

**CITY OF NEW YORK
DEPARTMENT OF CORRECTION**



AGREEMENT

**FOR THE INSTALLATION, CONFIGURATION AND MAINTENANCE OF AN
INMATE TELEPHONE SYSTEM**

Contractor: Securus Technologies, Inc.

EPIN: 07213P0005001

Agency PIN: 072201315MIS

Effective Date: _____

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AGREEMENT

INMATE TELEPHONE SYSTEM IMPLEMENTATION, SUPPORT, MAINTENANCE and SERVICES AGREEMENT between the City of New York (the "City"), a municipal corporation formed pursuant to the laws of the State of New York, acting by and through its Department of Correction ("DOC" or "Department"), with its principal place of business at 75-20 Astoria Blvd., East Elmhurst, New York, 11370, and SECURUS Technologies, Inc. (the "Contractor" or "Securus"), a corporation with its principal place of business at 14651 Dallas Parkway, Ste. 600, Dallas, TX 75254 (each a "party" collectively the "parties").

WHEREAS, DOC requires the furnishing, installation, implementation, operation and maintenance of a new Inmate Phone System ("IPS") together with associated phones and cabling, and to replace the existing system in the DOC facilities.

WHEREAS, DOC issued a Request for Proposals for the provision of Inmate Phone System Implementation, Support, Maintenance and Services, Procurement Identification Number 072201315MIS (the "RFP") on May 13, 2013; and

WHEREAS, the Contractor submitted a proposal in response to the RFP on June 27, 2013; and

WHEREAS, DOC has determined that the Contractor's proposal is responsive and provides satisfactory value to the City;

WHEREAS, DOC desires to contract with Securus for the scope of services set forth in this Agreement and Securus is ready, willing and able to provide these services.

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

1.1 Defined Terms

Whenever used in this Agreement, the words and phrases listed below have the meanings given below and include the plural as well as the singular.

"Accept," "accepted" or "acceptance" means a written determination by the DOC pursuant to Section 4 hereof that a Deliverable, including all of its components, satisfies all applicable acceptance criteria, which must be demonstrated by successful completion of all acceptance testing procedures that are based upon testing criteria established by the parties in accordance with this Agreement.

“Agreement” means this document titled “Agreement” and all attachments, exhibits, and appendices thereto. Where the Request for Proposals (RFP) refers to “the contract” or “the contract resulting from this RFP,” the Agreement is such contract.

“Business Process Support” means services provided by the Contractor in support of the inmate phone system use by inmates and the DOC staff.

“Customized Existing Products” means customizations and enhancements to the Existing Products enhanced or customized for DOC.

“Commissioner” means the agency head of DOC, or authorized designee, if so indicated.

“Documentation” means, with respect to phone system and/or software, all materials, specifications, technical manuals, user manuals, flow diagrams, file descriptions and other written information that describes the function or use of such software and its variables. Documentation may be part of a program or a separate file or printed volume(s).

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

“Existing Products” means tangible products and intangible, licensed products that exist prior to the commencement of this Agreement and are not developed at the DOC’s expense.

“Good Working Order” means the uninterrupted, trouble-free operation of the IPS, and all components thereof, in conformity with all applicable specifications and other requirements of the Agreement.

“Maintenance Services” means the services specified in Statement of Work.

“Milestone” means an event or occurrence that entitles Contractor to consider a scope of work completed.

“Performance Specification” means, with respect to any equipment, software, services or system or any part thereof, the performance standards and requirements or service levels or similar criteria set forth in the Statement of Work or other document intended by the Parties to constitute a Performance Specification that are associated with a Deliverable.

“Phase” means a distinct stage of implementation of the IPS that concludes with Final Acceptance.

“Parallel Testing” has the meaning expressed in subsection 4.7.1 herein.

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

“Project” means the IPS project undertaken by DOC and Contractor.

“Project Schedule” means the schedule of Deliverables and the corresponding agreed upon dates by which such Deliverables must be accepted, subject to section 2.2.

“Reject” or “rejected” means the act of denying acceptance of a Deliverable in writing pursuant to Section 4 hereof for failure to meet one or more requirements associated with the Deliverable.

“Requirements” means any and all of the technical and functional conditions or capabilities necessary for DOC users to solve, or avoid, a problem or achieve a business objective as detailed in this contract.

“RFP” means the Request for Proposals, issued by DOC on May 13, 2013.

“Services” means all work performed by the Contractor under this Agreement, and includes all work described in the Statement of Work, including the provision of Products ordered by the DOC.

“Service Level Agreement” means the Service Level Requirements set forth in the Statement of Work that Contractor must meet in providing Maintenance Services.

“Statement of Work” means Attachment SOW, including the Exhibits thereto.

“System” means the inmate phone system(s) that Contractor is required to provide, including all hardware and software components such as phone units, Licensed Software and any Third-party Products, as well as the complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, that are necessary to enable the DOC to properly test, operate, and enjoy full use of the System.

“Third-party Products” means any Products procured by Contractor from a third-party. Third-party Products do not include DOC Data, Custom Existing Products or the Licensed Software. “Written Deliverables” has the meaning expressed in subsection 4.3.1 herein.

1.2 Other Definitions

Unless otherwise expressly stated, the words “herein,” “hereof,” and “hereunder” and other words of similar import refer to the Agreement as a whole and not to any particular section, subsection, or other subdivision. The words “section” and “subsection” in the Agreement or an attachment refer to sections and subsections of, respectively, the Agreement or the attachment, unless stated otherwise. A reference to “attachments” means the attachments to the Agreement unless provided otherwise. The words “include” and “including” are not terms of limitation. The word “or” means “and/or” unless the context requires otherwise, and the words “writing” or “written” mean preserved or presented in retrievable or reproducible written form, whether electronic (including e-mail, but excluding voice-mail) or hard copy, unless otherwise stated.

1.3 References to Time

The words “day,” “month,” and “year” mean, respectively, calendar day, calendar month and calendar year. “Business hours” or “business day” means 9:00 a.m. through 5:00 p.m. Monday through Friday, excluding the following DOC holidays, unless otherwise agreed to by the parties: New Years Day, Martin Luther King, Jr.’s Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans’ Day, Thanksgiving Day, and Christmas Day. If one of these days falls on a Saturday, the preceding Friday is a holiday and if one of these days falls on a Sunday, the following Monday is a holiday. The word “current” refers to the period contemporaneous with its corresponding contractual obligation; the word “existing” means as of the Effective Date. The DOC facilities operate 24x7 and 365 days a year where IPS is to be supported.

1.4 Undefined Terms

Words not otherwise defined in the Agreement are given their common and ordinary meaning appropriate to the context in which they appear.

2 TERM, TIME FOR PERFORMANCE, SURVIVAL

2.1 Contract Term

The term of the Agreement will start upon the effective date stated by the Department in a Notice to Proceed given to the vendor. The term will be for a period of up to six (6) months for IPS design, configuration, wiring, integration, testing and implementation, followed by a period of five (5) years of maintenance and support of the IPS, from the implementation date. The Agreement may be renewed for five (5) additional one-year terms at the sole option of the Department. The Department reserves the right, to determine whether they would like to exercise each option to renew, if any.

2.2 Time for Performance

(a) Contractor shall complete all of the Services in accordance with the durations set forth in the Project Schedule. Contractor acknowledges that due to the nature of the DOC's need to commence use of the System by the date specified in the Project Schedule, TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT; and that timely performance in accordance with the Project Schedule is a material requirement of Contractor's performance under this Agreement. The Implementation Schedule for all DOC facilities is not to exceed 6 months in duration and is to be developed by Contractor and be submitted to DOC within 10 business days from project commencement, signified by Effective Date of the contract.

(b) If Contractor is delayed in its performance and/or completion of a Written Deliverable or a Component Deliverable solely due to circumstances outside of the control of Contractor or a subcontractor, including any delays caused by the DOC, Contractor may in writing (supported by a detailed explanation of its plan to prevent delay of the dates of Preliminary Acceptance and Cutover) request an extension of time beyond the corresponding completion times set forth in the Project Schedule and the DOC shall grant such extension. DOC acknowledges that the implementation of the IPS is a cooperative process requiring the time and resources of DOC personnel. DOC shall, and shall cause DOC personnel to, use all reasonable efforts to cooperate with and assist Contractor as may be reasonably required to meet the Project Schedule and other milestones agreed to by the parties for implementation.

(c) For the avoidance of doubt, the Contractor is solely responsible for all aspects of the Project Schedule as it relates to its responsibilities set forth in this Agreement and associated Statement of Work, and the DOC is solely responsible for all aspects of the Project Schedule as it relates to its responsibilities set forth in this Agreement and associate Statement of Work.

2.3 Survival

2.3.1 The rights, responsibilities and obligations of the Parties set forth in the following provisions of the Agreement shall survive termination or expiration of the Agreement or part thereof:

Agreement:

Section 2.3 (Survival)

Article 5 (Software Licenses)

Article 6 (Representations and Warranties of Contractor)

Article 7 (Ownership of Deliverables)

Section 9.1 (No Construction Against Drafter)

Section 9.4 (Documents Part of the Agreement, Conflicts and Inconsistencies)

Appendix A:

Article 2 (Representations and Warranties)

Article 5 (Records, Audits, Reports, and Investigations) Section 6.04 (Antitrust)

Article 8 (Protection of Persons and Property and Indemnification)

Article 11 (Prompt Payment and Electronic Funds Transfer)

Article 12 (Claims)

2.3.2 In addition to the provisions listed in subsection 2.3.1 above, any other provision of the Agreement that by its nature is intended to survive will survive the expiration or termination of the Agreement or part thereof.

