Laws. Without limitation to the provisions of this Article 21 and Article 15, Provider shall comply with all Applicable Laws relating to the Confidential Information and privacy rights of the Agency, Agency Affiliates, and/or their customers, employees and consumers, including Title V of the Gramm-Leach-Bliley Act, 15 USC §6801 et. seq. and the Economic Espionage Act, 18 USC §1831 et. seq. Provider acknowledges that the Agency and/or certain Agency Affiliates may be regulated as a New York State corporate governmental agency constituting a public benefit corporation under Applicable Laws.

ARTICLE 22 DEFINITIONS

The following defined terms are defined in the indicated Sections of this Agreement.

<u>Defined Term</u>	<u>Section in which Defined</u>
Acceptance	6.3.2

<u>Defined Term</u>	<u>Section in which Defined</u>
Acceptance Criteria	6.2
Acceptance Period	6.3.1
Additional Warranties	16.11
Agreement	Preamble
Applicable Law	21.1.1
Auditor Attestation	21.4(b)
Benchmarking	3.14
Billing Review	4.6.1
Provider Services Centers	2.3
Candidate	7.2
Catastrophic Failure	3.5.1(b)
Change Proposal	2.6
Change Request	2.6
Claims	15.7(e)
Commencement Date	3.1.1
Confidentiality Agreement	Article 13
Confidential Information	13.1
Control	11.2.3(g)
Customer Information	15.1(a)
Data	15.1(b)
Data Privacy and Security Laws	15.1(c)
Dedicated Provider Personnel	7.1
Deliverables	3.10
Developer Tools	11.3.2
Disabling Code	16.7
Dispute	20.1
Dispute Commencement Date	20.1
Divested Entity	23.4.2
Effective Date	Preamble
Employee Information	15.1(d)
Exit Criteria	2.2.1
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ARTICLE 23
MISCELLANEOUS

- 23.1 Similar Services. During the Term and following the expiration and/or termination of this Agreement, the Agency may enter into, and Provider shall not oppose the Agency’s entering into, an arrangement with a third party or third parties pursuant to which such third party or third parties may provide services similar to the Services.
- 23.2 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Agreement.
- 23.3 Modification of Agreement. Except as otherwise provided herein, this Agreement may be modified only by a writing signed by both parties to this Agreement.
- 23.4 Assignment.
- 23.4.1 This Agreement shall be binding on the parties’ respective successors and permitted assigns. The Agency shall have the right without any requirement to obtain consent hereunder, to assign this Agreement to any Agency Affiliate, or a successor by merger, acquisition or consolidation, or to an acquirer of all or substantially all of the assets of the Agency or a PT PTO Affiliate. Provider may not assign or transfer all or any portion of this Agreement in any manner, either voluntarily or involuntarily, by operation of law or otherwise, or any interest, payment or rights hereunder without the prior written consent of the Agency and any assignment or transfer not so approved shall be considered null and void.
- 23.4.2 In the event an entity or unit of the Agency or any Agency Affiliate or the business or part of an entity or unit of the Agency or any Agency Affiliate is sold or otherwise divested (the “**Divested Entity**”), Provider shall, upon the Agency’s written request, provide all or part of the Services and Deliverables to the

Divested Entity, on the terms and conditions set forth in this Agreement and the applicable Statement(s) of Work for the period requested by the Agency, which period shall not exceed the Term hereof.

23.5 Subcontracting.

Prior to subcontracting any Services, Provider shall notify the Agency of the proposed subcontractor, its qualifications, and the scope of Provider’s use thereof, and in each instance, shall obtain the Agency’s prior approval of such subcontract. Any subcontracting, including the foregoing permitted subcontracting, shall not release Provider from its responsibility for its obligations under this Agreement. Provider shall be responsible for the acts and omissions of each of its subcontractors, including compliance with the terms of this Agreement, and must assure that subcontractors are covered by workers compensation and other insurance as required by applicable law. For purposes of determining Provider’s liability, any time the term “Provider” is used in this Agreement, it includes all subcontractors performing any part of this Agreement on behalf of Provider. Provider shall be responsible for all payments to its subcontractors. Upon the Agency’s request, Provider shall remove or replace any subcontractor, if the Agency determines, in its reasonable judgment that the continued use of such subcontractor is not in the best interests of the Agency. Any subcontractors approved by the Agency shall agree in a writing to be provided to the Agency before such subcontractor begins services, to be bound by the terms of this Agreement

