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Homes and Community Renewal

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Request for Proposals for Information Technology Solution for Housing Lottery and Waitlist

RFP Issuance Date:

November 30, 2022

Proposal Submission Deadline:

January 19, 2023, 12pm, EST

RFP Number:

HFA-RFP-221130

NEW YORK STATE HOUSING FINANCE AGENCY

641 Lexington Avenue, New York, New York 10022

www.hcr.ny.gov

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Table 1 – Useful Terms

Term	Description
AFHMP	Affirmative Fair Housing and Marketing Plan
Affiliates	Housing Trust Fund Corporation, New York State Division of Housing and Community Renewal, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation
Agency	New York State Housing Finance Agency
AI	Artificial intelligence demonstrated through technology (i.e., the website Solution)
AMI	Area Median Income
Application	Materials submitted to apply for an affordable housing unit
Area Median Income (AMI)	The median income levels , as modified by household size, for the New York Metropolitan Statistical Area are determined by the U.S. Department of Housing and Urban Development (HUD). For 2022, the New York State AMI at 100% for a one person household is \$68,000, and for a two person the AMI is \$78,000.(figures taken from huduser.gov)
Article 15-A	New York State Executive Law Article 15-a
Article 17-B	New York State Executive Law Article 17-b
AWL	Automated Wait List used by the Mitchell-Lama Housing Development portfolio
AWL-PA	Automated Wait List Public Access
City	The City of New York
Contractor	Successful Proposer
COTS	Commercial off-the-shelf
DED	Deliverable Expectations Document
DHCR	New York State Division of Housing and Community Renewal
Diversity	Assessment of participation by MWBEs
DR	Disaster Recovery
ESD	State’s Empire State Development

FEHO	Fair and Equitable Housing Office
HCR	New York State Homes and Community Renewal
HFA	New York State Housing Finance Agency
HPD	The New York City Department of Housing Preservation and Development
Housing Company	Entity that operates a State Mitchell-Lama Housing Development
HUD	U.S. Department of Housing and Urban Development
ITS	New York State Office of Information Technology Services
LIHTC	Low Income Housing Tax Credit Program
Lottery	Automated Online Housing Lottery and Wait List Portal, referred to hereinafter as the Lottery (the “Lottery” Project).
Mitchell-Lama	Affordable housing developments, containing rental and ownership units, characterized as State Mitchell-Lama Housing Developments
MBE	Minority owned business enterprise
MWBE	Minority- and/or Women-Owned Business Enterprise
MWBE Regulations	Article 15 A and 5 NYCRR Parts 142-144
NYC	New York City
New York Housing Search	New York Housing Search is an HCR Website that connects New Yorkers to affordable, accessible, high quality, and safe rental housing opportunities that meet the needs of their families. New York Housing Search enables Owners and Managing Agents to advertise for available units when an application period is open for their housing developments.
NYS	State of New York
OGS	State’s Office of General Services
Owner/Managing Agent	A developer, owner, individual, partnership, limited liability company, corporation, joint venture, or other entity that owns and/or operates an affordable housing development and is responsible for running affordable housing lotteries
Owners	Property owners
PDF	Portable Document Format
PHA	Public Housing Authority

PII	Personal Identifiable Information
Profile	A record of a Renter's household information such as size, income, assets, student status, disability, race, ethnicity, rental subsidy, etc.
Project	Provision of a COTS solution that includes the hosting and operating of a website that is comprised of a housing locator service, online applications, lottery, waitlist management and Support Center that also includes a comprehensive public-facing online Application for Owners and potential Tenants with a backend application for Owners and HCR staff to conduct processing and accurate reporting.
Proposer	Vendor submitting a response to this RFP
QA	Quality assurance
Renter(s)	Person or persons applying to become a tenant in an affordable housing unit
RFP	Request for Proposals
SDVOB	Service-Disabled Veteran-Owned Business Enterprise
SOC 2	SOC 2 Compliance
SFTP	Secure File Transfer Protocol
Solution	Provision of a COTS solution that includes the hosting and operating of a website that is comprised of a housing locator service, online applications, lottery, waitlist management and Support Center that also includes a comprehensive public-facing online Application for Owners and potential Tenants with a backend application for Owners and HCR staff to conduct processing and accurate reporting.
SSO	Single Sign On
State	State of New York
Support Call Center	New York based Customer care support call center
Tenant(s)	Person or persons who live or are applying for an affordable housing unit
UAT	User acceptance testing
USPS	United States Postal Service
UX	User experience
Wait List	List of Renters who have applied for affordable housing but were not selected from the initial Lottery to fill the available affordable housing units. Renters will be listed in the order in which they were selected from the initial Lottery. Example An Owner of a 100-unit affordable housing building conducted a housing Lottery

	and randomly selected 100 Renters to fill those units. The 101st Renter will be in the first position on the Wait List.
WBE	Women-owned Business Enterprise
Website	Synonymous with the “Automated Online Housing Lottery and Wait List Portal”

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NEW YORK STATE HOUSING FINANCE AGENCY

REQUEST FOR PROPOSALS

FOR

INFORMATION TECHNOLOGY SOLUTION FOR HOUSING LOTTERY AND WAITLIST

IMPORTANT NOTICE: A Restricted Period under the Lobbying Procurement Law is currently in effect for this procurement process and will remain in effect until approval of the Contract(s). Proposers are prohibited from Lobbying Procurement Law Contacts related to this procurement process with any employee of the New York State Housing Finance Agency (“HFA” or “Agency”), or its Affiliates,¹ other than the Designated Contact Officer listed below.

Lobbying Procurement Law Designated Contact Officer:

Alejandro J. Valella, Vice President and Deputy Counsel
New York State Housing Finance Agency
641 Lexington Avenue, 5th Floor
New York, New York 10022
Email: Alex.Valella@hcr.ny.gov

If you have inquiries regarding this Request for Proposals (“RFP”) or would like to contact HFA regarding issues not relating to Lobbying Procurement Law Contacts, please contact Lisa G. Pagnozzi or Monika Lekarczyk at ContractUnitInfo@hcr.ny.gov, citing the RFP page and section, no later than the date identified in the *Calendar of Events and Milestones* section of this RFP. The subject line of the email should indicate “2022 IT Solution for Housing Lottery and Waitlist.”

Further information regarding the Agency’s Lobbying Procurement Law policies is available in HFA’s [Standard Clauses and Requirements for Solicitations](#), hyperlinked herein.

¹ Affiliates mean the State of New York Mortgage Agency, Housing Trust Fund Corporation, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation.

1. Introduction

[New York State Homes and Community Renewal](#) (“HCR”) consists of all the major housing and community renewal agencies of the State of New York (“State” or “NYS”), including the New York State Housing Finance Agency (“HFA” or the “Agency”).

More detailed information relating to HFA, its Affiliates and their respective programs may be found on the [Agency’s website](#), hyperlinked herein.

2. Overview of the Agency

The New York State Housing Finance Agency is a public benefit corporation created in 1960 to finance low- and moderate-income rental housing. HFA issues taxable and tax-exempt bonds to provide mortgage loans to developers of affordable multifamily rental housing. HFA’s mission is to create and preserve high quality affordable multifamily rental housing that serves communities across the State of New York. Today, HFA is one of the nation’s most prolific issuers of multifamily housing bonds.

For further information regarding Agency programs, visit our website at <http://www.hcr.ny.gov>.

3. Project Background

In 2009, [NYHousingSearch.gov](#) was procured as a housing listing and locator service by the New York State Division of Housing and Community Renewal (“DHCR”), one of the seven agencies that comprise HCR, to connect New Yorkers to affordable, accessible, high quality, and safe rental housing opportunities that meet the need of their families and to allow the State to meet Federal compliance with the Olmstead Act as it relates to the Americans with Disabilities Act. DHCR owns the NYHousingSearch.gov domain name. The website is a Statewide, online listing and locator service for rental properties, serving both property owners (“Owners”) and prospective tenants.

As of July 2022, the website has grown to include 173,410 rental units listed by 3,117 Owners. Over the last year (*July 2021 – July 2022*), the website was searched approximately 53,258 times a month. To supplement the information online, a New York based customer care support call center (“Support Call Center”) provides inbound and outbound communication to Owners and other users, processing approximately 803 calls per month in the last year.

Furthermore, DHCR has developed, owns and manages the Mitchell-Lama Automated Wait List (“AWL”) system which consists of the AWL back-end application and a public-facing online application known as the Automated Waiting List Public Access (“AWL-PA”). The AWL-PA has been serving in its capacity for nearly 20 years for approximately 138 projects.

In the State of New York, and especially in New York City (“NYC”), affordable housing is in high demand. Over 50% of renters in the State, in over 1.7 million households, are rent burdened, which means that over 30% of income is spent on rent.² Owners often receive more applications than they have units available. The location of the affordable housing development is a factor which decisively affects availability of the order of magnitude of this issue. For example, in NYC, Owners may receive tens of thousands more Applications than they have units available; in other parts of the State, Owners may receive hundreds or a thousand more Applications than they have units available.

Currently, Owners conduct housing lotteries, as well as placement on waitlists, manually. Owners with available units in their housing developments advertise unit availability through www.nyhousingsearch.gov. Generally, Owners make Applications available by mail, but also make Applications available in a combination of email and/or online. Once Applications are received for the units, Owners conduct a housing lottery, manually. This can lead to human error, a lack of transparency, and difficulty for HCR to conduct audits on tenant selection and occupancy.

While Owners must follow certain steps to conduct housing lotteries, HCR cannot physically oversee every step of the housing lottery process. HCR instead relies on compliance monitoring site visits. Additionally, some steps of conducting a housing lottery may vary from Owner to Owner, such as the method used to randomly select Renters for available units.

As a result of the foregoing, HCR has determined the need to modernize and create a website solution to replace the manual housing lottery process, including HCR funded 4% (723 projects with 82,502 affordable units) and 9% (1,518 projects with 75,152 affordable units) multifamily tax credit projects, bond-financed projects, and capital funded projects throughout the State.