2.3.3 The foregoing does not limit or impair any claim of a party with respect to alleged breach of this Agreement that occurred prior to expiration or termination.

3 CONSIDERATION AND PAYMENT

3.1 Consideration

3.1.1 In consideration for the satisfactory and timely performance by Contractor for the completion of all of the Services described in the Statement of Work, the DOC shall agree to utilize the IPS in a revenue sharing model with the DOC receiving a fixed percentage (%) of the revenue as outlined in this Agreement.

3.1.2 Contractor shall not charge the DOC for any work it performs to remedy deficiencies in equipment or services performed by Contractor under the Agreement, for the duration of the contract.

3.2 Administrative Expenses

The revenue sharing model is inclusive of any and all charges and overhead incurred by Contractor in its performance of the Services. Contractor shall not charge the DOC, and the DOC is not obligated to reimburse Contractor, for any other charge or expense, including administrative expenses such as secretarial support, software tools, invoicing, travel, lodging or meal expenses, during the full contract term.

3.3 Call Rates and Revenue Sharing

3.3.1 The payment structure of the contract is based on a revenue sharing model. The Department will receive a share of the net sum of call fees collected by the Department at a prescribed level described below:

3.3.2 The DOC currently charges inmates the below fees, surcharges and per minute rates. These rates shall be maintained in the new System, unless otherwise requested in writing and approved by DOC.

Call Charge Type	Charge
Basic rate/Call (flat rate for the first 3 minutes)	0.0825
Surcharge/Call (flat rate)	0.48
Surcharge/Minute (charged for the duration of the call)	0.02
Additional Charge/Minute (for calls beyond 3 minutes)	0.0176

3.3.3 Call Rates charged will apply to all Local, IntraLata, InterLata, and InterState debit, prepaid, collect and Option 2 calls and will apply to the call type listed in section 3.4.2. Local Prepaid and Option 2 prepaid Calls are those calls placed to area codes (212); (718); (646); (917); (347), and any other local area codes that may be established during the term of this Agreement.

3.3.4 Contractor shall provide collect call functionality directly to the called party without the use of a third party operator. Contractor shall charge Local Exchange Company (LEC) tariffed collect call rates approved by the State of New York which will cover Local, IntraLata and InterLata and InterState calling.

3.3.5 Contractor shall comply with all current and future rules and regulations pertaining to inmate calling rates, fees and surcharges and shall not charge rates which would exceed the rate caps in accordance with Federal Communications Commission 47 CFR Part 64 [WC Docket No. 12-375; FCC 13-113] – Rates for Interstate Calling Services and any rules, regulations and/or court orders that may become effective during the term of this Agreement.

3.4 Call Types, Process, and Method of Payment

3.4.1 The Contractor will offer inmate calls by four call types in addition to Free Calls and Option 2 calling: traditional dialed calls debited from their banking account, traditional collect account calling, prepaid collect account calling, and direct bill account calling.

3.4.2 Free calls are limited to a predetermined schedule and will be permitted at no cost to the inmates.

3.4.3 Option 2 calls are traditional dialed calls made by inmates where there are insufficient funds in the inmates Commissary Account to cover the cost of the call. The system will debit the cost of the call once the inmate's Commissary Account has sufficient funds

3.4.4 Traditional dialed calls and Option 2 calls will permit inmates to have the cost of the call debited to their commissary account.

3.4.5 Traditional collect calls allow friends and family or special accounts group members (attorneys, etc.) to receive collect calls from inmates and have the charges billed by their telephone company monthly on their home or office phone bill. Traditional collect accounts are created automatically (one account for each bill-to-number (BTN)) when the call is accepted.

3.4.6 Prepaid collect account calling is an end user prepaid account established with the Contractor that allows friends and family members or special accounts group members to receive collect calls from inmates and have the charges deducted automatically from the account.

3.4.7 Direct bill account calling is a contractor provided account which allows friends and family members or special accounts group members to receive collect calls from inmates and have the charges billed directly by the Contractor each month.

3.5 Procedures for Invoicing and Payment

3.5.1 Payment by DOC to Contractor and payment from Contractor to DOC should reflect the following revenue structure:

- Commission Return to The City of New York = 81.1% ("Commission") of Gross Revenues as described below.
- Minimum Annual Guarantee of Five million dollars (\$5,000,000.00).

3.5.2 Free calls and related taxes shall not be invoiced to the City.

3.5.3 For traditional dialed calls and Option 2 calls, DOC will collect revenue and remit payment to the vendor on a monthly basis. Contractor will invoice the DOC monthly for call usage . The amount will include the total Gross Revenues generated from the calls minus the Commission (81.1%) for such calls. The DOC agrees to pay the invoice within thirty (30) days, including any applicable taxes and other regulatory charges. The DOC may provide a Sales and Use Tax Resale Certificate to Contractor stating that the DOC will be responsible for charging any applicable taxes and regulatory charges from the end-users and for remitting the collected taxes to the proper taxing jurisdictions. If Contractor receives a Sales and Use Tax Resale Certificate from the DOC, Contractor will not charge applicable sales taxes on the DOC invoices for traditional call usage. The invoice shall be submitted to DOC electronically along with supporting details in MS Excel 2007 to 2010 compatible format and should include

detailed call records and associated costs/fees. Specific details including format, layout and mode of transmission for the supporting details to be determined jointly by DOC and Contractor.

3.5.4 For traditional collect account calling, prepaid collect account calling, and direct bill account calling, the contractor will collect all revenue and pay the City of New York the Commission based on the Gross Revenues that Contractor earns through the completion of inmate telephone calls placed from the DOC Facilities.

3.5.5 "Gross Revenues" shall mean all gross billed revenues relating to completed calls generated by and through the IPS. Federal, state and local charges, taxes and fees, transaction funding fees, transaction fees, credits, bill recovery fees, wireless administration fees, charges billed by non-LEC third parties and promotional programs are excluded from Gross Revenues. Notwithstanding anything to the contrary contained in the Agreement, in accordance with Federal Communications Commission 47 CFR Part 64 [WC Docket No. 12-375; FCC 13-113] – Rates for Interstate Calling Services, effective as of February 11, 2014, no Commission shall be paid on revenues earned through the completion of interstate calls of any type received from the Agreement.

3.5.6 If at the end of the first Term year, the actual Commission from funds collected by the Department or from funds paid to the DOC pursuant to this Agreement are less than \$5,000,000.00, then Contractor will pay the Department the difference within thirty (30) days of the end of the Term year. For each Term year thereafter, Contractor may qualify for an adjustment to the Minimum Annual Guarantee ("MAG") to reflect eighty-one and one-tenths percent (81.1%) of earned Commissions and other payments for all calls and System applications in the prior twelve (12) months, if the level of service meets or exceeds 99% availability. All MAG commission payments shall be subject to audit by the Department.

3.5.7 For traditional collect account calling, prepaid collect account calling, and direct bill account calling, Contractor shall remit the Commission for a calendar month to DOC on or before the 30th day after the end of the calendar month in which the calls were made (the "Payment Date"). All Commission payments shall be subject to audit by the Department.

3.5.8 Securus shall provide the Department with access to the IPS Facility Portal, which is the online access point to various management, administrative, service request, and reporting functions. The features provided through the SCP portal will include secure remote access, covert, key word and other alerts, email alerts, live monitoring, BNA lookups, voice identification, and note taking functionality. The SCP and the IPS Facility Portals shall allow DOC staff to create the reports including but not limited to the Call Detail Report, Call Frequency Report, Covert Alert Call Detail Record Report, and Call Tracker Report.

3.5.9 The DOC reserves the right to audit Commissions through access to the System. In the event any error to the detriment of the DOC is found, the Contractor shall be responsible for immediate payment of the amount plus a penalty equal to five percent (5%) of the amount. Payment of such amount and penalty is non-negotiable, subject to Contractor exercising its rights under the Resolution of Disputes set forth at Section 12.03 of Appendix A to the Agreement. Failure to remit such payment or present its Notice of Dispute within 15 days of written notice from the DOC shall constitute default by the Contractor.

3.5.10 Failure to calculate accurate Commissions on a regular, monthly basis as determined by DOC shall be grounds for contract termination, without penalty to the DOC, for any agreement executed as a result of the contract. Upon contract termination, the Contractor shall be responsible for translation, knowledge transfer and system transition at the direction of the DOC for continued operation, with no interruption to inmate phone services.

4 DELIVERABLES, REVIEW, TESTING AND ACCEPTANCE OF DELIVERABLES AND THE SYSTEM

4.1 Deliverables

4.1.1 Contractor will produce the deliverables listed in this section for DOC review and approval. Approval of the noted deliverables is a requirement that must be met for implementation of the Inmate Phone System.

4.1.2 Contractor is responsible for internal quality control of all Deliverables at no additional cost to the DOC. The DOC may engage its own quality assurance consultant to advise the DOC, and in such event the Contractor shall cooperate with the DOC's consultant in providing information about the project.