PRE-APPROVED SUBCONTRACTORS

The following is the list of pre-approved subcontractors that Provider may utilize for the performance of the Services in accordance with and subject to the terms and conditions of this Agreement:

Subcontractor Corporate Name	Subcontractor Address	Subcontractor contact information

23.6 Consents and Fees . Provider will ensure that all agreements between Provider and any third party used to provide the Services are capable of assignment to the Agency or its designee without such third party’s consent and without the payment of any fees. Provider will be responsible for all consents and fees, if any, required to permit its personnel to access the Agency’s third party Intellectual Property and software necessary to perform the Services. Provider will be responsible for all consents and fees, if any, required to permit the Dedicated Provider Personnel to access the Agency’s third party Intellectual Property and software.

23.7 Independent Provider. Provider is acting, in performance of this Agreement, as an independent contractor and nothing herein shall create an agency, partnership, joint

venture or other relationship between the parties. Personnel supplied by Provider hereunder are not the Agency's employees or agents and Provider assumes full responsibility for their acts. The Agency shall not be liable to any such employees for any purposes, including for claims or causes of action arising out of or related to their assignment to the Agency or release therefrom. Provider shall be solely responsible for the payment of compensation of Provider's employees assigned to perform Services hereunder and such personnel shall be informed that they are not entitled to the provision of any the Agency employee benefits. The Agency shall not be responsible for payment of worker's compensation, disability benefits, social contributions, severance payments or unemployment insurance or for withholding and paying employment taxes for any Provider employee, but such responsibility shall be solely that of Provider. In the event that any Provider employee performing Services hereunder is found to be not an employee of Provider for any purpose, including tax purposes, Provider shall immediately take appropriate corrective action or remove said employee from performing services hereunder and, if requested by the Agency, provide a qualified replacement as set forth in Article 7.

- 23.8 Governing Law, Jurisdiction and Service of Process. This Agreement shall be governed exclusively by and construed in accordance with the laws of New York. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. The parties consent and agree that all legal proceedings arising out of or relating to this Agreement shall be exclusively maintained in either the federal or state courts located in New York County, New York. Provider hereby designates its office at _____ for service of process in any action or proceeding arising under this Agreement and waives any international treaty provisions with respect to such service of process. Service of process in any action or proceeding arising hereunder shall be by mail only.
- 23.9 Validity. To the extent any provision of this Agreement shall be held to be void, illegal or unenforceable by any court or regulatory agency, the same shall have no effect on the validity or enforceability of the remaining provisions and this Agreement shall be carried out as if any such invalid or unenforceable provision was not contained herein.
- 23.10 Remedies Cumulative. The enumeration of specific remedies shall not be exclusive of any other remedies under this Agreement or available under law or equity.
- 23.11 Notices. Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (a) if by hand delivery, upon receipt thereof by an authorized officer of the recipient party, (b) if mailed, ten (10) days after deposit in the mail, first class, postage prepaid, certified mail return receipt requested, (c) if by next day express delivery service, upon such delivery or (d) if by facsimile upon confirmation of receipt. All notices shall be addressed as follows (or such other address as either party may in the future specify in writing to the other):

the Agency: New York State Housing Finance Agency
641 Lexington Avenue
New York, NY 10022
Attn: Chief Technology Officer

If to Provider at: Provider

Attn: [_____]