4. Purpose

HFA seeks a total solution that addresses each of the functionalities set forth in the Scope of Services section of this RFP. While HFA will consider proposals for any single component described in the Scope of Services section of this RFP, HFA **strongly prefers** proposals for a comprehensive solution addressing all of the required functionalities described in the Scope of Services section of this RFP that incorporate best in class COTS applications, where possible, in order to provide maximum flexibility for future scaling and easy adoption of technological improvements as they come available (the “Solution” or “Project”). HFA will favor such characteristics in its evaluation of proposals as described in the Evaluation of Proposals section of this RFP. The Solution will serve a diverse user community comprised of (i) Renters and participants of the affordable housing lottery and associated programs, (ii) Owners and Managing Agents of the housing units, (iii) a network of HCR staff who administer the affordable housing programs delivered across the State, and (iv) HCR personnel who oversee the administration of the programs and

² American Community Survey, 2017

delivery of services. The business capabilities of this Solution will facilitate the delivery of NYS Funded Affordable Housing to low- and middle-income households in the State.

The website, when viewed from any desktop or mobile device, must conform to the [N.Y. Exec. Law § 202-A](#) and [New York State Accessibility Standards](#), hyperlinked herein, as those laws and standards may be modified or amended from time to time in the future. It must be translatable into 12 non-English languages and any additional language as may become required. In addition, HCR's overarching customer service and user experience goals for the website are to:

- improve site search results and allow Search Engine Optimization to better find and index content, where possible;
- ensure that the website is completely mobile responsive;
- improve navigation to speed access to pertinent information, transactions, and services;
- allow for customer feedback;
- integrate access to a web analytics platform to capture data for continuous monitoring and improvement of the website;
- apply HCR branding [style guidelines](#) throughout the website; and
- include the ability to adapt to any future expansion and enhancement to support housing lotteries and automated waitlists.

Other functionalities for the Solution include:

- Artificial intelligence ("AI") chatbot assistance to users on the website;
- All currently available vacancy data must be transferred to the new website and supported by the Support Call Center. The new Support Call Center should be located in the State of New York.
- Promote this service with other public and private lenders including New York City Department of Housing Preservation and Development, New York City Housing Development Corporation, Community Preservation Corporation, etc. to encourage other governmental agencies to promote housing finance agencies.

All currently available vacancy data must be transferred to the new website and supported by the Support Call Center.

Further Project details are provided in the Scope of Services section of this RFP.

5. Assessment of Practices Relating to Diversity and Service-Disabled Veteran-Owned Business Enterprises

Pursuant to New York State Executive Laws Article 15-a (“Article 15-A”) and Article 17-b (“Article 17-B”), respectively, HFA is required to make an assessment of participation by minority-and/or women-owned business enterprise (“MWBE”) (assessment of participation by MWBEs hereinafter referred to as “Diversity”) and Service-Disabled Veteran Owned business (“SDVOB”) practices of Proposers responding to this RFP that is practical, feasible and appropriate.

5.1 MWBE Participation

HFA is committed to awarding contracts to firms that are dedicated to diversity and provide high-quality services. HFA strongly encourages firms that are certified by the State’s Empire State Development (“ESD”) to submit responses to this RFP. All MWBE firms submitting proposals to this RFP should be registered as such with ESD.

HFA is required to implement the provisions of Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all Agency contracts, as defined therein, with a value in excess of \$25,000. The Agency strongly encourages the partnering of MWBE firms with majority firms and MWBE firms with other MWBE firms. For assistance identifying MWBE partners, review the [list of State certified MWBEs](#), hyperlinked herein.

For purposes of this solicitation, the Agency hereby establishes an overall goal of 30% of total contract expenditures for MWBE participation, broken down as 15% for minority-owned business enterprises (“MBEs”) and 15% for women-owned business enterprises (“WBEs”).

5.2 SDVOB Participation

HFA is committed to awarding contracts to service-disabled veteran-owned businesses that provide high-quality services. The Agency strongly encourages firms that are certified as SDVOBs to submit responses to this RFP. All SDVOB firms submitting proposals to this RFP should be certified with the State’s Office of General Services (“OGS”).

The Agency is required to implement the provisions of Article 17-B for all Agency contracts, as defined therein, with a value in excess of \$25,000. For assistance identifying SDVOB partners, review the [list of certified State SDVOBs](#), hyperlinked herein.

For purposes of this solicitation, the Agency hereby establishes a goal of 6% of total contract expenditures for SDVOB participation.

5.3 MWBE and SDVOB Partner/Sub-Proposer Interest

State certified MWBEs and SDVOBs may request that their firm's contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor. The list will be publicly posted on the Agency's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its State M/WBE certification and/or State SDVOB certification to ContractUnitInfo@hcr.ny.gov. Insert "MWBE/SDVOB 2022 IT Solution for Housing Lottery and Waitlist" in the subject line of the email. Nothing prohibits an MWBE or a SDVOB firm from proposing as a prime Proposer.

6. Primary Contractor and Subcontractor(s)Team

HFA seeks a total Solution. A Proposer may partner with other entities to provide HFA with the Scope of Work, described in the *Scope of Services* section of this RFP, and to meet the RFP's MWBE and SDVOB participation goals indicated in Section 5 of this RFP. The Proposer must be the lead vendor ("**Primary Contractor**") that will serve as the legal contracting entity with which HFA will enter into a contract if its proposal is selected. If the proposal includes products or services from any other participating vendors, it is understood that those vendors will serve as subcontractors to the Primary Contractor. The Cost Proposal should include and assume all costs required to meet the Scope of Work and the requirements of the RFP.

For purposes of evaluating proposals and developing the intended agreement between HFA and the Primary Contractor, all contributions to the Project from both the Primary Contractor and subcontractor(s), including skills, attributes, and products, will be considered as a total solution put forth by the Proposer.

In the event that a "team approach" is proposed, all necessary communications will be directed to the Primary Contractor.

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7. Calendar of Events and Milestones

It is anticipated that a contract(s) resulting from this RFP process will be awarded based on the schedule indicated below. HFA reserves the right to modify this schedule at its discretion. Notification of changes in connection with this RFP process will be made available to all interested parties via HFA's [Procurement Opportunities' webpage](#).

Event	Date
Issuance of RFP	November 30, 2022
Pre-Bid Conference via WEBEX (registration for Web-Ex is required) *	December 8, 2022, 1:00pm, Eastern Standard Time ("EST")
Deadline for RFP Questions	January 4, 2023, 12pm, EST
Deadline for Responses to RFP Questions	January 10, 2023
Deadline for Submission of Proposals	January 19, 2023, 12pm, EST
Interviews and/or Demonstrations (if necessary)	To be Determined
Anticipated Selection Date+	May, 2023
Anticipated start date for new contract(s)	June, 2023

Table 2 - Calendar of Events and Milestones

+Subject to the approval of HFA's Board of Directors*Webex and registration information: Registration is required for attendance at the Webex. Webex and registration information will be made available on the Agency's website by way of an addendum to this RFP.

8. Intent to Submit Proposal

Proposers are strongly encouraged to complete an *Intent to Submit Proposal* form, attached hereto as **Attachment 1**, and to submit the form via email to ContractUnitInfo@hcr.ny.gov with the subject line "*Intent to Submit Proposal – 2022 IT Solution for Housing Lottery and Waitlist .*"

The submission of the *Intent to Submit Proposal* form, while encouraged, is discretionary and, as such, is not binding in any way. Proposers that submit an *Intent to Submit Proposal* form will be added to HCR's bidders' list and will be notified of future related HCR solicitations.

9. Minimum Qualifications

The Proposer must meet the minimum qualifications and/or requirements indicated below. Failure to do so may result in the rejection of the proposal. The purpose of the minimum requirements is to ensure that only a qualified and reliable Proposer(s) perform the work of the resulting Contract(s). Proposer shall have the burden of demonstrating, to the satisfaction of HFA, that it can meet the below minimum qualifications.

The Proposer must have at least three current or recent (*within the last five years*) engagements that involve the implementation and maintenance of a technology solution delivering end-to-end systems developments or COTS implementation on projects with a direct correlation to the size and scope of the Solution described in the Scope of Services section of this RFP. To be considered, the implementation of the solution must be fully designed, accepted and installed within the last five years. Individual experience as a principal, director, officer or employee of an organization may not be used to satisfy this requirement.

The Proposer, or its subcontractor, if any, must be able to provide a fully staffed Support Call Center to support inbound and outbound calls/communication to rental Property Owners, Managing Agents, Renters and HCR staff and provide accurate reporting.

The Proposer must have a Project Lead or Project Manager with a minimum of three (3) years of experience in project management or relevant professional experience. Experience must include work similar in size and scope to the Scope of Work outlined in the Scope of Services section of this RFP.

The Proposer must have a Configuration Lead with a minimum of 5 years of experience in a Configuration Lead role using the technologies comprising the Proposer's solution.

HFA reserves the right to request clarification on Minimum Qualification responses, including verification of information.

Note: Failure by a Proposer to provide any of the above information, as requested by HFA, or to meet any of the above qualifications, in whole or in part, may result in a rejection of the Proposal.

10. Scope of Services (also referred to as the "Scope of Work")

The Scope of Work is written at a high level with the intent to accurately outline the tasks that must be accomplished without prescribing the steps to arrive at each desired result. All services must be fully supported by the Proposer. HFA seeks creative design concepts for enhancing functionality and

attractiveness of the website to connect New Yorkers to affordable housing units.

It is HFA's preference for the Proposer to possess experience in, and knowledge of, the housing and real estate industry including, but not limited to:

- affordable housing market;
- housing rental subsidies;
- leasing and rent up; and
- waitlists and lottery processes.