Phase / Deliverable		Minimum Requirements	Deliverable
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Phase / Deliverable		Minimum Requirements Deliverable
Project kickoff, plan and schedule	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Project kickoff presentation and meeting ▪ Project schedule including planning, design, configuration, implementation, training and other related activities ▪ Project implementation schedule and plan broken out by each facility to be installed and team structure implementing at each facility ▪ Project wrap up schedule including parallel testing, deployment and Final Acceptance Period ▪ List of Securus team resources including name, title and responsibilities with respect to the project
Status Report	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Weekly status report outlining work accomplished in the prior week, work scheduled for the following week, and a list of issues or action items for DOC's attention to be addressed
Site Survey Plan and Results	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Detailed plan on how Contractor plans to conduct a site survey. ▪ Documentation that details the technical environment of each facility as a result of the site survey ▪ Updated list of equipment and implementation schedule for each facility as a result of site survey
System Architecture	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Diagram and design of the system architecture for the overall DOC infrastructure as well as by each facility
Training Plan and Curriculum	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Proposed training schedule for the DOC staff at each facility as well as administrative offices ▪ List of training materials to be provided to the prior to and post go-live ▪ Actual training materials to be used in delivering training to DOC
User Guides	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Documentation and user guides for inmates to use the new phone system ▪ Documentation and user guides for DOC staff to administer the new phone system

Phase / Deliverable		Minimum Requirements Deliverable
Equipment	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Schedule for new telephone equipment acquisition and delivery at DOC facilities ▪ Schedule for network and server equipment acquisition and delivery at DOC facilities
Interface Designs and Specifications	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Detailed documentation with information about which systems will interface with the IPS, what data will be exchanged, frequency of the data exchange and mode
Integration Plan	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Design for DOC network integration of the phone system to run on the DOC infrastructure ▪ Data integration design for IPS integration with JMS, Commissary and other DOC applications as per requirement
Testing	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Overall approach and plan for testing including system testing, User Acceptance Testing, and performance testing. ▪ Test scripts and plan, broken up by each facility as well as overall DOC installation testing ▪ Integration test scripts and plan to test the JMS and Commissary system interfaces
Reports	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ A list and description of out-of-box reports provided with IPS to meet DOC business needs such as accounting reports, line failure report and others in the scope of work

Phase / Deliverable		Minimum Requirements	Deliverable
Data Conversion	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Conversion and cut-over plan for legacy data into the new IPS prior to go-live, including a list of data elements to be transferred from legacy system into the new IPS and format in which DOC should provide the data from the JMS or other source systems ▪ Data conversion reconciliation scripts, if applicable, to ensure legacy data is loaded into the new IPS database and mapped appropriately ▪ Test plan to test the conversion process and verify accuracy of the legacy data converted into the new IPS 	
System Support Protocol	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Detailed SLA commitments ▪ Documentation to describe the procedure for DOC staff to call about support or services during system outage or issues ▪ Documentation of procedures for inmates' reference to call with questions regarding phone system usage or issues ▪ Details roles and responsibilities for DOC and Contractor staff 	

4.2 Provisions Applicable to All Deliverables

4.2.1 Failure by the DOC to reject a Deliverable within the specified timeframes will not be deemed acceptance by the DOC.

4.2.2 Acceptance of a Deliverable does not relieve Contractor from responsibility for design or other errors of any sort in the requirements, designs, drawings or plans, to the extent such error is caused by the Contractor.

4.2.3 Contractor shall not charge the DOC for the remediation of any defect within a Deliverable, and Contractor is not entitled to an extension to the Project Schedule for time spent correcting a defect in a Deliverable.

4.2.4 Contractor shall not proceed with any activity under the Agreement that is conditioned upon the DOC's acceptance of a Deliverable in the absence of such acceptance as contemplated herein, except as expressly authorized by the DOC in writing. Such authorization to proceed does not constitute acceptance of the Deliverable and does not obligate the DOC to pay for such Deliverable.

4.2.5 The DOC's acceptance of any Deliverable, including Preliminary and Final Acceptance of a Release, is deemed to be based on representations by Contractor that all of the requisite acceptance criteria have been satisfied.

4.3 Written Deliverables

4.3.1 "Written Deliverables" means any and all documents required to be provided by Contractor under the Agreement, including but not limited to, project plans, requirements documents, design documents, software documentation, acceptance criteria, and test plans.

4.3.2 Before beginning development of a Written Deliverable, Contractor shall submit an annotated outline for such Written Deliverable for (i) review by the DOC Project Team and (ii) approval by the DOC Project Manager.

4.3.3 For each Written Deliverable, draft and final, Contractor shall submit one hard copy and one electronic copy. All Written Deliverables are subject to the DOC's review and must meet the applicable requirements.

4.3.4 DOC shall use reasonable efforts to review draft Written Deliverables and return with comments for revision by Contractor within ten (10) business days of submission, or such other time as indicated in the Project Schedule. Within five (5) business days of receipt, Contractor shall revise the Written Deliverable as requested and resubmit to the DOC Project Manager. This process will continue until the Written Deliverable is accepted.

4.3.5 In order to be accepted by DOC, each Written Deliverable must: (i) satisfy the scope and requirements for the Deliverable, (ii) be presented in a format appropriate for the subject matter and depth of discussion, and (iii) meet the acceptance criteria applicable to the particular Written Deliverable.

4.3.6 Acceptance by the DOC of design documents furnished by Contractor with respect to a Release does not discharge the Contractor from any claims of deficiencies in the resulting System to the extent that such design does not meet the Requirements Specification Document, even in the case that the Release is in conformance with the previously-approved design documents.

4.4 Component Deliverables

4.4.1 “Component Deliverables” means the predetermined, constituent parts of the System that are identified in the Statement of Work.

4.4.2 All Component Deliverables are subject to the DOC’s review and must be either accepted as specified in the Statement of Work, or if not so specified, at the DOC’s reasonable discretion. Except as otherwise agreed to by the parties in writing, the DOC shall complete its review of Component Deliverables within twenty (20) days following receipt of notice that such Component Deliverable is ready for testing.

4.4.3 If a Component Deliverable is rejected, the DOC shall provide written reasons for rejection, including a reasonably detailed description of the deficiencies that must be remedied. The reasons for rejection must be contained in a Notice of Deficiency which also includes a description of the acceptance criteria that have not been satisfied.

4.4.4 The DOC may request to extend the review period by an additional ten (10) business days to complete its review.

4.4.5 Following rejection of a Component Deliverable, Contractor shall remedy the described deficiencies within five (5) business days or such longer time period as stated in the Notice of Deficiency, or as otherwise agreed to by the parties in writing, at no additional cost to the DOC. Upon receipt of a revised Component Deliverable from Contractor, the review period recommences, during which time the DOC will review the corrected Component Deliverable to determine whether it is suitable for acceptance. Except as otherwise agreed to by the parties in writing, this process of correcting deficiencies will continue at no additional charge to the DOC until all deficiencies have been corrected.

4.5 Adequate Assurances

If a Component Deliverable fails to pass any phase of testing within fourteen (14) days of the period provided in the Project Schedule, the DOC may at any time thereafter write to Contractor and demand reasonable and adequate assurances in writing that Contractor shall remedy all deficiencies with the Component Deliverable and that Contractor will meet the Project Schedule requirements for Preliminary and Final Acceptance notwithstanding such current deficiency. Should Contractor fail to provide such reasonable and adequate assurances, the parties shall meet in good faith to discuss the Contractor’s remediation efforts and their potential impact on the Project Schedule. After such meeting, if the DOC reasonably determines that the Contractor cannot meet the overall Project Schedule, the DOC may at any time thereafter declare Contractor in default and terminate the Agreement pursuant to Section 10.03 of Appendix A. This right is in addition to, and not in lieu of, any other remedy that the DOC may have for Contractor’s non-performance, including the right to liquidated damages for

delay. Contractor may challenge such determination by the DOC pursuant to Section 12.03 of Appendix A.

4.6 Inspection of the System

4.6.1 As part of the Department's right to demand adequate assurances, the Department may require an inspection of the IPS to determine whether or not it is of the appropriate quality and satisfies all requirements of the Statement of Work. At the discretion of the DOC, such inspection may be conducted by the DOC, or an independent third-party of its choosing.

4.6.2 When Contractor has determined that the conditions for acceptance have been satisfied, it shall notify the DOC in writing and shall submit all testing results and other documentation as the DOC may require or further request in order for the DOC to make its determination. Except as otherwise agreed to by the parties in writing, the DOC shall review all such testing results and other documentation to determine whether acceptance testing results have been satisfied, following which the DOC shall, within ten (10) business days:

(i) Issue to Contractor a Notice of Acceptance that is signed by the Commissioner of DOC or their authorized designees. Such Notice of Acceptance is effective on the date of receipt by Contractor;

(ii) Issue to Contractor a Notice of Deficiency, containing the reasons for rejection, including a reasonably detailed description of the deficiencies that must be remedied and a description of the Acceptance criteria that have not been satisfied; or

(iii) Advise Contractor in writing that the DOC needs to extend the review period by an additional ten (10) business days to complete its review.

4.6.3 Failure by the DOC to provide a Notice of Deficiency will not be deemed acceptance by the DOC, provided that in no event will the DOC unreasonably delay the acceptance of a Release beyond the foregoing time periods. Following receipt of a Notice of Acceptance, Contractor and the DOC shall work together to commence Parallel Testing.

4.6.4 Following receipt of a Notice of Deficiency:

(i) Contractor shall remedy the described deficiencies within ten (10) business days or such longer time period as stated in the Notice of Deficiency or as otherwise agreed to by the parties in writing, at no additional cost to the DOC.

(ii) Upon receipt of a notification from Contractor that the deficiencies have been corrected, or upon the submission of additional satisfactory materials, the DOC shall review such submission to determine whether the conditions for Preliminary Acceptance have been satisfied.

(iii) This process of correcting deficiencies will continue at no additional charge to the DOC until all deficiencies have been corrected and the Preliminary Acceptance criteria have been satisfied, subject to Section 4.7.

4.7 Parallel Testing

4.7.1 "Parallel Testing" means the period during which time the IPS must operate in Good Working Order in its intended environment as a precondition to Cutover, as further detailed in the Statement of Work.