- 23.12 Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes any and all prior or contemporaneous agreement, understanding, negotiation or warranty or representation between the parties in connection with the subject matter of this Agreement, except for the Non-Disclosure Agreement dated _____, 2015, which shall continue in effect in accordance with its own terms for disclosures made prior to the Effective Date. In the event of a conflict between the terms and conditions of this Agreement and any Statement of Work attached hereto, then the terms of this Agreement shall prevail. Any amendment to this Agreement in a Statement of Work shall only be effective by a specific reference to the Section of this Agreement being amended.
- 23.13 Waiver. The failure of either party to promptly enforce or seek remedy for the breach of any provision of this Agreement shall not constitute a waiver of such provision or any part thereof. No term or provision shall be deemed waived, and no breach hereof shall be deemed consented to, unless such waiver or consent shall be in writing and signed by the party which has given such waiver or consent. Any such waiver or consent shall not constitute a waiver of, or consent to, any other term or provision.
- 23.14 Force Majeure. Subject to Provider’s obligations under Article 10 hereof, neither party shall be liable to the other for any delay or failure to perform due to causes beyond its reasonable control (each such cause, a “**Force Majeure Event**”). Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay, provided that in the event Provider is delayed in its performance by reason of such cause, no such extension shall be made unless notice thereof is presented by Provider to the Agency in writing within five (5) business days after the start of the occurrence of such delay, no payment shall be made by the Agency for any fees or expenses incurred by Provider by reason of such delay, and Provider shall use best efforts to perform its obligations during such period of delay.
- 23.15 Publicity. Provider agrees that it will not, without prior written consent of the Agency in each instance (i) use in advertising, publicity or otherwise the name of the Agency, or any Agency Affiliate or any director, officer, employee or agent of the Agency or any Agency Affiliate nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction, or simulation thereof owned by the Agency or any Agency Affiliate, (ii) represent directly or indirectly that any product or service provided by Provider has been approved or endorsed by the Agency, or (iii) refer to the existence of

this Agreement in press releases, advertising or materials distributed to prospective customers.

- 23.16 The Agency Marks. Provider acknowledges the Agency's exclusive right, title and interest in and to all trademarks, trade names, service marks, logos, assignees, program and event names, identifications and other proprietary rights and privileges of the Agency (the "Agency Marks"). This Agreement and its various provisions are not a license or assignment of any right, title or interest in the Agency Marks to Provider. Provider must not, in any manner, represent that it has any ownership in the Agency Marks. Provider must not do or cause to be done anything that impairs the Agency's exclusive license or ownership in the Agency Marks. Provider must not use, print or duplicate the Agency Marks unless Provider has obtained prior written approval from the Agency. Any permitted use by Provider of the Agency Marks is limited to the Term. Upon termination, Provider must immediately cease all use of the Agency Marks. Provider must not assign or attempt to assign any rights with regard to the Agency Marks that arise under this Agreement and any such attempted assignment is void.
- 23.17 Prohibited Solicitation. During the term of this Agreement and for a period of one (1) year thereafter, Provider shall not solicit, interview, hire, or discuss employment prospects with any officer, contractor or employee of the Agency or any Agency Affiliate without the prior written approval of the Agency; nor will Provider solicit, interview, hire or discuss employment prospects with any former officer, contractor or employee of the Agency or any Agency Affiliate who voluntarily terminated their employment for a period of six (6) months after such termination without the prior written approval of the Agency.
- 23.18 Covenant of Further Assurances. The Agency and Provider covenant and agree that, subsequent to the execution and delivery of this Agreement and, without any additional consideration, each of the Agency and Provider shall execute and deliver any further legal instruments and perform any acts which are or may become necessary to effectuate the purposes of this Agreement.
- 23.19 Prohibited Interests.
- 23.19.1 No principal, officer, shareholder, family member, employee, agent or consultant of Provider or its subcontractors who, on behalf of Provider, negotiates, makes, accepts, or approves or takes part in negotiating, making, accepting, or approving any approved subcontractor or any approved subcontract or other agreement entered into by Provider in connection with the Services, shall be or become directly or indirectly interested personally in the subcontractor or any subcontract or such other agreement.
- 23.19.2 Neither Provider nor its subcontractors or its or their principals, agents, employees, contractors, subcontractors will accept, in connection with the performance of the Services to be performed by Provider hereunder, any fee, compensation, remuneration or reimbursement of any kind, direct or indirect, actual or promised, from any entity or person other than Agency. Any such

acceptance by Provider (or its subcontractors or its or their principals, agents, employees, contractors, or subcontractors) of any such fee, compensation, remuneration or reimbursement shall constitute a breach and shall, in addition to any remedy set forth herein or available at law or in equity, allow the Agency to terminate this Agreement immediately upon notice and to recover in addition to any other damages which the Agency may otherwise be entitled, the full amount of such fee, compensation, remuneration or reimbursement.