The Proposer must be able to provide a fully functioning website and Support Call Center. The Scope of Work for this RFP includes, but is not limited to, the following desired results:

- website design;
- website functionality;
- setup and implementation;
- administration;
- compliance management;
- performance reporting; and
- multilingual Support Call Center supporting Owners, Managing Agents, Renters, and HCR Program Staff.

The website and Support Call Center will be:

- managed by the successful Proposer working in consultation with an HCR liaison;
- populated with HCR-financed and HCR-supervised housing providers that are contractually mandated to publicly share available units;
- utilized by Owners and Managing Agents to manage their own listings;
- utilized by Renters seeking affordable housing in New York State; and
- utilized by HCR Asset Managers to access data, initial logs, open and close waitlists, and approve initial rent up lottery postings or remarket lottery postings.
-

10.1 The Solution

HFA seeks a total solution that includes a Support Call Center that facilitates the operations of the affordable housing application process.

The Solution is envisioned to be a state-of-the-art, secure, and reliable technology solution, preferably a COTS product if one exists, supported by quality professional services from a firm that is intimately familiar with the current and evolving New York State regulatory landscape. The Solution must be hosted in a government cloud and comply with all [policies and standards of the New York State Office of Information Technology Services \("ITS"\)](#). The website will handle personally identifiable information ("PII") for Renters making information security of paramount importance. The reporting features of the Solution

will also empower HCR to analyze trends and better understand the population it serves. For further details, refer to the Requirements Matrix in **Attachment 2** and **Attachment 2a** attached hereto.

10.1.1 Website and Support Call Center Features

In cooperation with HFA and its technology partners, the successful Proposer (“Contractor”) must incorporate NYS and HCR regulations on the website. The website must include the features indicated below:

1. **Posting and Searching**

- property Owners and Managing Agents should be able to register, create, post, and manage listings via a portal based on HCR Asset Manager approval
- allow the public to search for housing based on location, features, amenities, accessibility features, income limits and rents, as required by HFA
- allow Renters to refine search for open lotteries and waitlists by unit types, such as size, accessibility, rent and income ranges

2. **Online Application Submittal**

- Owners and Managing Agents should have a feature to manually input paper applications and get a distinct application ID for each submission
- allow Renters to create an account
- Renter’s accounts should include:
 - name of head of household, mailing address, residential address, email address, phone number, preference of contact from project they have applied to
- allow Renters to create a profile
- allow Renters to submit an online application without creating a profile
- Renter’s Profile should include:
 - name of head of household, names of all other household members and relationship to head of household who will be living in the unit they are applying to
 - all household income, assets, student status, disability status, date of births, gender, race, ethnicity, whether household has a transferable rental subsidy and other items listed in the Requirements Matrix, **Attachment 2 and Attachment 2a.**
- allow Renters to access an Application in their preferred language by:
 - clicking on a link to get the online application
 - requesting an Application via paper mail
- Renters should get a distinct application ID when they apply for a listing
- allow Renters to apply to multiple developments:
 - available apartments
 - open waitlists

- lotteries
- All communication with Renters in the Application process must occur by text message or email, as preferred by the Renter.

3. **Lottery and Waitlist Management**

- The website must operate a lottery of available units for HCR funded and HCR supervised projects
- The website must have a feature where the system randomizes all Renters' Applications into a lottery log giving each individual Application a log number
- Renter's Application information should be used to create a log for the lottery
- The lottery log should easily be generated onto an Excel spreadsheet, sortable by both Application ID, log number, and by all Application information
- The log should have the status of the Renter's Application (*e.g., processing for tenancy, waitlist, extended waitlist, rejected*) and the reasons for rejection (*e.g., no response, over income, under income, justice involvement screening, credit screening, fraud in Application process, other*)
- Any report generated from the log should show which Renters have moved up or skipped other Renters in the lottery log order and the reason for such skipping (*e.g., preference applied, family has needs that would be addressed by mobility/hearing/visual impairment adapted units*)
- Renter data must be aggregated for HCR to determine for each development, regionally and Statewide, who it is that is applying and getting housed in HCR projects
- The website must only show unit listings of current available units, open lotteries and open waitlists
- The website must allow Owners, Managing Agents and select HCR Program staff to add Renters with ineligible Applications to waitlists for re-submission of information
- The website must include the ability for all leased units to remain in the database to quickly re-open the specific unit's size and AMI waitlist to accept more Applications
- The website must allow the length of the waitlist to be added (in general ranges) to the property information

4. **Support Call Center**

- review and approve new Owner/Managing Agent listings
- conduct quality control to review:
 - new listings added to the website
 - listings edited for errors
 - potential fair housing violations
- ensure that listings are up to date
- provide guidance to Owners and Managing Agents with posting rental opportunities and updating listings

- provide support in multiple languages to assist Renters in navigating the website, searching for appropriate listings, and applying for rental opportunities
- Support Call Center must be dedicated to website access, navigation and technical assistance for this Solution and not be a shared service of any sort
- Support Call Center must be able to handle an average of 1,500 to 3,000 incoming calls per month
- Support Call Center must be available to respond to calls and emails from Monday-Friday, 9 a.m. to 8 p.m., Eastern Standard Time
- Support Call Center staff are expected to be knowledgeable on NYS affordable housing and informed about compliance needs outlined in the [Affirmative Fair Housing Marketing Plan \(“AFHMP”\)](#), hyperlinked herein

The Proposer must share Support Call Center materials, like scripts and reports, with HFA for quality assurance purposes. The Proposer must provide a Support Call Center Service Level Agreement (SLA) to capture call metrics such as Average Speed of Answer (ASA), average handle times, percentage of inbound and outbound calls, abandon rate, etc., for review and approval by HFA.

Section 773 of the State Labor Law requires HFA to use its reasonable best efforts to ensure that State related business contracts for call service centers and customer service work be performed by State contractors or other agents or subcontractors entirely within the State of New York. In order to demonstrate HFA’s compliance with this section, the proposal must indicate that the proposed call center or customer service work connected with this Project will be within the State of New York and if not, either indicate what efforts Proposer made to locate them within the State of New York or such other reason why such work will not be performed in the State of New York. Please note that if Proposer has relocated 30 percent of a call center employees from New York State to a foreign country within the last year and did not advise the department of Labor as required by labor Law section 771, such relocation will be taken into account in assessing vendor responsibility.

10.1.2 Solution Users

The Solution must provide access to the following internal and external users who will conduct the activities listed below. The Solution will need to integrate with the NYS NY.GOV authentication service to authenticate external users and Single Sign On (“SSO”) with the NYS Active Directory service.

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Table 3 Future NYS Housing Portal System Users

System User	Internal/ External	Access and Responsibilities
Renter without account	External Unauthenticated	<ul style="list-style-type: none"> User will search and apply for housing without setting up a profile.
Renter with account	External Authenticated	<ul style="list-style-type: none"> Search for affordable rental housing based on location, features, amenities, accessibility features, bedroom sizes and income limits, and other relevant information Create a profile Update application information
Owners and Managing Agents	External Authenticated	<ul style="list-style-type: none"> Create an account Create a project listing Submit paper applications online Run lotteries Open and close waitlists
Asset Manager/ HCR Asset Management Unit	Internal Authenticated	<ul style="list-style-type: none"> Review listings to ensure they are up to date and accurate Approve lotteries Confirm the decision to accept a newly created project profile from the Owner/Managing Agent
FEHO	Internal Authenticated	<ul style="list-style-type: none"> Monitor compliance based on Fair Housing regulations Review listings to ensure they are up to date and accurate
Support Call Center	External Authenticated	<ul style="list-style-type: none"> Support Owners/Managing Agents with uploading and registering listings Accept and respond to calls and emails as per the Governor's Statewide Language Access Policy from 9:00 AM to 8:00 PM Eastern Standard Time Remind landlords about expiring leases and re-listing of vacant and/or new units
Administrator	Internal Authenticated	<ul style="list-style-type: none"> Performs all functions for all user roles

10.1.3 Solution Functional Requirements

The Agency's needs are broadly outlined below and further referenced in the Requirements Matrix (See Attachment 2 and Attachment 2 a):

- Component 1: Posting & Searching for HCR funded Affordable Rental Units
- Component 2: Application Submittal
- Component 3: Lottery and Waitlist Management
- Component 4: Support Call Center

10.1.3.1 Component Requirements

Requirements for the above four components are further organized in the Requirements Matrix (See **Attachment 2** and **Attachment 2a**) as follows:

- Public portal
- Posting and Searching for rental listings
- Submitting Applications
- Lotteries and waitlists
- Support Call Center
- Reporting & Analytics

Requirements have been prioritized based on the table below. Any requirement prioritized as “High” and “Essential” must be implemented immediately with an upfront cost. Requirements with lower priorities can be implemented in later phases. One of the lower prioritized requirements encompasses the capacity to transfer and modernize the pre-existing Mitchell-Lama Automated Waitlist System as outlined in the Requirements Matrix (see **Attachment 2**) and further detailed in the Mitchell-Lama AWL Supplemental Requirements Document (see **Attachment 2a**).

The Solution must meet the defined requirements in the Requirements Matrix, **Attachment 2** and **Attachment 2a**, based on their Solution's features and functionality using the following criteria:

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Table 4 - Business Requirements scoring categories

Score	Prioritization
5	Essential
4	High
3	Medium
2	Low
1	Nice to have

Table 5 - Proposer response scoring features

Score	Meaning
3	Standard feature – meets requirements based on “Out of the box features”
2	Requires minor customization
1	Requires significant customization
0	Unavailable feature – does not meet requirements – requires total customization

These requirements are not comprehensive or final, but are key functionalities required to meet the ideal future state Solution HFA is seeking. See **Attachment 2 and Attachment 2a** for additional details.

10.4.1 Solution Non-functional Requirements

10.1.4.1 Compliance

By submission of a Proposal, the Proposer agrees that the Solution, when completed, will meet all New York State, federal and HCR compliance standards and guidelines outlined in the Requirements Matrix. See **Attachment 2 and Attachment 2a** for reference.