4.7.2 Once a phase satisfies all preconditions to Acceptance, Contractor shall work together with the DOC to launch the IPS in live production on or before the corresponding Milestone date in the Project Schedule.

4.7.3 During Parallel Testing, the DOC Legacy Phone System corresponding to the applicable phase will continue in production as the system of record.

4.7.4 Throughout Parallel Testing, Contractor shall furnish complete on- and off-site support, as necessary to maintain the System in Good Working Order in accordance with the SLA's set forth in the Statement of Work.

4.8 Final Acceptance of the System

"Final Acceptance" means a determination by the DOC, in its sole judgment, that IPS meets all of the acceptance criteria of the Agreement, including successful completion of Parallel Testing and the Final Acceptance Period. Use of the System in its intended environment will not be deemed Final Acceptance.

4.9 Procedure if Acceptance is Not Timely Attained

4.9.1 If Contractor, solely attributable to its own performance, fails to provide a complete system that satisfies all of the prerequisites in accordance with the Project Schedule, then, without any notice or further opportunity to cure, Contractor shall pay liquidated damages to the DOC in an amount equal to seven thousand eight hundred twenty five dollars (\$7,825.00) per day for each day commencing on the seventh (7th) day after the projected end date for Parallel Testing set forth in this Agreement, until either (i) the IPS is placed into Parallel Testing or (b) the DOC terminates the Agreement pursuant to subsection 10.03.B of Appendix A to the Agreement; provided, however, that Contractor may earn back the liquidated damages assessed if the IPS is deployed into Parallel Testing in accordance with the Project Schedule notwithstanding such failure to timely meet the Preliminary Acceptance milestone.

4.9.2 If Contractor, solely attributable to its own performance, fails to complete Parallel Testing and Cutover of a Release in accordance with the Project Schedule set forth in

SOW, Contractor is immediately deemed to be in default of the Agreement and the DOC may pursue any one or more of the following remedies:

(i) without any notice or an opportunity to cure, the DOC may terminate the Agreement for cause pursuant to section 10.03.C of Appendix A to the Agreement; or

(ii) in lieu of immediate termination, the DOC may, without any notice or an opportunity to cure, require Contractor to pay liquidated damages to the DOC in an amount equal to twenty-five thousand dollars (\$25,000) for each week commencing on the seventh (7th) day after the projected date of Cutover provided for in the Project Schedule, until either (a) Contractor attains Final Acceptance of the System or (b) the DOC terminates the Agreement pursuant to subsection 10.03.B of Appendix A to the Agreement.

4.9.3 Upon termination of the Agreement for cause, the DOC shall notify Contractor that it intends to:

(i) accept the IPS as incomplete at an adjusted revenue sharing rate due to reduced value of the system to DOC, in which case the DOC will commence negotiations with Contractor to reach agreement on the reduced value of the System; or

(ii) reject the System in whole or in part and terminate all or part of the terms under the Agreement for cause. To the extent that the System is rejected pursuant to this subsection, the DOC is not obligated to pay for the rejected System or any Component Deliverables, and Contractor shall refund to the DOC all prior revenue sharing payments associated with such Component Deliverables.

5 SOFTWARE LICENSES

5.1 SECURUS

5.1.1 "Licensed Software" means individually and collectively all of the software and documentation (other than Third-Party Products): (1) actually delivered or provided to the DOC by the Contractor under this Agreement and (2) necessary for the Contractor to provide to the DOC in order to meet all the requirements of the Statement of Work for each respective Phase of this project.

5.1.2 The DOC may disclose, provide or otherwise make available the Licensed Software to: the City's employees, agents, contractors, as necessary, Contractor's employees, and any third-party service provider of the DOC's choosing for the purposes of backup, operations continuity, and/or disaster recover, without prior written consent of Contractor. Except as set forth herein, the DOC agrees not to sell, assign, lease, license, or in any manner encumber, pledge, convey or transfer the Licensed Software or any interest therein.

5.1.3 In addition to the Infringement Indemnification provisions in Appendix A of the Agreement, if any part of the System becomes unavailable to DOC because of an infringement claim, then Contractor, at its sole option and expense, will either: (A) obtain for DOC the right to

continue using the System under the terms of this Agreement; or (B) replace the part or parts of the System with products that are substantially equivalent in function, or (C) modify the System so that it becomes non-infringing and substantially equivalent in function.

6 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

6.1 System Warranty

6.1.1. Contractor warrants that, for the life of the System in use under contract (“Warranty Period”), all components of the System provided by or through Contractor will be in Good Working Order and will operate in accordance with their intended use and meet or exceed the Performance Specifications. If the manufacturer’s warranty for any third party software, hardware, installed components, modifications, additions, and parts thereof is in excess of the periods stated herein, then that period of time shall be in effect.

6.1.2 During the Warranty Period, Contractor shall meet or exceed the Service Level Requirements, as provided in the SLA.

6.1.3 The Warranty Period will commence upon Final Acceptance and cut-over and will expire only when the contract is terminated.

6.1.4 Contractor shall provide and bear the cost of all labor and materials required to meet its obligations under this warranty.

6.1.5 During the Warranty Period, any Third-party Products acquired or furnished by the DOC, are deemed to be components supplied by Contractor for purposes of Contractor’s obligations under section 6.1 provided that the DOC must maintain current maintenance, support and/or software assurance agreements applicable to such Third-party Products for the duration of the term of the Agreement and the Warranty Period.

6.2 General Warranty

6.2.1 Contractor warrants and represents that it is capable of providing all of the resources necessary to timely complete its obligations under this Agreement within its own organization. Engagement of a subcontractor is subject to the terms and conditions of Section 8 Contractor Personnel.

6.2.2 Contractor warrants and represents that all Services furnished by or through Contractor pursuant to the Agreement will perform in accordance with all applicable Performance Specifications and other requirements of the Agreement, that the documentation fully describes the proper procedure for using the System and any Products, and that the Services will be provided in a workmanlike manner in accordance with industry standards.

7 OWNERSHIP OF DELIVERABLES

7.1 Ownership

Title and ownership of IPS (including Existing Products, and Customized Existing Products) shall remain with the Contractor. Title and ownership of Third Party Products that are owned by a third-party, whether or not embedded in, delivered or operating in conjunction with hardware or the License Software, remain with such third-party.

7.2 Use of General Knowledge

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

7.3 Ownership and Return of Data

7.3.1 The DOC retains sole ownership and intellectual property rights in and to all information, data (call records and recordings), data compilations, reports, charts, graphs, diagrams, or other information provided or made accessible by the DOC to the Contractor, or created by the Contractor pursuant to the Agreement ("DOC Data"). The Contractor does not have the right to retain any DOC Data including but not limited to inmate voice recordings, voicemails, and other inmate call related information stored in the IPS databases.

7.3.2 Within thirty (30) days of expiration or early termination of the Agreement, the Contractor shall, at no cost to the DOC, perform the following actions:

- (i) transmit the DOC Data to the DOC or its designee in a format that is easily usable by the DOC or its designee and does not contain any proprietary software or other materials of the Contractor or third parties;
- (ii) destroy the DOC Data and any copies, extracts, descriptions, and summaries thereof contained in the Contractor's records or systems; and
- (iii) provide the DOC with a written certification of such destruction

8 CONTRACTOR PERSONNEL

8.1 Generally

8.1.1 "Contractor Personnel" means all individuals furnished by, through, or on behalf of, Contractor excluding agents and subcontractors, to perform Contractor's obligations under the Agreement. Contractor shall not use any subcontractors for the implementation and maintenance of the IPS without prior consent of DOC.

8.1.2 Contractor shall ensure that (i) all Contractor Personnel throughout the duration of each individual's performance under the Agreement have all of the skills, knowledge, training, and experience necessary to perform the Services in a competent and professional manner and in accordance with the requirements of the Agreement, and (ii) an

adequate number of such appropriately qualified Contractor Personnel will be available to timely perform Contractor's obligations under the Agreement.

8.1.3 Contractor shall not use any subcontractor to deliver or service the proposed system or its component parts, without prior consent of DOC. Contractor will provide the IPS that is designed and fully owned by the Contractor. The calling platform service will be provided by its own technicians,

8.1.4 Contractor is fully responsible to the DOC for the acts and omissions of all Contractor Personnel.

8.1.5 Delays in performance resulting from changes in Contractor Personnel are subject to Section 4.9 herein.

8.2 Approval

8.2.1 Upon DOC's request, Contractor shall submit to the DOC, resumes and references of all proposed Contractor Personnel. The DOC is entitled to interview all proposed Contractor Personnel at no charge to the DOC. Where Contractor has provided resumes to the DOC, Contractor shall update information on the resume to the extent of a material change.

8.2.2 Contractor shall comply with the current security requirements of the City of New York and DOC, as set forth online at

<http://www.nyc.gov/html/doitt/html/business/security.shtml>., including background check requirements. At the DOC's request, Contractor shall provide the DOC with the results of a particular individual's background check. Contractor shall require that all Contractor Personnel comply with all security requirements of the DOC.

8.2.3 Contractor must perform all of the Services within the United States. Notwithstanding the foregoing, Contractor may submit, in hard-copy writing, a proposal to utilize resources outside of the United States, which must include: (i) specification of the out-of-country resources, (ii) advantages of using out-of-country resources to the DOC, (iii) cost differential to Contractor, and (iv) any additional information reasonably requested by the DOC. Contractor shall ensure, and hereby represents, that any information provided to the DOC under this subsection is true and accurate and that the use of any out-of-country resources will meet all of the security requirements of the DOC. The DOC's approval of such proposal is within the sole discretion of the DOC. Such approval may be revoked by the DOC at any time, if the Commissioner of DOC determines such use of out-of-country resources is not in the best interests of the DOC.