23.19.3 Provider represents and warrants that (i) it has not violated and will not violate any the Agency policies of which Provider has been or may be given notice regarding the offering of inducements, gift or gratuities in connection with this Agreement; (ii) it has disclosed to the Agency any relations it has with third parties which could jeopardize its ability to provide its services to the Agency fully and on a timely basis; (iii) no officer, director or employee, or any member of his or her immediate family, has or will have, any financial interest in any service provider engaged by the Agency pursuant to Provider's recommendation; and (iv) it will not, without the Agency's prior written consent, accept any rebate, commission or other consideration related to the Services from any third party without passing along the full benefit of any such rebate, commission or consideration to the Agency.

23.19.4 Provider agrees and shall instruct its personnel that any Provider recognition, awards or other Provider logo-marketing items may not be distributed by its personnel on-site at any the Agency location.

23.20 Surviving Articles and Sections. All provisions of Sections 3.2, 3.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.10, 7.1, 7.11, 7.12 and 11.3, and Articles Article 12, Article 13, Article 14, Article 15, Article 16, Article 17, Article 18, Article 20 and Article 23 shall survive the termination of this Agreement for any reason or the completion of Services.

23.21 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

23.22 New York State Executive Law Article 15-A. Pursuant to New York State ("NYS") Executive Law Article 15-A, the Agency recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified minority- and women-owned business enterprises ("MWBEs") in the performance of the Agency's contracts. For purposes of this Agreement, the Agency hereby establishes an overall goal of 35% for MWBE participation: 17.5% for minority-owned business enterprises ("MBEs") and 17.5% for women-owned business enterprises ("WBEs"). The Provider shall complete the MWBE Utilization Form, PROC-2, attached hereto as Exhibit B. Thereafter, the Provider is required to submit a quarterly MWBE Compliance Report, PROC-6 form, on a quarterly basis during the term of this Agreement documenting the progress made towards achievement of the MWBE goals of this Agreement. The quarterly MWBE Compliance Report, PROC-6 form, attached hereto as Exhibit C, must be submitted to report this information for the quarters ending March 31st, June 30th, September 30th and December 31st. Quarterly MWBE Compliance Reports shall be

submitted, in PDF format, to OFHEO1@nyshcr.org by April 10th, July 10th, October 10th, and January 10th. The Provider shall comply with the provisions of the Agency's Participation by Minority Group Members and Women Requirements and Procedures for Contracts, attached hereto and incorporated herein as Appendix II. In accordance with 5 NYCRR §142.13, the Provider acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in this Agreement, such finding constitutes a breach of this Agreement and the Agency may withhold payment from the Provider as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Provider achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under this Agreement.

- 23.23 Equal Opportunity Requirements and Procedures. The Provider's completed Staffing Plan is attached hereto as Exhibit D. Thereafter, this information is to be submitted on a quarterly basis during the term of this Agreement to report the actual workforce utilized in the performance of this Agreement by the specified categories listed including ethnic background, gender, and Federal occupational categories. The quarterly Workforce Report, PROC-5 form, attached hereto as Exhibit E, must be submitted to report this information for the quarters ending March 31st, June 30th, September 30th and December 31st. Quarterly Workforce Reports shall be submitted, in PDF format, to OFHEO1@nyshcr.org by April 10th, July 10th, October 10th, and January 10th. The Provider shall comply with the provisions of the Human Rights Law, and all other New York State and Federal statutory and constitutional non-discrimination provisions. The Provider shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first herein above set forth.