10.4.1.2 Design and Branding

The website will be compatible with standard design elements that are specific to State websites, and [NYS HCR Design Guidelines](#), hyperlinked herein.

10.4.1.3 Hosting

The Solution will be hosted in a government cloud. All HCR data must be segregated from other organizations' data that the Proposer hosts. No HCR data must be available outside the borders of the continental United States, either physically, electronically, verbally, or in any other form or manner.

10.4.1.4 Availability/Accessibility

The successful Proposer will provide HFA with a contractual guarantee to keep the website accessible and properly functioning in accordance with the service level terms outlined in the Service Level Agreement (“SLA”) to be provided by the Proposer with proposal and acceptance of the SLA by HFA.

10.4.1.5 Browser Compatibility

The website will be compatible with all currently supported versions of major internet browsers (*e.g., Firefox, Safari, Microsoft Edge, and Chrome*), accessible, responsive, extensible, and optimized for mobile devices such as smart phones and tablets.

10.4.1.6 User Access Management

The Solution will provide a customizable “user access management” capability that enables authorized users to assign user access at application, use case, and field level, as needed, by employee role.

10.4.1.7 Usability

The Solution will ensure all web pages have up to date web content, relevant information, and active links. The Solution, upon completion, will support electronic signature capability that is compliant with ITS policy.

10.1.4.8 Interoperability

The Solution will be interoperable with other technology solutions utilizing modern, industry-standard technologies such as APIs, web services and/or secure file transfer protocol (“SFTP”) interface standards.

10.1.4.9 Addresses

The website will utilize standard addressing as per United State Postal Service (“USPS”) and web standards (see [Postal Addressing Standards](#)).

10.1.4.10 Auditing

The Solution must perform audit logging to build a historical record of all user actions, including user authentication attempts, and critical system processes.

10.1.4.11 Security

The website must comply with security standards as required by the New York State Enterprise Information Security Office. The successful Proposer will be required to complete and satisfactorily answer the [SOC 2 Compliance](#) (“SOC 2”). SOC 2 is an auditing procedure that ensures that the service providers securely manage the data to protect the interests of an organization and the privacy of its clients.

10.1.4.12 Performance

It is anticipated with the current housing crisis, there will be an increase in HCR funded housing projects resulting in an increased listing of affordable rentals on the new website. To address this matter, the Solution must be able to handle at least 100,000 visitors a month with optimal transaction and response times.

Statewide technology policies and guidelines set standards and define best practices for the State's IT community. All Statewide technology policies are available by category and can be ordered by number, date published, and date modified date. A complete listing of defined terms for NYS Information Technology Policies, Standards, and Best Practice Guidelines is available in the ["NYS Information Technology Policies, Standards, and Best Practice Guidelines Glossary"](#).

10.1.4.13 Business Continuity

The successful Proposer will test the Disaster Recovery (“DR”) Plan annually, review results with HFA, remediate any problems identified, and review the remediation actions with HFA as per the Service Level Agreement to be provided by the Proposer with proposal and acceptance of the SLA by HFA.

10.1.4.14 Data Ownership

All website data will be owned by HFA. Website data shall include all data that is owned, licensed, leased or developed by or on behalf of HFA, whether provided to the successful Proposer by HFA or by a third

party in connection with successful Proposer’s provision of services to HFA, including any such data that is loaded into, or located in, any data files, tables, objects or other storage medium developed or maintained by, the successful Proposer, including related data that results from hygiene, cleaning, and database build services performed by, the successful Proposer.

All derivative works of, based on, derived from, or otherwise using any customer data, are themselves considered to be data owned by HFA. This subsection covers, but is not limited to, all output, copies, reproductions, improvements, modifications, adaptations, and translations. HFA shall also own usage data reflecting any access to, or use of, the Website by or on behalf of the customer or its authorized users. All data will be integrated into the Agency’s data warehouse.

10.1.4.15 Data Migration and Transition

Where the Solution involves the creation of any new or derived data by a service provider or other licensee, the Scope of Work should include the following professional services:

- to provide a Data Migration Plan that defines the data to be migrated, the process that will be followed to migrate the data, including testing any automated processes, and detailed data mapping of the source data locations and the destination data locations:
 - identifying and migrating all required data elements from the source systems to ensure historical data retention and continuity of operations;
- to provide a report for validation of the data fields to be migrated;
- for all data formatting activities related to data migration;
- to obtain approval from HFA on the “data migration plan” before any actual migration work starts.

The successful Proposer will enter into a non-disclosure agreement with HFA relating to staff who have access to production data from the legacy system that will be migrated to proposed solution, and will work with the HCR team to create a data dictionary for the new Solution.

10.1.4.16 Support and Maintenance

The successful Proposer will provide technical support to HFA during standard business hours.

10.1.4.17 Release Validation

The successful Proposer will provide a user test environment and HCR staff and select users will have access to the environment for quality assurance (*QA, UAT and UX*) purposes.

10.1.4.18 Extensibility

The website will include the ability to adapt to any future housing lotteries and/or automated waitlists.

10.1.4.19 Analytics Platform

The successful Proposer will work with HCR technology partners to implement a web analytics platform on HCR's data warehouse that has access to, and provides data back to, HFA reflecting the activities occurring on the newly established site and permits HFA to continually measure key performance indicators for the purpose of continually improving the site and overall user experience. The new site pages, coding, data, and metadata need to be optimized during development to provide data once the site is launched. The successful Proposer will provide:

- Optimization of web metrics tools (as available) and implementation of other tools as agreed to by HFA; and
- Reports that will be used to inform the ITS WebNY Team, HCR executives, managers, and staff about website performance on an ongoing basis.

10.2 Solution Expectations

The successful Proposer will implement the Solution and support its operation and enhancements over the full term of the contract. The strong preference of the Agency is for the Solution to be fully functional 12 months from contract start date. The proposal must include a timeline for this design, development, implementation ("DDI") and go-live phase, preferably not to exceed a maximum of 12 months from contract start date. The implementation will involve seamlessly transitioning the current nyhousingsearch.gov website to a new Solution.

The Solution will need to remain in full compliance with all applicable ITS policies and standards throughout its entire lifecycle and meet additional non-functional requirements.

10.3 Delivery of Product and Documentation

The Proposer must provide project management, business analysis, security, design, testing, and operations deliverables, among others, as defined in the Deliverables Matrix table below. The Deliverables Matrix indicates the deliverable and when it is expected to be delivered by project milestone following award of the contract.

The Proposer must supply complete copies of the documentation related to the creation or configuration used during development of this Project.

Table 6 - Deliverables Matrix

Deliverable Name	Milestone 1 Initiation & Planning	Milestone 2 Requirements Analysis & Solution De- sign	Milestone 3 Go Live Readiness	Milestone 4 Full ac- ceptance of solution
D1 Project Plan	X			
D2 Schedule	X			
D3 Deliverable Expectations Document (DED)	X			
D4 Kick Off Meeting	X			
D5 Req/Analysis Plan	X			
D6 Data Migration Plan	X			
D7 Content Migration Plan	X			
D8 Go Live Plan	X			
D9 Release Mgt Plan	X			
D10 Training Plan	X			
D11 Test Plan	X			
D12 Support and Maintenance Plan	X			
D13 Business Continuity (BC) Plan	X			
D14 Executive Status Reports	X	X	X	X
D15 Discovery Report		X		
D16 Information Architecture (IA)		X		
D17 Visual Design		X		
D18 Requirements Traceability Matrix		X		
D19 Demonstrations		X		
D20 Testing Final Report			X	

Deliverable Name	Milestone 1 Initiation & Planning	Milestone 2 Requirements Analysis & Solution De- sign	Milestone 3 Go Live Readiness	Milestone 4 Full ac- ceptance of solution
D21 Training Final Report			X	
D22 Solution in Production (Go Live)			X	
D23 Transition to Production Support				X
D24 Project Close Out Report				X
D25 Website Statistics Report (Initial)				X*
D26 Support Desk Status Report (Initial)				X*

* D25 and D26 will be ongoing reports once the Solution is in production following the implementation project.

10.4 Deliverable Management Process

Deliverable Management Process is outlined in Article 6 of the Master Services Agreement, attached hereto as Attachment 8.

10.5 Licenses; Indemnity

- The Master Services Agreement (“MSA”) shall include an exclusive, transferrable, perpetual license, in favor of HFA to use the Website and other deliverables, including Pre-Existing Materials incorporated in the Website (as discussed below) and any related documentation.
- To the extent that the successful Proposer incorporates in the Website any pre-existing computer code or other materials it owns (“Pre-Existing Materials”) including photos or other graphics, tools, routines, subroutines, techniques and other programs and materials, the successful Proposer shall grant to HFA in the MSA a perpetual license to permit HFA to use such Pre-Existing Materials in the Website.

To the extent that the successful Proposer incorporates in the Website any materials owned by a third party (“Third Party Materials”) including photos or other graphics, tools, routines, subroutines, techniques and other programs and materials, the successful Proposer shall be obligated in the MSA to obtain for the benefit of HFA a perpetual license to use and incorporate such Third Party Materials in the Website. The successful Proposer shall represent and warrant to HFA that:

- the successful Proposer has full right and every lawful power and authority, without the consent of any other party, to create the website and to license the same to HFA and to grant the licenses in the source code as contemplated by this section;
- except to the extent of any matter for which HFA is providing to the successful Proposer a representation, website does not and shall not infringe the rights of any other party; and
- The successful Proposer shall provide an indemnity in the MSA with respect to any infringement of third-party intellectual property rights.

10.6 Recommended Staffing

Depending on the Solution and subject to HFA's approval, the successful Proposer must provide staff to fulfill the following key roles:

- Configuration Lead
- Engagement Manager
- Project Manager
- Lead Business Analyst
- Lead Data Migration Lead
- Lead User Experience/User Interface (UX/UI) Designer
- Lead Tester

Depending on the Solution and subject to HFA's approval, responsibilities and qualifications for these key roles can be found in the Key Role Staffing Matrix, provided as **Attachment 4**.