8.3 Removal and Replacement of Personnel

8.3.1 At any time during the Agreement, the DOC may require Contractor to remove Contractor Personnel for any reason, including but not limited to, performance-related or security concerns, failure to meet the requirements of the relevant labor category or lack of technical competency, or the violation of a law or DOC rule, policy or practice. The DOC shall provide notice to Contractor of the effective date of such removal and whether such Contractor Personnel requires replacement; and Contractor shall cause such individual to cease work on such effective date.

8.3.2 Whenever there has been removal, turnover, or reassignment of Contractor Personnel permitted hereunder, within ten (10) business days of such removal, turnover or reassignment, Contractor shall use its best efforts to provide a replacement individual of comparable or better skills, knowledge, training and experience of the individual being replaced, which appointment is subject to approval of the DOC.

8.3.3 Without limiting any other right of the DOC, the DOC may, at any time, without notice, deny access to its premises, facilities, networks or computer equipment to any individual for any reason.

8.3.4 Notwithstanding anything in this Agreement to the contrary, Contractor shall not be responsible for delays in the Project Schedule attributable to the DOC's rejection or request for removal or replacement of Contractor Personnel without cause.

8.4 Key Personnel

8.4.1 Contractor acknowledges that Contractor Personnel identified in the Statement of Work have unique skills, knowledge, training, and experience such that the engagement or employment of such individuals on the Project is a material obligation of Contractor ("Key Personnel").

8.4.2 Contractor shall ensure that, except as otherwise agreed to by the parties in writing, the Key Personnel initially assigned to perform work under the Agreement continue through completion of the Services or such time as the Parties mutually agree that an individual's responsibilities have been fulfilled under the Agreement. Contractor shall neither remove Key Personnel nor reassign Key Personnel to other duties while performing Services, except for the following reasons: termination; extreme illness; family leave; personal hardship; or other similar material change in the employment circumstances of the individual that is beyond Contractor's control.

8.4.3 Promptly upon the departure of one of the Key Personnel, Contractor shall use all commercially reasonable efforts to provide a replacement individual with equivalent or superior knowledge, training and experience to perform the work at no additional charge to the

DOC. Contractor shall ensure a smooth transition between the departing and newly-assigned individuals at no additional cost to the DOC, and will make best efforts to provide knowledge transfer documentation, cooperation between the former and newly-assigned individuals, and an overlap in the assignment of the former and newly-assigned individual for a duration of at least ten (10) business days.

8.5 Availability

Regardless of location, Contractor shall use reasonable efforts to ensure that Contractor Personnel are available to speak with DOC resources during and after business hours.

9 MISCELLANEOUS

9.1 No Construction Against Drafter

Each party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this Agreement.

9.2 Information Security Policies and Architecture Requirements

9.2.1 All elements of the IPS shall comply with the New York City Citywide Information Security Policies, which may be found online at <http://www.nyc.gov/html/doitt/html/business/security.shtml>.

9.2.2 Contractor shall comply with all City-wide and DOC-specific local and remote access and connectivity policies and procedures.

9.2.3 Contractor shall perform, and ensure the successful completion of, any and all security accreditation tasks and processes relevant to all Services and/or Deliverables at no additional charge to the DOC.

9.2.4 Contractor shall adhere to the technical architecture standards, established by NYC DoITT and as they may be reasonably modified from time to time, which may be found online at <http://www.nyc.gov/html/doitt/html/business/security.shtml>.

9.3 Stop-Work Order

9.3.1 The DOC may, in its sole discretion, at any time issue a written order to Contractor, requiring Contractor to stop performing all, or any part, of the work required under the Agreement (“Stop-Work Order”) for a period of up to thirty (30) days from the date specified in the Stop-Work Order, and for any further period to which the parties may agree (“Stop-Work Period”).

9.3.2 Upon receipt of a Stop-Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs during the Stop-Work Period allocable to the work covered by the Stop-Work Order. Within the Stop-Work Period, the DOC shall either:

(i) by written order cancel the Stop-Work Order and instruct Contractor to resume work on the date specified in the order;

(ii) by written order instruct Contractor to resume work at the expiration of the Stop-Work Period; or

(iii) terminate the work covered by the Stop-Work Order in accordance with the termination provisions of this Agreement.

9.3.3 If the DOC takes action under either paragraph (i) or (ii) of section 9.3, Contractor shall resume work as ordered by the DOC; provided, however, that Contractor’s obligation to resume work is subject to Contractor’s reasonable ability to re-establish the project team previously approved by the DOC or present the DOC with a project team of equivalent experience and skill. In the event that Contractor resumes work as ordered by the DOC, the DOC shall grant Contractor an extension of time for the completion of the work required by the Agreement, which extension will be at least as long as the period during which work was stopped, but may at the DOC’s discretion be longer if Contractor can demonstrate that the Stop-Work Order resulted in need for an increase in time to complete any work required by the Agreement.

9.4 Documents Forming the Agreement, Conflicts and Inconsistencies

9.4.1 This Agreement will be construed wherever appropriate to avoid conflict between the provisions of this document titled “Agreement” and Appendix A, the Attachments, and exhibits thereto. Where a conflict or inconsistency exists between the documents that compose the Agreement, provisions shall govern in the following descending order of precedence:

- This document, titled “Agreement;”

- Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services;
- Appendix B: Statement of Work
- Appendix C: DOC Security Requirements and Policy Regarding Undue Familiarity

9.4.2 Any assumptions, exceptions or terms and conditions set forth in Contractor's proposal documents that are not included in this document entitled "Agreement" are deemed to be inconsistent with the Agreement.

9.5 New Technologies

The DOC is aware that technology is evolving rapidly and that Contractor may be in the process of improving its existing products or services; or making available new technologies to its commercial and governmental customers. In this regard, the Contractor shall:

- (i) promptly inform DOC of all improvements to Contractor's existing technologies relevant to any component of the System, including the Licensed Software, and the expected or actual availability of such technologies;
- (ii) except as may be agreed to by the parties in writing, at the time when Contractor is required to furnish the Products, Contractor shall furnish the most current version of the technology; and
- (iii) at DOC's request, and at no additional charge, Contractor shall provide DOC with any new features, functions, revisions, enhancements, modifications or improvements of the Licensed Products that Contractor makes available to other customers without charge, during the Warranty Period, and for as long as the DOC maintains a valid maintenance agreement.

9.6 Notices

DOC:

Director of Project Management IT Division
Bulova Building- DOC Headquarters
75-20 Astoria Blvd, Suite 110
East Elmhurst, N.Y. 11370

SECURUS:

14651 Dallas Parkway, Suite 600
Dallas, Texas 75254
Attention: General Counsel
Phone: (972) 277-0300

9.7 Sole and Exclusive Provider

During the Term of this Agreement and subject to the remaining terms and conditions of this Agreement, Contractor shall be the sole and exclusive provider of existing and future inmate related communications, including but not limited to voice and data (e.g., phone calls, messaging, prepaid calling cards, debit calling and email) at all existing and future correctional facilities under the authority of the Department in lieu of any other third party providing such inmate communications, including without limitation, the Department's employees, agents or subcontractors.

9.8 Entire Agreement

This Agreement, including the Appendices and Attachments hereto, represents the entire agreement of the DOC and the Contractor with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied or statutory. The DOC hereby acknowledges that in entering into this Agreement it did not rely on any information not explicitly set forth in this Agreement. This Agreement may not be altered or amended except in writing, making specific references to this Agreement, by a duly authorized officer of the Contractor and by a duly authorized official of the DOC.

No further text.

ACKNOWLEDGMENT OF PRINCIPAL—IF A CORPORATION

State of Texas County of Dallas ss:

On this 16th day of July, 2014, before me personally appeared Richard A. Smith to me known, who being by me duly sworn did depose and say that he/she resides at 612 Hayden Lane, Lucas, Texas 75002, that he/she is the Chief Executive Officer of Securus Technologies, Inc., the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that one of the seals affixed to the said instrument is such corporate seal; that it was affixed by order of the directors of said corporation; and that he/she signed his/her name thereto by like order.



Cindy A. Carey
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL—IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____, 20__, before me personally appeared _____ to me known and known to me to be a member of the firm of _____, the firm described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as and for the act and deed of said firm.

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL—IF AN INDIVIDUAL

State of _____ County of _____ ss:

On this _____ day of _____, 20__, before me personally appeared _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER OR DESIGNEE

State of New York County of Queens ss:

On this 18th day of July 2014, before me personally came Ari Wax, to me known and known to me to be the Deputy Commissioner of the Department of Correction of the City of New York, the person described as such in and who as such executed the foregoing instrument and he acknowledged to me that he executed the same as Commissioner for the purposes therein mentioned.



Notary Public or Commissioner of Deeds

SUSANA CHAVEZ HERSH
Notary Public, State of New York
No. 02CH6089210
Qualified in Queens County
Commission Expires March 24, 2015

APPENDIX A - GENERAL PROVISIONS

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

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

- A. "Agency Chief Contracting Officer" or "ACCO" shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.
- B. "Agreement" shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.
- C. "City" shall mean The City of New York.
- D. "City Chief Procurement Officer" or "CCPO" shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.
- E. "Commissioner" or "Agency Head" shall mean the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.
- F. "Comptroller" shall mean the Comptroller of the City of New York.
- G. "Contractor" shall mean the entity entering into this Agreement with the Department.
- H. "Days" shall mean calendar days unless otherwise specifically noted to mean business days.
- I. "Department" or "Agency" shall mean the City agency that has entered into this Agreement.
- J. "Law" or "Laws" shall mean the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
- K. "Procurement Policy Board" or "PPB" shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.
- L. "PPB Rules" shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.
- M. "State" shall mean the State of New York.