**NEW YORK STATE
HOUSING FINANCE AGENCY**

[SERVICE PROVIDER]

Signature

Signature

Name

Name

Title

Title

Date

Date

Schedule 2.3
Statement of Work

Schedule 3.1
Transition Plan

Schedule 3.5.1
Service Level Matrix
(including Service Levels and Service Level Credits)

Schedule 4.1
Fees

Schedule 8
Governance

Schedule 9.1
Software and Tools of the Agency and Provider

Schedule 9.2
the Agency's Code of Conduct

Schedule 9.5
Telecommunications Connection

Schedule 10.1
Disaster Recovery Plan and Business Continuity Plan

[The BCP shall include at a minimum, the emergency response, crisis management and business recovery processes and activities that Provider will undertake after a disaster. The BCP shall also address the recovery time for each of the Services. Provider shall, at its expense, provide a back-up facility from which it can fully perform the Services in the event that the Provider Services Center is rendered unavailable, including as a result of a Force Majeure Event. Such back-up facility shall have a pre-identified location for the Agency's operations. Provider will update the DRP and the BCP within thirty (30) days of each SOW Services Commencement Date, such update to reflect the new Service commencing as well as any necessary updates to the DRP and/or BCP with respect to existing Services.]

Schedule 13.1
Provider Confidential Information

NEW YORK STATE HOUSING FINANCE AGENCY, STATE OF NEW YORK MORTGAGE AGENCY
NEW YORK STATE AFFORDABLE HOUSING CORPORATION, STATE OF NEW YORK MUNICIPAL
BOND BANK AGENCY, AND TOBACCO SETTLEMENT FINANCING CORPORATION
641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022, (212) 688-4000

HOUSING TRUST FUND CORPORATION
38-40 STATE STREET, ALBANY NEW YORK 12207

April, 2015

APPENDIX I

STANDARD CLAUSES FOR CONTRACTS WITH THE

NEW YORK STATE HOUSING FINANCING AGENCY
STATE OF NEW YORK MORTGAGE AGENCY
NEW YORK STATE AFFORDABLE HOUSING CORPORATION
STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY
TOBACCO SETTLEMENT FINANCING CORPORATION
HOUSING TRUST FUND CORPORATION
(individually or collectively, "Agency" or "Agencies")

STANDARD CLAUSES FOR AGENCY CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Contract") agree to be bound by the following clauses which are hereby made a part of the Contract (the word "Contractor" herein refers to any party other than the State of New York ("State"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. ACCOUNTING RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance of work done for the Agency or Agencies under this Contract (hereinafter, collectively, "the Records") consistent with generally accepted bookkeeping practices. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The Agency or Agencies involved in this Contract and any person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Agency or Agencies shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the Agencies' Senior Vice President and Counsel, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Agency's or Agencies' right to discovery in any pending or future litigation.

2. CONFLICTS OF INTEREST. The Contractor shall not accept any engagement in conflict with the Agency's or Agencies' interest in the subject matter of this Contract.

The Servicer shall not offer to any employee, member or director of the Agency or Agencies' any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

3. SUBCONSULTANTS. The Contractor shall not employ, contract with, or use the services of any consultant for the work of this Contract (except such third parties which may be used by the Contractor in the normal course of business, such as couriers, imaging services, etc.) without obtaining the prior written approval of the Agency or Agencies.

4. NON-ASSIGNABILITY. This Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent in writing of the Agency or Agencies and any attempts to assign the Contract without the Agency or Agencies' written consent are null and void. However, this Contract shall be binding upon and inure to the benefit of the Agency or Agencies and its successors and assigns.

5. INDEMNITY. The Contractor shall indemnify and hold the Agency or Agencies and their employees, officers, Members and Directors (collectively, the "Indemnities") harmless from and against all claims, demands, liability, loss, cost, damage or expense, including attorney's fees, which may be incurred by the Indemnities because of negligence or malfeasance on the part of the Contractor arising out of this Contract.