If selected as the successful Proposer and successful Proposer formally accepting contract deliverables, the successful Proposer agrees to:

- coordinate with HFA and ITS as their technology partners to ensure compliance with NYS direction, policies, and project goals; and
- coordinate the methodology, toolset, and project plan with the HCR and ITS Project Manager(s), the NY.Gov Digital Team and the ITS WebNY Team at the:
 - beginning of the Project – to ensure global/enterprise alignment; and
 - completion of each major phase of the Project.

Upon the successful implementation of the Project, the successful Proposer will primarily work with an HCR Liaison/Product Owner.

10.7 HFA's Responsibilities

- Provide an HCR Project Manager and ensure HCR technology partners are available to serve as liaison(s) with the successful Proposer during the Project

- Provide the successful Proposer with information about the current website and other related information requested by successful Proposer
- Serve as the final decision maker and provide written notice to the successful Proposer, upon HFA's approval of all final products
- Upon consultation with the successful Proposer, dedicate HCR staff to the Project, as deemed appropriate by, and at the sole discretion of HFA

11. Contents of Proposals

The Proposer must submit a proposal that clearly provides all the information required in this RFP. Proposal should be based on conformance to the RFP instructions, responsiveness to the RFP requirements, and clarity of content. Proposer is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements in this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

HFA does not require, nor desire, any promotional material that does not specifically address the proposal requirements in this RFP. Proposals that make extensive use of color photographs or illustrations, or that include separate brochures or marketing materials and overly elaborate embellishments, are discouraged. Images of screens within the Solution (i.e., screenshots) that explain required functionality may be useful. All proposals submitted in response to this RFP must be written in English, with quantities expressed using Arabic numerals and currency using United States Dollars, as applicable.

The proposal should demonstrate that the Proposer is qualified to perform the Scope of Work based upon prior relevant professional experience.

Each Proposer is required to submit the information and documentation listed below, in the order in which it is requested. A proposal that does not include all required information and completed forms may be subject to rejection.

All materials submitted in response to this RFP will become the property of HFA. HFA will not be liable for any costs incurred by any Proposer pertaining to the preparation and submission of any written response or for participation in any interview(s) and/or demonstration(s) in response to this RFP. Proposals are subject to disclosure under Public Officers Law, §87 (*Freedom of Information Law*).

Proposers are strongly encouraged to utilize the Proposal Checklist in Attachment 10 to ensure completeness of their proposal.

The Proposer's proposal must contain responses to the items listed below in Tabs 1, 2, 3, 4 and 5. The proposal must be submitted electronically in portable document format ("PDF") with electronic bookmarks corresponding to the tab numbers.

11.1 TAB 1: Proposal Application Coversheet, Cover Letter and evidence that Proposer meets the minimum requirements indicated in Section 9 of this RFP titled minimum requirements.

The Proposer must complete and submit the Proposal Application Coversheet, attached hereto as **Attachment 6**.

In addition, the Proposer must include a Cover Letter. The Cover Letter must not exceed **three (3) pages** and must include the information indicated below.

- a) The Proposer's name, address, telephone number, fax number, email address and web site address, if applicable.
- b) The name, title, telephone number, fax number and email address of the individual within the Proposer's organization who will be HFA's primary contact concerning the proposal.
- c) A summary of the Proposer's organizational history and legal structure (*e.g., corporation, MWBE and/or SDVOB certification status*).
- d) A statement as to whether the Proposer is an MBE, WBE, MWBE or SDVOB certified by New York State.
- e) Provide evidence and demonstrate how the Proposer meets the Minimum Qualifications indicated in Section 8 of this RFP, including a statement that is signed and dated by an authorized signatory of the Proposer affirming that the Proposer meets all of the Minimum Qualifications indicated in Section 9 of this RFP.
- g) A statement affirming as to whether the Proposer currently does, or will have an office within New York State, including the current or anticipated address (*if the current address listed above is outside of New York State*).
- h) A written certification confirming the following:
 - i. The information contained in the proposal is true and accurate;
 - ii. The Bid is an irrevocable offer for 180 days from the date of submission;
 - iii. The Proposer can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in this RFP;
 - iv. The Proposer has read and understands the RFP and all appendices, attachments, and exhibits attached thereto, including the terms and conditions of [HCR's](#)

Standard Clauses and Requirements for Solicitations;

- v. The Proposer has read the draft MSA and either (i) has no edits at this time or (ii) has provided a list of suggested edits as part of their proposal;
- vi. The Proposer has met or exceeds the Minimum Qualifications described in Section 9 of this RFP; and
- vii. The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Proposer referenced above and that he or she signed this Proposer Certification as the legally binding act of the Proposer.

11.2 TAB 2: Technical Proposal

This section of the RFP provides instructions to the Proposer regarding information that is to be included in Tab 2 of the Technical Proposal. Proposals must be complete, factual, accurate, clear, concise and as detailed as necessary to allow HFA to adequately evaluate capabilities and experience. The content in the Technical Proposal is limited to 30 letter-size pages, single spaced, minimum of 12-point font, and at least one-inch margins. The page limit is inclusive of text as well as diagrams, flow charts, organizational charts, etc.; however, resumes and responses to Requirements Matrix are excluded from the page limit.

The purpose of the Technical Proposal is to provide the Proposer an opportunity to demonstrate its qualifications, capability, experience, capacity and competence to undertake the Scope of Work described in the Scope of Services section of this RFP in a manner that complies with the requirements of this RFP. Proposals should specifically detail the Proposer's qualifications and experience in providing services sought by HFA.

A complete Technical Proposal must include responses to the items listed in the **Attachment 5**. Proposer should present as much information about the proposed Solution and services to be provided as it deems necessary together with all applicable supporting documentation to illustrate the responses in **Attachment 5**. It is recommended that the proposal include samples of deliverables as outlined in Section 10.3 of the RFP titled "Deliverables" including, but not limited to, a high-level tentative Project Schedule for the DDI effort that includes, but is not limited to, a timeline for the DDI and go-live phase, preferably not to exceed a maximum of 12 months from contract start date.

Note: The technical proposal shall not include any pricing information or any exceptions or notes referencing the pricing proposal. All such pricing information shall be included only in Tab 3, the Cost Proposal submission.

11.3 TAB 3: Cost Proposal

Proposers are expected to outline a timeline and cost per phase with implementation of different features as they see fit. See **Attachment 7** for Cost Proposal worksheet.

The Proposer must complete the Cost Proposal Worksheet (Worksheet), attached hereto as **Attachment 7**, in the format outlined in the Worksheet, and costs must include the items indicated below. The Cost Proposal must be signed and dated by an authorized representative of the Proposer. The prices shall remain fixed for the duration of the contract and shall not be subject to any additions, mark-ups, percentage multipliers, or cost of living increases.

The total cost for this Project will include four components:

- Design, Development, Implementation (“DDI”) Fixed Price;
- Operations & Maintenance Services Fixed Fee;
- Systems Change Management Services Fixed Hourly Rate; and
- Proposer phases in approach plan.

The Worksheet must include the following items:

- The Proposer must specify a total fixed price to provide initial setup services for each component of the Solution that will include planning, requirements analysis, solution design, configuration/customization, integration with other systems, testing, training, and go-live and post-go-live services. The total cost will be broken down by payment points tied to milestones.
- The Proposer must specify a yearly maintenance fee for the website solution and Call Support Center. The price will be fixed for the blocks of years outlined in **Attachment 7**.
- The Proposer must specify a blended hourly rate for systems change management services for enhancements that may be needed outside of regulatory changes. This blended rate should, at a minimum, include a Project Lead, Subject Matter Expert, Business Analyst, Configuration Specialist (which includes system integration), and a Tester. The hourly rate must be a fully loaded rate that includes all personnel, overhead, indirect, travel, profit, equipment usage, and other miscellaneous costs. The proposed rate must be specified and remain fixed for multiple Operation Year blocks, for the duration of the total contract term. HFA estimates 1,000 hours annually for potential systems change management services but does not make any guarantees regarding the use of systems change management hours beyond the term of the contract. This value of estimated hours can be utilized to compute the total amount. The anticipated numbers/quantities provided do not represent a commitment or guarantee to utilize a specific quantity of hours or level of services.

11.4 TAB 4: Administrative Proposal

11.4.1 Required Documents

Proposers are subject to the requirements indicated in HFA's [Standard Clauses and Requirements for Solicitations](#).

Proposers should complete and submit the following forms, hyperlinked herein:

- a) [Vendor Information FORM](#)
- b) [Lobbying Procurement Law FORM 1](#)
- c) [Lobbying Procurement Law FORM 2](#)
- d) [Non-Collusive Bidding Certification FORM](#)
- e) Vendor Responsibility Questionnaire [For-Profit Business Entity](#) or [Not-For-Profit Business Entity](#)
- f) [Vendor Assurance of No Conflict of Interest and Detrimental Effect](#); and
- g) [Executive Order #16 – Prohibiting Contracting with Business Conducting Business in Russia](#)

In addition to completion of the forms hyperlinked above, Proposers must provide the following items according to the instructions provided below.

- 1) Either: (a) proof that the Proposer has the required insurance indicated in subsection 11.4.2 together with confirmation that if awarded a contract(s), the Proposer will maintain the same types of insurance and limits for the life of the contract OR (b) a statement from the Proposer that they will acquire the required insurance indicated in subsection 11.4.2 prior to contract execution and will maintain the required insurance for the life of the contract.
- 2) Confirmation of Certifications and other Credentials.
- 3) If Proposer intends to recommend edits to the Master Services Agreement, attached hereto as **Attachment 8**, Proposer must submit a list of proposed edits in the following format: (a) section, page number and current language; (b) suggested revised language; and (c) justification for proposed edits.
- 4) The Proposer must provide the last two years of their firm's most recent tax returns or, if available, audited financial statements.
- 5) The Proposer must respond affirmatively that it, and its subcontractors (if any), will have, prior to commencement of work under the contract resulting from this RFP, all necessary licenses, certifications, approvals, and other needed credentials to perform the Scope of Work, if applicable.