**ARTICLE 2 - REPRESENTATIONS
AND WARRANTIES**

Section 2.01 Procurement of Agreement

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

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

Section 2.02 Conflicts of Interest

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

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

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

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

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

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

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

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

Section 2.03 Fair Practices

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

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

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

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

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

Section 2.04 VENDEX

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

Section 2.05 Political Activity

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.06 Religious Activity

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

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

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

Section 2.08 Bankruptcy and Reorganization

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

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

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

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

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

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

Section 3.02 Subcontracting

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

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

C. All subcontracts shall contain provisions specifying that:

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

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

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

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

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

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

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

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

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

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

Section 4.03 Removal of Individuals Performing Work

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

Section 4.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid,

without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

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

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

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

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

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

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

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

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

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

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

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

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

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

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

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

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

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

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

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

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

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

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or

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

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

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

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

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

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an

electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

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

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

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

Section 5.04 Audit

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

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

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

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

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

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

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall

convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

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

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

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

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

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

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

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

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

F. Definitions

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

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

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

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

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

Section 5.08 Confidentiality

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

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such

breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

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

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

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

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

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in

any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

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

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

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

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

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

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

rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

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

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, and shall be "occurrence" based rather than "claims-made."

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

Section 7.03 Professional Liability Insurance

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

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

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

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

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

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

Section 7.05 Unemployment Insurance

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

Section 7.06 Business Automobile Liability Insurance

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

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

Section 7.07 General Requirements for Insurance Coverage and Policies

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

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

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

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

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

Section 7.08 Proof of Insurance

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

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

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

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

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

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

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

Section 7.09 Miscellaneous

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

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

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

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

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

**ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY
AND INDEMNIFICATION**

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

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

Section 8.03 Indemnification

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

Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

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

Section 8.06 Actions By or Against Third Parties

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

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

Section 8.07 Withholding of Payments

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

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

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

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

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

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this

Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

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

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

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

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

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be

bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

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

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

Section 10.03 Contractor Default

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10.04 Force Majeure

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such

events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

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

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

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

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

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

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

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

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

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

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

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the

“EFT Vendor Payment Enrollment Form” available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

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

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

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

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

Section 12.03 Resolution of Disputes

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

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

or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

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

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

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

D. Presentation of Dispute to Agency Head.

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

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

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

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

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

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

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

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

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

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

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

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

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

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

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

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

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

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

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

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

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be

limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

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

Section 12.04 Claims and Actions

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

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

Section 12.05 No Claim Against Officers, Agents or Employees

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

Section 12.06 General Release

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

Section 12.07 No Waiver

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

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

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

Section 13.02 All Legal Provisions Deemed Included

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

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

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

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

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

Section 13.06 Voter Registration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. display any political preference or party allegiance;

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

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

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

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

Section 13.07 Participation in an International Boycott

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

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

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

Section 13.08 MacBride Principles

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

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

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

Section 13.09 Access to Public Health Insurance Coverage Information

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

Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

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

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

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

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

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

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

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

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

Section 13.10 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

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

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

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

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

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

Section 14.02 Merger

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

Section 14.03 Headings

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

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or

communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

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

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

AFFIRMATION

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

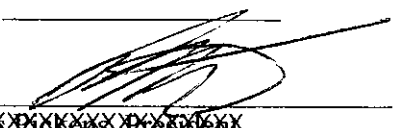
Full name of Proposer or Bidder *[below]*
Securus Technologies, Inc.

Address 14651 Dallas Parkway, Suite 600

City Dallas State TX Zip Code 75254

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorships
SOCIAL SECURITY NUMBER _____
- B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER _____
- C - Corporation
EMPLOYER IDENTIFICATION NUMBER 75-2722144

By 
~~Robert Pickens, President~~
Richard A. Smith, Chief Executive Officer

If a corporation place seal here
Must be signed by an officer or duly authorized representative.

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

CERTIFICATION BY BROKER

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

CERTIFICATION BY BROKER

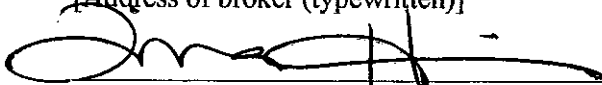
The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

Willis of Texas Inc.

[Name of broker (typewritten)]

15305 N Dallas Parkway, Suite 1100, Addison, TX 75001

[Address of broker (typewritten)]



[Signature of authorized officer of broker]

Tina Harris

[Name of authorized officer (typewritten)]

Client Manager

[Title of authorized officer (typewritten)]

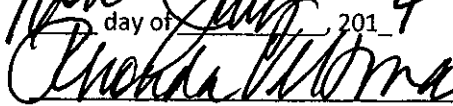
972-385-9800

[Contact Phone Number for Broker (typewritten)]

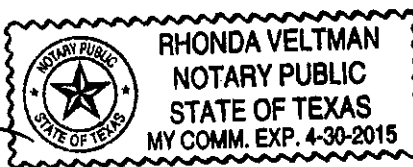
Tina.Harris@willis.com

[Email Address of Broker (typewritten)]

Sworn to before me this

16th day of *July*, 2011


NOTARY PUBLIC



APPENDIX B – STATEMENT OF WORK

The DOC and the Contractor execute this agreement for furnishing, installation, implementation, operation and maintenance of a new Inmate Phone System (IPS) together with associated phones and cabling, and to replace the existing system in the DOC facilities. A number of significant benefits are expected by DOC, including no cost of equipment ownership, ease of maintenance, use of latest technologies providing more comprehensive features, scalability as inmate population grows, and increased stability resulting in less downtime.

Contractor shall provide a working, integrated IPS in accordance with the requirements of the Agreement, including delivery of products, scheduling and coordination of all suppliers/subcontractors, and interface with existing architecture. Failure to meet the Requirements remains the Contractor's responsibility and must be remedied at the Contractor's expense.

Scope

The Contractor will furnish DOC facilities with the following equipment, services and personnel as part of the Agreement. Contractor will replace all hardware, including the current telephone sets to ensure the new System meets DOC requirements. The existing cabling infrastructure and in pod wiring may be replaced or reused at the Contractor's discretion as part of the new solution. The DOC will determine which of the above features will be implemented and how they will be configured. The final quantities will be mutually agreed after site surveys.

- 1,825 new stainless steel inmate telephones utilizing confidencer handsets to support voice biometric identification, improve sound quality and increase revenue though decreased downtime
- Roll up Cart Phones For Segregation or Isolation Cells
- Workstations As Required
- Portable Phones for Segregation Cells
- TDD/TTY Phones at all facilities for ADA Compliance
- 2 full time site administrators/technicians
- 1 full time investigative specialist for staff support, analysis and data integration and extraction of forensic information from confiscated contraband
- 3 UFED Devices to extract cell phone data for investigative purposes
- Unlimited Billed Number and Address inquiries
- Prison Rape Elimination Act (PREA) Hotline to Ensure Compliance With New Guidelines
- Secure Instant Mail to automate mail delivery options, provide searchable context and eliminate contraband
- Securus Call Platform (SCP) inmate calling system will include quarterly upgrades and training with the following features:
 - On-line recording storage for the life of the contract
 - Unlimited Secured Remote Access to System Information
 - Voice Mailz

- Patented 3 Way Call Detection/Prevention
- Patented Real Time Remote Call Forwarding Detection/Prevention
- Dual tone multi-frequency (DTMF) detection
- Key Word Spotting
- Covert Alert with Barge-In
- Reverse Look Up with mapping
- Voice Biometric Identification of Every Inmate
- Patented Automated Operator Services (AOS)
- Real-time call monitoring capabilities
- Officer Check-in
- Crime Tip Hot Line
- Scan Patrol
- Patented Perma Block
- User-friendly reporting and self-help capabilities
- JMS and Commissary Interfaces
- Continuous Voice Verification and Identification with Investigator Pro in order to provide the identification of multiple inmates on a single call without pausing the call for re authentication.
- Transcription services for a minimum of 10% of all calls.
 - Based on 2012 call volume, process approximately 1.2 million calls per year or approximately 3400 calls per day. The average call length based on 2012 data is approximately 5-6 minutes per call. This equates to approximately 6,000,000 to 7,200,000 minutes.
- System will provide the ability to record and transcribe 340 hours of inmate conversations each day, while allowing for expansion of services to accommodate an increase in DOC's transcription needs.

Service Level Agreement

The Contractor shall be responsible for operations, maintenance and support of the IPS, including on-site presence for DOC staff support, in order to provide a reliable phone system to the inmate population 24 hours a day, 7 days a week and 365 days a year. Such maintenance shall include, but is not limited to providing preventive maintenance and prompt repairs as detailed below.

Service Level Agreement/Requirements (SLA)

Priority levels and response time:

- Priority 1 issue – 30% or more of system functionality down, resolution within 2 hours
- Priority 2 issue – 5% to 29% of system functionality down, resolution within 24 hours
- Priority 3 issue – 5% or less of system functionality, single or multiple phones down, resolution within 72 hours

Equipment Category:

- Individual phone(s) - Resolved in 24 hours
- Bank of phones/Housing Area - Resolved in 4 hours
- One or more facilities - Resolved in 4 hours
- System wide shutdown - Resolved in 4 hours

Support Staff:

- 3 dedicated onsite staff members at DOC facilities as follows:
 - 2 technicians assigned to handle issues, maintenance of equipment, respond to inmate grievances, etc. during weekdays regular business hours
 - 1 investigative resource officer onsite during weekdays regular business hours
- 150 remote customer service staff (non-dedicated)

Contractor is responsible for repair of infrastructure when service is not in good working order, including cabling as required. Contractor is responsible for moves, adds, and changes as the result of open or closed housing facilities or other new needs. Contractor is responsible for backups, no less than daily, of any software developed as part of a project.