6. NON-DISCRIMINATION. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. If this a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason or race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or

intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of \$50 per person per day for any violation of Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

If directed to do so by the State Commissioner of Human Rights (“Commissioner”), the Contractor will send to each labor union to which the Contractor is bound a notice provided by the Commissioner advising of this provision. The Servicer will keep posted in conspicuous places notices of the Commissioner regarding laws against discrimination. The Contractor will state in all advertisements for employees that all qualified applicants will be afforded equal opportunities without discrimination because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

If the Contractor has fifteen or more employees, it is an unlawful employment practice for the Contractor to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual’s status as an employee, because of such individual’s race, color, religion, sex, or national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title; and that it shall be an unlawful employment practice to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

If the Contractor has fifteen or more employees, the Contractor: (1) will make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed; (2) will preserve such records for such periods as the Equal Employment Opportunity Commission (“EEOC”) shall prescribe by regulation; (3) will make such reports therefrom as the EEOC shall prescribe by regulation or order; (4) must post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will comply with all non-discriminatory employment practices, will furnish all information deemed necessary by the Commissioner, and will permit the Commissioner access to its records to ascertain compliance. The Contractor will bind all subcontractors hired to perform services in connection with this Contract to the requirements of this section, take such action for enforcement as the Commissioner may direct, and notify the Commissioner if such action results in litigation. This Contract may be terminated by the Agency or Agencies upon the Commissioner’s finding of non-compliance with this section, and the Contractor may be declared ineligible for future contracts with an agency of the State or a public authority until the Contractor satisfies the Commissioner of compliance.

7. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby the Agency or Agencies, is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Agency or Agencies, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor’s equal employment opportunity policy that:

(a) the Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Agency or Agencies’ contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the Agency or Agencies, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of 'a', "b", and "c" above, in every subcontract. Section 312 does not apply to: (i) work, goods or services unrelated to this Contract; or (ii) employment outside New York State. The Agency or Agencies shall consider compliance by a Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Agency or Agencies shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the Agency or Agencies shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

(d) If the procurement of the goods or services provided herein is subject to minority and women-owned participation requirements pursuant to Article 15-A of the Executive Law, the Contractor shall be liable to the Agency or Agencies for liquidated or other appropriate damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payments to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under this Contract. This Contract may provide for other appropriate remedies on account of such breach in the event it is found that the Contractor willfully and intentionally failed to comply with the minority and women-owned participation requirements set-forth in Article 15-A of the Executive Law.

8. PROPRIETARY INFORMATION. All memoranda, analyses, spreadsheets and other pertinent documents or writings, including reports and financial statements developed or prepared by, or for, the Contractor in connection with the performance of this Contract are "Proprietary Information" and shall be, and remain, the property of the Agency or Agencies. All original documents constituting Proprietary Information shall be delivered to the Agency or Agencies by the Contractor, or any subcontractor, or any other person possessing them, upon the termination of this Contract or upon the earlier request of the Agency or Agencies, except that the Contractor may retain copies for its files. Proprietary Information may not be utilized, disclosed or otherwise made available to other persons by the Contractor without the prior written approval of the Agencies' Senior Vice President and Counsel. The provisions of this section shall be in addition to, and not in derogation of, any duty imposed upon the Contractor by any law, regulation or rule governing professional conduct respecting confidentiality.

9. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices submitted for payment for the sale of goods or services or the lease of real or personal property to the Agency or Agencies must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Agency or Agencies is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses

and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by Agency or Agencies to purchase the goods or services or lease the real or personal property covered by this Contract or lease. The information is maintained by Disbursement Manager at the Agency or Agencies, 641 Lexington Avenue, New York, New York 10022, under the name "Vendor Federal Social Security and Federal Employee Identification Numbers."

10. CONTRACTUAL RELATIONSHIP. It is expressly understood that the relationship between the Agency or Agencies and the Contractor is an independent contractual relationship and neither the Contractor, its employees, nor its subcontractors shall be considered employees of the Agency or Agencies for any purpose. Please refer to the following link on the Agency's web site to view each of the Agency's Prompt Payment Policies at <http://www.nyschr.org/AboutUs/Procurement/Contractinformation.htm> or call the Agencies' Contract Officer at (212) 688-4000.

11. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between the Contractor and the Agency or Agencies with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix I, the terms of this Appendix I shall control.

12. MODIFICATION. Waiver, discharge, amendment, supplement, extension or other modification of this Contract shall be subject to prior approval by the Agency or Agencies and may be effected only by an instrument in writing signed by the parties to this Contract.

13. SECTION HEADINGS. The caption of sections in this Contract are inserted solely for convenience of reference and are not intended to define, limit, or describe the scope of this Contract or any provision hereof or to otherwise affect this Contract in any way. The section headings shall not be considered in any way in construing this Contract.

14. COUNTERPARTS. This Contract may be executed in any number of counterparts. Each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.

15. GOVERNING LAW. This Contract has been executed and delivered in, and shall be construed and enforced in accordance with the laws of, the State of New York. In the event of conflict between New York State law and federal laws and regulations, the latter shall prevail.

16. NOTICES. All notices and other communications given hereunder shall not be effective for any purpose whatsoever unless in writing and delivered by hand or mailed by United States first class registered or certified mail, return receipt requested. Notice shall be deemed to have been given, if delivered by hand, when actually received by the party being notified, or, if mailed, when addressed (a) if to the Contractor, to the attention of the Contractor's authorized signatory of this Contract at the address specified for the Contractor on page one of this Contract, or at such other address as to which the Contractor shall have notified the Agency or Agencies, and (b) if to the Agency or Agencies, to the attention of the Senior Vice President and Counsel, at the address for the Agency or Agencies on page one this Contract, or at such other address of which the Agency or Agencies shall have notified the Contractor.

17. SEVERABILITY. All rights, powers and remedies provided herein may be exercised only to the extent that they do not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Contract invalid, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision or term of this Contract or any portion of a provision shall be held to be invalid, illegal or unenforceable, only such provision or part thereof shall be affected by such holding and this Contract shall be construed as if such invalid, illegal or unenforceable provision or part thereof had not been contained herein.

18. WORKERS' COMPENSATION. This Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

19. NO ARBITRATION. Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

20. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service of process hereunder shall be complete upon the Contractor's actual receipt of process or upon the Agency's or Agencies' receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Agency or Agencies, in writing, of each and every change of address to which service of process can be made. Service of process by the Agency or Agencies to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

21. NON-COLLUSIVE BIDDING CERTIFICATION. If this Contract was awarded based upon the submission of a bid or proposal, the Contractor affirms, under penalty of perjury, that the prices in its bid or proposal were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor. The Contractor further affirms that, at the time the Contractor submitted its bid or proposal, an authorized and responsible person executed and delivered a non-collusive bidding certification to the Agency or Agencies on the Contractor's behalf.

22. LOBBYING REFORM LAW DISCLOSURE. If the procurement of the goods or services provided herein were applicable to Lobbying Reform Law Disclosure as pursuant to State Finance Law §§139-j and 139-k, the Agency or Agencies reserves the right to terminate this Contract in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Agency or Agencies may exercise their termination right by providing written notification to the Contractor.

23. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

24. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100 Fax: 518-292-5884
Email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, New York 10017
Telephone: 212-803-2424
Email: mwbecertification@esd.ny.gov <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or Contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this Contract and agrees to cooperate with the State in these efforts.

25. GENERAL RESPONSIBILITY LANGUAGE. The Contractor shall at all times during Contract term remain responsible. The Contractor agrees, if requested by the Agencies, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

For purposes of this Agreement, Contractor responsibility generally means that the Contractor has the integrity to justify the award of public dollars and the capacity to perform the requirements of this Contract fully. In connection herewith, to the extent that the Agencies may make certain determinations with respect to Contractor responsibility, wherein the Agencies determine whether it has reasonable assurances that a Contractor is responsible, is an important part of the procurement process, promoting fairness in contracting, mitigating contract issues, and protecting the Contractor and the Agencies against failed contracts. In making such a responsibility determination, the Agencies shall evaluate the Contractor's responsibility with respect to four factors: (a) financial and organizational capacity; (ii) legal authority to do business in New York State; (c) integrity; and (iv) previous performance.