11.4.2 Insurance Requirements (Required prior to Contract execution)

The awarded Contractor is required to provide and maintain, at its (their) sole cost and expense, the required insurance coverage, at the minimum limits specified herein, during the term of the contract and for five years after completion of work. All required insurance policies must be maintained with insurance companies licensed within the State of New York and holding an AM Best rating of no less than A- VIII. In addition, companies writing insurance intended to comply with the requirements should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. HFA may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Upon notification of contract award, the awarded Contractor shall deliver to HFA evidence of the insurance required by the Contract(s) resulting from this RFP process in a form satisfactory to HFA. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by HFA does not, and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities under the awarded Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

The Contractor shall provide HFA with a Certificate or Certificates of Insurance, in a form satisfactory to HFA as detailed below. Certificates shall name the New York State Housing Finance Agency, 641 Lexington Avenue, 5th Floor, New York, New York 10022 as the certificate holder. Within 30 business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide HFA with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of the Contract(s) resulting from this RFP process.

Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from HFA. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

Prior to the commencement of any work by a subcontractor, the Contractor shall require such subcontractor to procure policies of insurance as required herein and maintain the same in force during the term of any work performed by that subcontractor, unless otherwise approved by HFA. HFA reserves the right to

set minimum insurance limits in any subcontracting agreement between the Primary Contractor and its subcontractor(s). An Additional Insured Endorsement CG 20 38 04 13 (*or the equivalent*) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and shall be provided to HFA upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

Commercial general liability and business automobility insurance policies shall provide that the required coverage be primary and non-contributory to other insurance available to the New York State Housing Finance Agency and its officers, agents, and employees. Any other insurance maintained by the New York State Housing Finance Agency and its officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

For the Commercial general liability, business automobile liability, and workers' compensation insurance required below, the Contractor shall cause to be included in its policies insuring against loss, a waiver of the insurer's right of subrogation against the New York State Housing Finance Agency and its officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against the New York State Housing Finance Agency and its officers, agents, and employees or (ii) any other form of permission for the release of the New York State Housing Finance Agency and its officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in the MSA shall be delivered to HFA. If, at any time during the term of the Contract(s), the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract(s), or proof thereof is not provided to HFA, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by HFA.

The Contractor must furnish to HFA evidence of the insurance requirements indicated below prior to execution of the awarded Contract(s). Contractors shall obtain and maintain in full force and effect, throughout the term of the Contract(s), at their own expense, the following insurance with limits not less than those described below and as required by the terms of the Contract(s), or as required by law, whichever is greater. HFA reserves the right to modify these insurance requirements.

- a. Commercial General Liability Insurance, including Contractual Liability of liability of no less than One Million Dollars U.S. Dollars (\$1,000,000) per occurrence, Two Million Dollars U.S. Dollars (\$2,000,000) aggregate and Products and Completed Operations. If coverage is written under a blanket policy, an aggregate per location endorsement is required. The policy should

be written on the current edition of ISO occurrence form CG 00 01, or its equivalent, and must not include any exclusions or limitations other than those incorporated in the standard form.

The Contractor shall include coverage for on-going work and operations naming as additional insureds (*via ISO coverage forms CG 20 10 04 13 or CG 20 38 04 13, or a form or forms that provide equivalent coverage*): New York State Housing Finance Agency, its Affiliates and their officers, agents, and employees. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insured, in the same manner that the Contractor would have been required had the Contractor obtained such insurance policies.

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed the Contract;
- Cross liability for additional insureds; and
- Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by the Contract.

b. Data Breach and Privacy/Cyber Liability Insurance, in an amount not less than One Million U.S. Dollars (\$1,000,000) each claim, Contractors are required to maintain coverage during the term of the Contract(s) and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems due to the actions of the Contractor which results in unauthorized access of the data. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies.

Said insurance shall provide coverage for damages arising from, but not limited to, the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (*e.g., medical, financial, or personal in nature in electronic or non-electronic form*);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property including, but not limited to, money and securities.

If the policy is written on a claims made basis, the Contractor must submit to HFA an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed

in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

c. Bond Coverage or Employee Dishonesty for each claim as follows:

During the term of an awarded contract, the Contractor shall maintain at least a Seven Hundred Fifty Thousand U.S. Dollars (\$750,000) limit, employee dishonesty through a bond or insurance coverage. If coverage is through an insurance policy, it must be on a “loss sustained form” or “loss discovered form,” and coverage must include the following:

- The coverage must allow for reporting of circumstances or incidents that might give rise to future claims;
- The coverage must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy;
- Any warranties required by the Contractor’s insurer as a result of the Contract awarded under this RFP process must be disclosed and complied with. Said coverage shall extend coverage to include the principals (*all directors, officers, agents and employees*) of the Contractor as a result of this Contract awarded under this RFP process;
- The coverage shall include coverage for third party fidelity and name the “New York State Housing Finance Agency and its officers, agents, and employees” as “Loss Payees” for all third-party coverage secured. This requirement applies to both primary and excess liability policies, as applicable; and
- The policy shall not contain a condition requiring an arrest and conviction.

d. Professional Errors and Omissions for no less than One Million U.S. Dollars (\$1,000,000) for each claim and Two Million U.S. Dollars (\$2,000,000) in the aggregate. The coverage must include the following:

- Insure loss arising from any claim or claims made arising out of the scope of services during the policy period by reason of any covered error, omission or negligent act committed in the conduct of the insured’s professional business during the policy period;
- If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under the Contract resulting from this RFP process is completed; Written proof of this extended reporting period must be provided to HFA prior to the policy’s expiration or cancellation;
- The policy shall cover professional misconduct or lack of ordinary skill for the positions defined in the scope of services of the Contract resulting from this RFP process; and
- This policy requirement applies to both primary and excess liability policies, as applicable.

e. Automobile Liability, such insurance shall cover liability arising out of an automobile used in connection with performance under the Contract including owned, leased, hired and non-owned automobiles bearing, or under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear license plates in the amount not less than One Million U.S. Dollars (\$1,000,000) per accident.

f. Workers' Compensation and Disability Benefits - Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and State entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid/Proposal or any contract renewal. A Bidder/Contractor will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to HFA. Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to HFA at the time of Bid/Contractor submission, policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.

Proof of Compliance with Workers' Compensation Coverage Requirements:

- CE-200 – Certificate of Attestation for New York Entities with No Employees and Certain Out-of-State Entities that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required; or
- C-105.2 – Certificate of Workers' Compensation Insurance (*or U-26.3 if insured through the State Insurance Fund*); or
- SI-12 – Certificate of Workers' Compensation Self-Insurance (*or GSI-105.2 Certificate of Participation in Workers' Compensation Group Self-Insurance*); or
- Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- CE-200 – Certificate of Attestation for New York Entities with No Employees and Certain Out-of-State Entities that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required; or
- DB-120.1 – Certificate of Disability Benefits Insurance; or
- DB-155 – Certificate of Disability Benefits Self-Insurance.

An instruction manual clarifying the New York State Workers' Compensation Law requirements

is available for download at the New York State Workers' Compensation Board's website at <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>.

g. Umbrella/Excess Liability, with minimum limits of One Million U.S. Dollars (\$1,000,000) each occurrence and aggregate. Such Umbrella Liability policy shall be written on a no less than follow form basis.

11.5 TAB 5: Diversity Proposal

11.5.1 Equal Employment Opportunity (EEO), Diversity, and SDVOB Information

Proposers that are certified in NYS as an MBE, a WBE, an MWBE and/or a SDVOB should attach evidence of NYS certification.

Proposers who will subcontract with firms that are certified in NYS as a MBE, a WBE, an MWBE or a SDVOB should attach evidence of that firm's certification and should also indicate what tasks the subcontractor Proposer will deliver and how much they will be paid.

Proposers must complete and submit the following Diversity related items as part of their response:

- 1) [Equal Employment Opportunity Staffing Plan, PROC-1 form.](#)
- 2) [Utilization Plan, PROC-2 form.](#)
- 3) [Minority and Women Business Enterprises – Equal Employment Opportunity Policy Statement, PROC-4 form.](#)
- 4) [Company Demographic Profile, PROC-7 form.](#)
- 5) [EEOC Statement, PROC-8 form.](#) Please note that completion of the PROC-8 form is applicable to Proposers with 15 or more employees.
- 6) [Diversity Practices Questionnaire.](#)

12. Questions and Answers

Any questions or requests for clarification regarding this RFP must be submitted via email to ContractUnitInfo@hcr.ny.gov citing the RFP page and section, no later than the date identified in the *Calendar of Events and Milestones* section of this RFP. The subject line of the email should indicate “2022 RFP Questions for IT Solution Housing Lottery and Waitlist.”

HFA will not respond to oral questions, and any question received after the deadline may not be answered. The list of questions/requests for clarifications and the official HFA responses will be posted on [HCR’s “Procurement Opportunities” webpage](#).

An electronic version of this RFP will be posted on [HCR’s website](#) in addition to any subsequent changes, additions, or deletions to the RFP, including the timelines and target dates. **It is recommended that Proposers check HCR’s website frequently for notices of any clarifications, changes, additions, or deletions to the RFP.**

13. Amendments and Addenda

HFA reserves the right to modify any part of this RFP including, but not limited to, the date and time by which proposals must be submitted to and received by HFA, at any time prior to the Deadline for Submission of Proposals indicated in the *Calendar of Events and Milestones* section of this RFP. Modifications to this RFP will be made by issuance of amendments and/or addenda. Any amendment or addendum to this RFP will become part of this RFP.