Contractor shall provide a U.S. based service center(s) designed to support DOC's needs. Technical support group to be staffed 365/24/7, to respond to any issues that may arise. For the friends and family of inmate population, the Contractor shall provide support through a U.S. based multi lingual call center.

Liquidated Damages

Liquidated damages assessed pursuant to this section do not constitute a penalty and are deemed appropriate to be borne by the Contractor. The total liability of Contractor with respect to liquidated damages for delay will be determined by DOC in consultation with the liquidated damages outlined below, and the DOC retains the right to any other remedies available to the DOC under the Agreement for failed performance by the Contractor or in the event of termination.

DOC sets forth below the following liquidated damages for failure to perform services or meet standards as required and are as follows:

1. System installation and implementation delay prior to parallel testing will be assessed at \$7,825 per day
2. Failure to meet Final Acceptance upon starting parallel testing will be assessed at \$25,000 per week. Failure to install software fixes and upgrades within 60 days of release will result in a penalty of \$1,000 per day for each day after the 60 days.
3. Replacement of damaged, defective or questionable field equipment delay beyond the period outlined in the SLA will be assessed at \$200 per day/per unit.
4. Trouble reporting and resolution delay will be assessed at \$200 per day until the reported problems have been resolved.
5. Out of box failure rate will be assessed at \$200 per unit/per day until properly working unit is received at appropriate location.

**APPENDIX C: DOC Security Requirements and Policy Regarding
Undue Familiarity**

SECURITY REQUIREMENTS FOR CONTRACTORS ON RIKERS ISLAND AND BOROUGH FACILITIES

All contractors and their employees including sub-contractors must comply with all security and traffic regulations instituted by the Department of Correction.

For the purpose of these security requirements, sub-contractors and their employees shall be considered employees of the contractor. Contractors are responsible for informing all subcontractors of these requirements. When the term contractor is used herein it shall mean contractor and sub-contractor.

DOC may perform a background investigation on any employee of the Contractor who enters DOC premises. Contractor agrees to replace any employee deemed a security risk by DOC.

S1: IDENTIFICATION OF EMPLOYEES

1. All contractors and their employees who have authorized business at a DOC facility are required to report for identification and approval at established security control points.
2. Each contractor shall furnish its employees with an identification (ID) card. The ID card shall be standard size (approximately 2 inches by 3 inches), laminated and furnished with either a clip or light chain so that it may be secured to the person wearing it. The ID cards shall be sequentially numbered and contain the following:
 - The company name;
 - A recognizable photo of the employee;
 - The employee's printed name and signature; and
 - Expiration date.
3. These ID cards are typically exchanged at a facility for an institutional pass when the employee enters the facility. ID cards/institutional passes must be prominently displayed and secured while the wearer is at a DOC facility. Additionally, identification must be produced upon demand of Department of Correction personnel assigned to various checkpoints, as well as security patrols.
4. The loss of any ID card or institutional pass must be reported immediately to the nearest officer on duty. The officer shall then promptly notify his/her supervisor who shall then take appropriate action.

S2: DELIVERING MATERIAL AND EQUIPMENT TO JOB SITES

1. Contractors must obtain clearance for all deliveries to and removals from Department facilities of material and equipment. All employees reporting for business (non-delivery staff) shall arrive at the main entrance of the respective facility and abide by that facility's security procedures.
2. All vehicles and material contained therein are subject to random searches and inspections. Searches may involve the use of the Canine Unit.

S3: CONTRACTOR'S VEHICLES

1. Drivers of contractor vehicles intending to drive to Rikers Island are directed to report to the security control point on the date and time of the scheduled delivery. The driver will be required to produce the following current and valid documents to the officer:
 - i. A drivers license;
 - ii. The vehicle's registration; and
 - iii. Vehicle Insurance Card.

Additionally, all occupants of the vehicle will be required to produce their employee ID cards and some form of government issued identification with photo (i.e., Driver's license) to the officer.

Upon producing the above noted documents to the officer's satisfaction, the officer will issue the driver a vehicle access pass and allow the driver and the occupants of the vehicle access to Rikers Island.

Note: Access to Rikers Island and/or any Department of Correction facility shall be limited to employees of the contractors (as described herein). Employees shall remain on Rikers Island and/or in the facility for only the time needed to carry out their business.

2. The vehicle access pass must be prominently displayed in the windshield inside the vehicle at all times.
3. Vehicles must be secured when not occupied. The vehicle must be turned off and the ignition key must be removed. Additionally, all windows must be closed and doors and trunks locked.
4. Vehicles are not permitted to be left at DOC facilities or on DOC Property at the conclusion of each workday.
5. Vehicle access passes and any issued DOC identification cards/tags must be turned in upon leaving Rikers Island.
6. All vehicles are subject to a search at any time while on Rikers Island or on the grounds of any DOC facility and also will be searched prior to departing Rikers Island and borough facilities. Searches will include a visual inspection of the vehicle's trunk, passenger and/or cargo compartment and the undercarriage. Additionally, all vehicle occupants will be required to produce their identification cards prior to departing Rikers Island or any DOC facility.

S4: TRAFFIC REGULATIONS

1. Drivers shall obey all posted traffic regulations and speed restrictions.
2. Passing vehicles on the Rikers Island Bridge is strictly prohibited.
3. Drivers and the occupants of their vehicles must produce their identification at all checkpoints.
4. Drivers must yield to all emergency vehicles.
5. The maximum weight limit on Rikers Island Bridge is 36 Tons.

S5: SECURITY PROCEDURES AND ISSUES

1. Contractors and their employees must remain within the physical limits of their work area. Contractors are forbidden to move into any other area on the Island. There is no walking permitted on Rikers Island outside of the respective work site or delivery destination.
2. Contractors, subcontractors, and their employees are forbidden to take or bring into a DOC facility, any articles for an inmate.
3. Contractors and their employees shall not contact, or communicate with or give anything to inmates.
4. Contractors and their employees shall not possess on their person any contraband as described in paragraph #7 of this section.
5. The personal vehicles of the contractor's employees are not permitted on Rikers Island or at Borough facility loading docks. No personal vehicles will be permitted to enter a DOC facility.
- 6.a. Food or lunch packages of the contractor's employees are subject to inspection by Department of Correction custodial personnel.
 - b. No food services are available to contractor's employees at DOC facilities.
- 7.a. Arrest and prosecution will follow violations of Sections 205.00, 205.20 and 205.25 of the New York State Penal Law, which are summarized as follows:

SECTION 205.00.3 Contraband means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation or order.

SECTION 205.00.4 Dangerous contraband means contraband which is capable of such use as may endanger the safety or security of a detention facility or any person therein.

SECTION 205.20 A person is guilty of promoting prison contraband in the second degree when:

1. He knowingly and unlawfully introduces any contraband into a detention facility.

SECTION 205.25 A person is guilty of promoting prison contraband in the first degree when:

1. He knowingly and unlawfully introduces any dangerous contraband into a detention facility.

- b. Contraband is described as any article, the presence of which, within the prison may jeopardize safety, security and good order, or impair the moral and physical welfare of prisoners or employees, or which is prohibited by Rules and Regulations of any institution.
- c. Items that are considered contraband include but are not limited to: unauthorized clothing, unattended tools, loose or unattended vehicle keys, knives, and items to be considered as such, prescription and over the counter medicines, spices, alcoholic beverages, money in the

- possession of inmates, tobacco and tobacco related products (see Section S7), unauthorized written communications to and from inmates that were not processed through the institutional mail rooms, unauthorized packages and carrying cases, as well as unsafe conditions of articles which in the opinion of the Warden would affect the security of the institution.
8. The introduction of electronic/recording devices into any facility without the approval of the Commanding Officer of that facility is strictly prohibited. Electronic/recording devices are defined as any type of instrument, which is designed to transmit and/or receive telephonic, electronic, digital, cellular or radio communication as well as any type of instrument designed to have sound and/or image recording or capturing capabilities. Examples of electronic/recording devices include but are not limited to: cellular or digital phones, any type of pager, two-way radio, text messaging or modem devices, cameras (digital or film), video recorders and tape or digital recording devices.
 9. Any violation of the policies and procedures described herein or of any law, Departmental rule and regulation or institutional policy or procedure may result in criminal prosecution (when applicable) and /or the violating individual being banned from future access to Rikers Island or any Departmental facility.

S6: CONDUCT OF CONTRACTORS AND THEIR EMPLOYEES

1. The New York City Department of Correction has a zero tolerance policy with regard to sexual abuse and sexual threats directed at inmates in its custody. **No one** is allowed to have sexual contact with any person who is incarcerated. Other inmates and staff are prohibited from asking, demanding, forcing or participating in a sexual act with an inmate. This applies to EVERYONE including contractors, vendors, volunteers and employees of other agencies who work in the jails
2. Rikers Island and all Department of Correction facilities are secure facilities. Any person working within secure areas shall exercise extreme caution at all times. Each contractor and its employees must comply with the following security regulations of the Department of Correction:
 - a. Personal identification must be produced on demand by the Department of Correction personnel assigned to checkpoints and security patrols.
 - b. Employees must remain in the area of their work assignment.
 - c. Employees shall not bring any article, letters, notes or messages on the premises for the purpose of giving them to an inmate.
 - d. Employees shall not take any article, letters, notes or messages from an inmate to any other person including another inmate.
 - e. Employees shall not bring alcoholic beverages (beer, wine or liquor) on the premises at any time. Nor shall employees bring drugs or medicines except those required to stock the first aid cabinets in the contractor's field offices.
 - f. Contractors and their employees are prohibited from burning and/or dumping any refuse, debris or rubble on Department property.
 - g. When one person engages in conduct, which constitutes a criminal offense, another person is criminally liable for such conduct when, acting with the culpability required for the commission thereof, he or she solicits requests, commands, importunes, or intentionally aids such person to engage in such conduct.