26. SUSPENSION OF WORK (for Non-Responsibility). The Agencies reserve the right to suspend any or all activities under this Contract, at any time, when the Agency discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Agencies issue a written notice authorizing a resumption of performance under the Contract.

27. Termination (for Non-Responsibility). Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Agency staff, the Contract may be terminated by the Agencies at the Contractor's expense where the Contractor is determined by the Agencies to be non-responsible. In such event, the Agencies may complete the contractual requirements in any manner they deem advisable and pursue available legal or equitable remedies for breach.

28. Iran Divestment Act. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the Agency.

During the term of the Contract, should the Agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The Agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

APPENDIX II

**Participation by Minority Group Members and Women Requirements and Procedures for
Contracts**

Appendix II can be found at:

<http://www.nyshcr.org/assets/documents/APPENDIXIIMWBEParticipation2012.pdf>

EXHIBIT A

CONFIDENTIALITY PLEDGE

I, [_____], am an employee of [INSERT NAME OF FIRM] with an office at [INSERT FIRM'S ADDRESS] (the "Employer") and am not an employee of the New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency or Tobacco Settlement Financing Corporation (individually, "Agency" and collectively, the "Agencies").

In the course of my employment with Employer, I will perform certain official duties for the Agencies and have executed this Confidentiality Pledge ("Pledge") as of this [] day of _____, 2015 in order to induce the Agencies to allow me to access Data so that I may use such Data in the performance of my official duties for the Agencies while an employee of Employer.

"Data", as used in this Pledge, means any and all records, data, or any other information not generally known to the public belonging to, generated by, provided to me by, or otherwise related to any Agency (whether in written, oral or electronic form), whether of a technical, business or other nature, that I may access, read, become aware of, or otherwise come into contact with in any way in the performance of my official duties for the Agencies or for Employer.

1. I will use the Data only as may be required for the performance of my official duties for the Agencies, and not for any other purpose.
2. I understand that applicable laws and regulations require the Agencies to safeguard the confidentiality of certain information contained in the Data.
3. I will exercise extreme caution to safeguard the confidentiality of the Data and will not release, reveal, publish, or permit the public to obtain access to any portion of the Data without the prior written consent of any of the Agencies.
4. I will exercise extreme caution to safeguard the confidentiality of any password that may be issued by any Agency. I will not permit any person, other than myself (including, but not limited to, any other employee of Employer), to use any such password at any time.
5. I will not attempt to copy any Data (other than as may be required for the performance of my official duties for the Agencies) nor will I create any record, public or private, from which any Data could be regenerated.
6. This pledge shall continue indefinitely and shall survive the termination of my employment with Employer and any date on which I may cease to perform any official duties for any Agency.

In witness whereof, I have executed this Pledge as of the date and year first above written.

[INSERT NAME OF FIRM], SERVICER AND EMPLOYER

Signature

Printed Name

Phone Number

[INSERT NAME OF EMPLOYEE], EMPLOYEE

Signature

Printed Name

Phone Number

EXHIBIT B

MWBE Utilization, PROC-2 Form

Exhibit B can be found at: <http://www.nyshcr.org/assets/documents/MWBEUtilizationForms.pdf>

EXHIBIT C

MWBE Compliance Report, PROC-6 Form

Exhibit C can be found at: <http://www.nyshcr.org/assets/documents/MWBEQuarterlyReport.pdf>

EXHIBIT D

Provider Staffing Plan

Provider's Staffing Plan should be submitted using the form found at:
<http://www.nyshcr.org/assets/documents/PROC1StaffingPlan.pdf>

EXHIBIT E

Workforce Report, PROC-5 Form

Exhibit E can be found at:

<http://www.nyshcr.org/assets/documents/EEOWorkforceUtilization.pdf>