Prior to the Deadline for Submission of Proposals, any such clarifications or modifications as deemed necessary will be posted to <https://hcr.ny.gov/procurement-opportunities>.

If the Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Proposer will immediately notify HFA of such error, in writing, and request clarification or modification of the document.

There are no designated dates for release of addenda. therefore, interested Proposers should check HCR’s website frequently through the Deadline for Submission of Proposals. It is the sole responsibility of the Proposer to be aware of all addenda related to this RFP process.

14. Proposal Submission Requirements

Proposers must submit a complete proposal that satisfies all the requirements set forth in the RFP. Failure to do so may render the Proposer's proposal non-responsive. A proposal checklist is included in this RFP as **Attachment 10**.

Proposals must be delivered, by email, no later than the proposal due date and time indicated in the *Calendar of Events and Milestones* section listed in the RFP.

Proposals must be submitted by email to HFA at Nyhomes.proposal@hcr.ny.gov, in searchable portable document format ("PDF") compatible with Adobe Reader XI. HFA will not accept discs, flash drives, or File Transfer Protocol ("FTP") file references that require HFA to download information from the Proposer's or a third party's website.

The proposal must be bookmarked and divided into five parts: (i) Tab One: Application Coversheet and Cover Letter; (ii) Tab Two: Technical Proposal; (iii) Tab Three: Cost Proposal; (iv) Tab Four: Administrative Proposal; and (v) Tab Five: Diversity Proposal, and must be presented in the exact order requested in this RFP. Proposals must be sent in two emails and labeled as follows: (a) one email to include Tabs One and Two and the subject line of the email must be labeled: "2022 RFP IT Solution for Housing Lottery and Waitlist, Tabs 1 and 2". and (b) the other email must include Tabs Three, Four and Five and the subject line of the email must be labeled "2022 RFP IT Solution for Housing Lottery and Waitlist, Tabs 3, 4 and 5". If the file is large, it may be submitted in multiple email, with the proper Tab 1 or Tab 2 label (if applicable), and "Tab 1 - 1 of X," "Tab 1 - 2 of X," etc., and the last email as "Tab 1 - X of X – Final."

Any proposal delivered after the date and time designated as the proposal submission deadline indicated in the *Calendar of Events and Milestones* section of this RFP may be deemed ineligible. It is the Proposer's sole responsibility to ensure that all emails and attachments are delivered on time and in a legible format. HFA, at its discretion, may extend the deadline to allow for the acceptance of late proposals due to extraordinary circumstances.

A proposal may be deemed non-responsive because it is materially incomplete. HFA reserves the right to seek clarification or request missing or additional information. The determination of whether any proposal is complete or was received on time is at the sole discretion of HFA. All submitted proposals become the property of HFA.

15. Evaluation of Proposals

15.1 The Selection Process

The selection process will begin with the comprehensive review and evaluation of each of the written proposals. The purpose of the evaluation is two-fold (1) to examine the responses for compliance with the requirements of this RFP and (2) to identify the complying Proposers that have the highest probability of satisfactorily performing the Scope of Work, described herein. The evaluation will be conducted in a comprehensive and impartial manner as set forth herein.

15.2 Preliminary Review

Proposals will be reviewed to determine if they meet the Minimum Qualifications indicated in Section 8 of this RFP. All proposals will be reviewed to determine if they contain all required submittals specified in this RFP. Incomplete proposals may be rejected.

15.3 Evaluation, Criteria and Scoring for Selection

Proposals will undergo an evaluation process conducted by an HFA review committee (“**Committee**”). The Committee will evaluate the proposals based on the qualifications and experience of the Proposer and its current personnel, utilizing the following criteria, not necessarily listed in the order of importance:

- Cost effectiveness, including discounts to governmental agencies, if any;
- Demonstrated experience, ability, competence, capacity, knowledge, technical expertise and qualifications of Proposer, its staff and its sub-Proposer(s), if any, to provide the Scope of Work indicated in the Scope of Service section of this RFP;
- Overall fit of the product and services of the proposed Solution to meet HFA’s needs;
- Ability to incorporate innovation and industry best practices in Solution development;
- Diversity and commitment to equal employment opportunity;
- Other services and resources leveraged;
- Overall organization, completeness, and quality of response, including cohesiveness and clarity of response;
- Methodology and approach;
- Requested changes to the MSA;
- Avoidance of any potential conflict of interest or appearance of impropriety and policies designed to ensure the avoidance of such conflicts in the future;
- Financial stability;
- Interviews and/or demonstrations to clarify or expand on the RFP response (*to be conducted at the discretion of HFA*); and
- Any other identified risk factors.

The Committee may also consider any negative findings related to the Proposer, its subcontractors, if any, and any individual team members including, but not limited to, findings of nonperformance and contract

defaults from any federal, state, or local entity, unpaid State or local taxes or fines; and any pending governmental, criminal, or civil investigations. Failure to disclose any of these findings, either in the [Vendor Responsibility Questionnaire](#) form or in a separate attachment included within Tab 4, may result in the rejection of the proposal, at the sole discretion of HFA.

HFA retains the right to request any additional information pertaining to the Proposer's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract(s), as it deems necessary, to ensure safe and satisfactory work.

15.4 Interviews and Demonstrations

HFA reserves the right to determine whether interviews and/or demonstrations will be necessary and the number of firms to be interviewed. If HFA deems interviews and/or demonstrations necessary, selected firms will be notified. The Proposer's primary staff member who would be responsible for HFA's relationship with the Proposer, as well as other key personnel proposed to provide services, must be present and participate in the interview, including key personnel from subcontractor(s), if any. The purpose of the interview and/or demonstrations is to further document the Proposer's ability to provide the required services and to impart to the HFA Committee an understanding of how specific services will be furnished. The interview and/or demonstration will be evaluated based on whether it substantiates the characteristics and attributes claimed by the Proposer in its written response to this RFP and any other information requested by the Committee prior to the interview.

16. Award of Contract

The term of the contract(s) for the Solution is anticipated to be for a five-year period. HFA, at its discretion, may exercise its option to modify any provision in the contract including, but not limited to, the scope of services and compensation, on an as-needed basis, with the mutual written consent of the contracting parties. Any contract that exceeds a five-year period will require the affirmative concurrence of HFA's Board to extend the contract beyond the five-year period without undergoing a new solicitation process.

Prior written approval must be received from HFA for the use of any subcontractor(s), including substitution and/or change in existing subcontractor(s). The subcontract(s) between the Primary Proposer and its subcontractor(s) must receive written approval by HFA. The sections relating to the scope of services and compensation in the subcontracting agreement must be well-defined.

The successful Proposer(s) will be required to execute a *Master Services Agreement*, see **Attachment 8** that incorporates (i) HFA's [Standard Clauses for Contracts](#), hyperlinked herein as an Appendix I (ii) HFA's [Requirements and procedures for Participation by Minority Group Members and Women](#),

hyperlinked herein as an Appendix II (iii) Confidentiality Pledge, in the Master Services Agreement (**Attachment 8**) , signed by the successful Proposer(s), its subcontractor (s) (if any), and each individual of the Proposer and its subcontractor(s), if any, assigned to work on this Project. Any proposed deviations in the form of the MSA will be factored into the selection process. The MSA may be downloaded from HCR's website at: <https://hcr.ny.gov/procurement-opportunities>.

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17. List of Attachments

Attachment 1 Intent to Submit Proposal

Attachment 2 Requirements Matrix-

Attachment 2a Mitchell Lama Automated Wait List- Supplemental Requirements

Attachment 3 Reserved

Attachment 3a Deliverable Expectation Document (DED)

Attachment 4 Key Role Staffing Matrix

Attachment 5 Contents of Technical Proposal.

Attachment 6 Proposal Cover Sheet, Cover Letter and Certification

Attachment 7 Cost Proposal Worksheet

Attachment 8 Master Services Agreement (MSA)

Attachment 9 List of Exceptions to MSA

Attachment 10 Proposal Checklist

Table 1: Useful Terms

Table 2: Calendar of Events and Milestones

Table 3: Future NYS Housing Portal System Users

Table 4: Business Requirements scoring categories

Table 5: Proposer response scoring features

Table 6: Deliverable Matrix

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Proposal Checklist CHECKLIST FOR VARIOUS REQUIRED FORM RELATED ITEMS
TO BE COMPLETED AND RETURNED:

- ☐ Intent to Submit Proposal, Attachment 1
- ☐ Tab 1 – Proposal Coversheet (Use the form attached below), Schedule I
- ☐ Tab 1 - Cover Letter (not to exceed 2 pages)
- ☐ Tab 2 – Technical Proposal (not to exceed 30 pages excluding resumes)
- ☐ Tab 3 – Cost Proposal Worksheet (using template provided)
- ☐ Tab 4 - Administrative Proposal
- ☐ [Vendor Information Form](#)
- ☐ [Lobbying Reform Law Form 1](#)
- ☐ [Lobbying Reform Law Form 2](#)
- ☐ [Non-Collusive Bidding Certification Form](#)
- ☐ [Vendor Responsibility Questionnaire – For Profit Business Entity OR Non-Profit Entity.](#)
- ☐ [Vendor Assurance Form of No Conflict of Interest and Detrimental Effect](#)
- ☐ [Executive Order#16 – Prohibiting Contracting with Businesses Conducting Business in Russia](#)
- ☐ Evidence of Insurance (required upon contract award) or affirmation that insurance will be acquired
- ☐ Financial Statements
- ☐ Tab 5 - Diversity Proposal
- ☐ [EEO Staffing Plan, PROC-1](#)
- ☐ [Utilization, PROC-2](#)
- ☐ [MWBE & EEO Policy Statement, PROC-4](#)
- ☐ [Company Demographic Profile, PROC-7](#)
- ☐ [EEOC Statement, PROC-8](#)
- ☐ [Diversity Practices Questionnaire, PROC-9inal](#)

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Intent to Submit Proposal
New York State Housing Finance Agency

*Request for Proposals for
2022 Information Technology Solution for
Housing Lottery and Waitlist*

This is to notify you that it is our organization's intent to submit a proposal in response to the above-referenced RFP and to acknowledge and confirm that our organization meets or exceeds the minimum qualifications set forth in the RFP.