S7: SMOKING PROHIBITION

1. The Department of Correction maintains a smoke-free environment in accordance with Local Law 47 of 2002, the Smoke Free Air Act which prohibits smoking in public places and workplaces. The following restrictions and procedures apply to all contractors and their employees.
 - a. The use of tobacco related products within any Department facility, office, and vehicle is prohibited;
 - b. This prohibition applies to all persons, including staff, inmates, and visitors;
 - c. In addition to the smoking restrictions, contractors and their employees are prohibited from introducing any type of tobacco products and lighting agents into any department premises that houses or detains inmates, or utilize inmate work details, including the entire area of Rikers Island.
For the purpose of this document, tobacco products include but are not limited to cigarettes, cigars, pipes, loose tobacco and rolling paper. Lighting agents include cigarette lighters and matches.
2.
 - a. Inmates are prohibited from smoking and possessing any form of tobacco products including but not limited to cigarettes, lighting agents, cigars, pipes, loose tobacco and rolling paper.
 - b. Any contractor or employee providing an inmate tobacco related products shall be deemed as promoting prison contraband and shall be subject to arrest.



NEW YORK CITY DEPARTMENT OF CORRECTION
 Joseph Ponte, Commissioner
 Ava B. Walker, ACCO
 Central Office of Procurement

Bulova Corporate Center
 75-20 Astoria Boulevard, Suite 160
 East Elmhurst, NY 11370

Office: 718 546-0690
 Fax: 718 278-6205

Dated 7/16/2014

RE: Security Requirements

Dear Vendor:

All current Department of Correction contractors are required to acknowledge receipt and full compliance of the Agency's current "Security Requirement", which is attached to this memorandum. You have ten (10) days from the date of receipt of this letter to return the signed acknowledgement page in the enclosed self-address envelope. Failure to do so may cause the Agency to commence contract termination procedures.

Please contact Ava Walker at 718-546-0690 if you have any questions. I may also be reached by email at docacco@doc.nyc.gov. In the interim, I thank you for your full cooperation and compliance.

Yours truly,

Ava Walker
 ACCO

I hereby acknowledge receipt of the "Security Requirements".

Richard A. Smith

Name (Please Print)

Signature

July 16, 2014

Date



THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION



MEMORANDUM

[] NEW		[X] REVISED	SUBJECT
EFFECTIVE DATE 02/07/08	NUMBER 01/08	PAGE 1 OF 3 PAGES	UNDUE FAMILIARITY AND PREVENTION OF SEXUAL ABUSE OF INMATES BY STAFF AND OTHER INMATES

TO : ALL STAFF

FROM : MARTIN F. HORN, COMMISSIONER



This message is addressed to all of you who work in our jails, whether you are an employee of the Department of Correction, an employee of another agency, a volunteer, contractor or vendor. Our collective mission is to keep our jails, the inmates, and staff, safe.

We take pride in providing a safe environment for all individuals who are committed to our custody. It is the professionalism of all of us that has established the Department as a leader in the field of corrections. We maintain high standards of behavior and demand the highest level of integrity.



- The way we behave around inmates is key to our success. We must perform our job with integrity. When boundaries are crossed, we become ineffective and the safety of each of us is threatened.
- Once you accept a gift or favor, introduce a single piece of contraband or single an inmate out for special treatment---with the first letter you carry in or out, the first cigarette you provide, the infraction you quash---the door is opened for the inmate to control you and influence your further actions.

And that becomes a serious threat to the safety of fellow staff and other inmates.

- 'Undue familiarity' is a direct violation of our Rules and Regulations. It is the Department's policy to seek termination of those who violate this rule. This behavior includes any social activity with an inmate that is not directly related to one's duties. Such behavior may involve, for example, the granting of a special favor or privilege, a phone call, accepting of a gift, bringing in contraband, a romantic relationship or at its worst, sexual conduct. Undue familiarity is not only a violation of our rules and regulations, but may also be a criminal offense.
- One of the worst offenses staff can commit is to engage in any sexual conduct with an inmate, or make sexual threats.

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- The Department of Correction has zero tolerance for sexual abuse of inmates. **No one** is allowed to have sexual contact with any person who is incarcerated. Other inmates and employees are prohibited from asking, demanding, forcing, or participating in a sexual act with an inmate. This applies to EVERYONE including uniformed and civilian employees of the Department, as well as contractors, vendors, volunteers, and employees of other agencies who work in the jails.
- In addition to the Department policy, New York State Law clearly states that inmates are not able to give consent to sexual conduct with an employee. (Penal Law §130.05, subdivision 3). Individuals considered employees under this law include not only uniformed and civilian employees of the Department, but contractors, vendors, volunteers, employees of other agencies and all other persons who provide a direct service to inmates. In the same way that an underage minor can not consent to sex with an adult, so too an inmate can not consent to sex with employees. **There is no such thing as consensual sex between employees and inmates.** Any such sexual misconduct is a sex crime---whether it occurs inside a correctional facility, during transportation, or at any other time during an inmate's custody.
- The personal consequences for an employee who has any sexual contact with an inmate or sexually threatens an inmate are severe. Not only will that individual be terminated but they will also be arrested and criminally prosecuted. **If convicted they face imprisonment and registration as a sex offender.** The employee may also be required to pay monetary damages to the inmate out of his or her own pocket.
- This illegal behavior also poses a grave risk to all staff. The offending employee has totally compromised himself or herself, no different than if he or she were to smuggle weapons to an inmate.
- All allegations of sexual abuse and sexual threats will be investigated promptly and thoroughly.
- You all play a critical role in identifying and preventing a potential incident of sexual abuse, and responding if such an incident occurs.
- Equally important to us is the protection of inmates from sexual assaults by other inmates. The Department prohibits sexual acts between inmates, whether voluntary or coerced. Inmates who are observed engaging in a sexual act or soliciting a sexual act with another inmate must be ordered to cease their actions. Where the sex is voluntary, infractions will be processed for all the involved parties. Inmates who commit sexual abuse or assaults will be re-arrested and prosecuted to the full extent of the law. **Employees who fail to stop such assaults as they are occurring and/or fail to report them are subject to disciplinary action, including termination.** Inmates who are victims or in danger must be protected.

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- Each of us is responsible for being alert to signs of potential situations in which sexual abuse might occur as well as signs of victimization. And all of us also have the duty to report any knowledge or information we may have about an employee who sexually abuses or engages in undue familiarity with an inmate. You may either contact the Department of Investigation confidentially (numbers are posted in the facilities) or, DOC employees may report to the Tour Commander. You must report, or you will face disciplinary action yourself. All allegations must be reported.
- Any employee who receives a report of inmate-on-inmate sexual abuse, must immediately notify their supervisor. An employee who intentionally fails to report such information will be subject to disciplinary charges.
- There is another role for staff to play in the prevention of sexual abuse of inmates, and that is to encourage inmates to report sexual abuse as well as any other concerns about their safety. If an inmate makes an allegation against staff or other inmates they will be offered immediate protection, medical examination and mental health services and counseling by our chaplains. And the complaint will be reported to the appropriate law enforcement officials and thoroughly investigated. We need your help in getting that message out to the inmates so that they will not be afraid to come forward if they are being victimized.

The Department is very proud of its work force and all of you who come to work day in and day out and perform your jobs professionally, with integrity. Our tradition of excellence requires that we all join together and do everything possible to make sure our zero tolerance policy is part of our culture and value system, because it is the right thing to do!


 MARTIN F. HORN
 COMMISSIONER

Attachment:

Directive #5010, Preventing Inmate Sexual Abuse, dated 05/01/07 (as amended).

Supersedes:

Memorandum #02/07, UNDUE FAMILIARITY AND PREVENTION OF SEXUAL ABUSE OF INMATES BY STAFF AND OTHER INMATES, dated 05/01/07.



NEW YORK CITY DEPARTMENT OF CORRECTION
 Joseph Ponte, Commissioner
 Ava B. Walker, ACCO
 Central Office of Procurement

Bulova Corporate Center
 75-20 Astoria Boulevard, Suite 160
 East Elmhurst, NY 11370

Office: 718 546-0690
 Fax: 718 278-6205

Dated 7/16/2014

RE: "Undue Familiarity and Prevention of Sexual Abuse of Inmates by Staff and Other Inmates", Memorandum number 01/08/, effective 2/07/08.

Dear Vendor:

All current Department of Correction contractors are required to acknowledge receipt and full compliance of the Agency's current "Security Requirement", which is attached to this memorandum. You have ten (10) days from the date of receipt of this letter to return the signed acknowledgement page in the enclosed self-address envelope. Failure to do so may cause the Agency to commence contract termination procedures.

Please contact Ava Walker at 718-546-0690 if you have any questions. I may also be reached by email at docacco@doc.nyc.gov. In the interim, I thank you for your full cooperation and compliance.

Yours truly,


 Ava Walker
 ACCO

Vendor's acknowledgement of receipt of DOC memorandum 01/08, "Undue familiarity and Prevention of Sexual Abuse by Staff and other Inmates.

Securus Technologies, Inc.

Vendor Name

Richard A. Smith

Vendor Representative's Name (Print)



Vendor Representative's Signature

July 16, 2014