Company Name: _____

Contact Name and Title _____

Street Address: _____

City, State & Zip: _____

Phone Number: _____

Email Address: _____

Authorized Signature: _____

Date: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Phone Number: _____

Email Address: _____

Email completed Intent to Submit Bid forms to: ContractUnitInfo@hcr.ny.gov

Attachment 2a - Mitchell-Lama Automated Wait List (“AWL”)

1. Executive Summary

The Mitchell-Lama Automated Wait List (AWL) system consists of the AWL backend application and a public-facing online application, known as the Automated Waiting List Public Access (AWL-PA). It is used by HCR and owners of low-income housing in a partnership to ensure that prospective tenants (*and internal transfers*) are assigned to available Mitchell-Lama apartments on a first-come basis with additional considerations for handicapped, senior, and veteran requirements.

While serving in its capacity for nearly 20 years, the AWL system is now in need of additional functionality, as cited in an audit by the State’s Office of the State Comptroller (OSC). Such enhancements include keeping historical data on Applicants to ensure that they were indeed the next perspective tenant, tracking vacant units and their appropriate availability (*2-bedroom, handicap, etc.*), tracking number of Applicant declinations, and easily providing metrics of all activity through reporting.

The proposed Mitchell-Lama Automated Wait List system must have the following features:

- Modern, intuitive web-based application with responsive web design
- Real-time automated waiting lists
- Ability to collect and store Applicant general screening attributes
- Ability to retrieve and view information
- Ability to determine Applicant eligibility
- Ability to provide Applicants their lottery and/or waitlist status
- Ability to allow HCR, the Housing Companies and/or Applicants to view reasons why Applicants were determined to be ineligible
- Ability to support automated and robust reports
- Ability to allow people on the waitlist to look up their position on lists
- Ability to allow people to see how long lists are at different Mitchell Lama developments before applying
- Ability to allow Applicants to update their initially provided contact information

2. Business Need

Building owners/building management (“Owners”) rely on the AWL to provide accurate record of all waitlist Applicants as well as Applicants for internal transfers. But for the AWL, Owners would have to maintain independent lists for external Applicants for each bedroom size and lists of internal transfer Applicants for each bedroom size.

The AWL system is nearly 20 years old and was developed in a “pre-.Net” web-based system and is in need of additional functionality, as cited in a [2017 audit by OSC](#).

3. High-level Requirements

High level requirements for the Mitchell-Lama AWL include the following:

- The system must be self-explanatory and intuitive so that members of the public can successfully search Automated Waitlists
- The system must comply with standards for [accessible design](#) under the Americans with Disability Act (ADA)
- The system must alert or signal Housing Companies when:
 - an offering is out of compliance/skipped
 - or when an update is required
- The system must include a search function
- Ability to search for Applicants based on the last four digits of their social security number
- The system must allow Applicants to search more than one housing development at a time
- The system must include a virtual assistant or built-in assistant to answer questions or re-direct Applicants to information within the site
- Ability for Applicants to either create an account or apply online as a guest to housing developments of their choice
- The system must ensure that the person logging in, is the actual person assigned to the credentials being used
- The system must remind Applicants to not share login and password credentials
- The system must remind Applicants to contact super user of the Housing Company assigned by HCR to reset password and if super user of the Housing Company is not available or lost access, the system must permit HCR to proceed with password reset
- The system must send notifications to users who are inactive for a specific period to login periodically to keep active status or risk account being disabled
- The system must send reminders to super users to delete or remove employees that are terminated from the company
- The system must ensure that information on a screen is saved before users move to the next screen
- The system must allow users to go back to a previous screen
- The system must be able to prioritize certain Applicants if they meet certain criteria (*e.g., veteran status, senior status, handicapped status*) confirmed by the Housing Company personnel
 - Preferences and priorities vary by programs. To move an Applicant up a waiting list, the change must be approved by HCR staff
 - Changes in Applicant's placement on a waiting list may be based on cases of emergency transfers and preferences
- The system must be able to prioritize veterans and move them to the top of a waitlist in order application was received
- The system must allow Housing Companies to switch Applicants to another list type based on application date and eligibility
- The system must confirm Applicants meet eligibility requirements related to income limits, family size, and apartment size before taking occupancy of a unit
- The system needs to be flexible enough to add new preferences when they come online. i.e., Victims of Domestic Violence, various income limits, any community/district set asides, etc.



- The system must prompt Applicants to confirm if they are veteran, senior or handicapped
- The system must allow the public to see if an Applicant received priority or not
- The system must include a disclaimer to let Applicants know whether a development does or does not have a veteran's preference for new admissions
- The system must include color indicators of items that need attention such as for pending Applicants, veterans, when an Applicant has received two (2) or more offers and must make a choice
- The system must place Applicants in a queue until confirmation of fees paid to Housing Company. Upon confirmation, the AWL must produce an application number for the Applicant
- The system must not allow an application to be deleted by the Housing Company without the approval of HCR
- The system must send a notification or alert to HCR when a Housing Company wants to delete an application
- Ability for Applicants with an account to be able to track their position on the waitlist as well as the progress of their application
- The system must allow Applicants to upload documents for Housing Company and HCR review (*e.g., proof of veteran status*)
- If lottery is the option for a Housing Company, procedure, instructions, and Ad template to be incorporated into the system
- The system must feed applications from lotteries into Automated Waitlists
- The system must include a function for HCR staff to add waiting list types based on HCR approval. Fully customizable. (*AMI Tiers, Apartment with balcony/terrace, Apartment without balcony/terrace, federally assisted etc.*)
- The system must create an Automated waitlist for external lists (*this is the new admission list made up of new Applicants who have applied to move into a development*) and for internal transfers (*this is a transfer list made up of Applicants who already live at the development and want to transfer to another apartment in the development*)
- The system must include an Automated Waitlist for each room size
- The system must not set/allow preferences for internal transfers
- Automated Waitlists must comply with and enforce the 3:1 rule i.e., for every 3 internal transfers (*that is people given apartments from the internal list*) one external person (*on the external list mentioned above*) must be moved into an apartment
- The system must accept applications to the AWL on a rolling basis or via lotteries
- The system must accept new Applicants when a waiting list is "open," usually through the lottery system
- The system must not accept new Applicants when a waitlist is "closed"
- The system must allow Housing Companies to close the Automated Waitlist upon HCR electronic approval
- The Automated Waitlist must have a snapshot function where an authorized user can see what the Automated Waitlist looked like at a given time
- The Automated Waitlist must have a snapshot function of every approval activity (*e.g., pending approval, approved etc.*)
- The system must notify Applicants:
 - to confirm application is submitted accurately
 - if an application is accepted or denied
 - if an application was removed from the waiting list



- if the Housing Company is contacting them to set up an appointment to view apartments
 - If they need to submit documentation to the Housing Company
- The system must include auto reminders to Housing Company staff and HCR staff for a pending action or for approaching deadlines
- The system must incorporate all HCR letters (*templates for canvass, offering, assignment, succession denial, lottery letters for selected and not selected ones etc.*) into AWL so Housing Companies can use with a click of a button
- The system must auto populate Applicant's information onto letterheads for emailing, printing, and mailing purposes when needed. For example, if the Housing Company denies an Applicant due to credit, a denial letter is created or auto populated to fill in the denial letter and the reason to either be emailed or physically printed on paper to be mailed to the Applicant
- The system must keep track of registered history of apartments, showing current and past status along with transition dates - vacant, occupied, pending
- A lottery is conducted in person or electronically where names are chosen. Once the lottery has concluded the Housing Company will update the AWL with the chosen names
- When there are vacancies, the system must select Applicants to be offered and awarded apartments in the order their names appear on the waiting lists
- The system must keep track of registered vacancies and their descriptions (*1 bedroom, etc.*) and identify their protected class information (*handicap, senior*)
- Applicants who are offered apartments should be selected from a waiting list and their applications must be approved by HCR
- The system must add new Applicants to an external waitlist
- The system must allow Applicants to reject up to two units offered to them before they are removed from the waiting list (*Section 1727-1.3(f)*)
- The system must allow the extension of the AWL to include succession Applicants (*family members of tenants or cooperators who have requested to remain as the lawful tenant of the apartment if the tenant of record has vacated the apartment*) to ensure transparency of succession application being submitted to Housing Company and eventually to HCR
- The system must send a confirmation number instead of application number to succession Applicants for progress to be tracked by the Applicant
- The system must send a follow up notification to Applicants who have been on the Waitlist for more than 5 years
- The system must restrict unauthorized editing of the AWL
- The system must have an override function for HCR personnel to issue waivers
- The system must track:
 - all applications in the AWL
 - tenant registration and history. Track the workflow of Applicant requests from registration through assignment and finally approvals within the new system
- The system must provide the ability to generate reports on all activities
- The system must create reports to list Applicants that were deactivated due to being denied for credit, no response, or income
- The system must allow authorized users to save reports
- The system must allow the waitlist to be exported into an excel document



- The system must support role-based permissions where select staff are able to edit and approve applications; HCR staff must have more control than building staff for approvals
- The system must provide editing roles to HCR staff for revisions to HCR templates
- The system must include training with manuals, how to, FAQs, test environment for the Housing Company to practice or show demonstrations
- HCR select staff should have access to a test environment. This would allow HCR staff to test different user profiles e.g., from a Housing Company or tenant's perspective while using the web-based application

Attachment 3a - Information Technology Solution for Housing, Lottery and Waitlist – Deliverables Matrix

Deliverable No.	Title	Description	Engagement Milestone
D1	Project Management Plan	<ul style="list-style-type: none"> This document contains a comprehensive list of key areas of the project based on the NYS PM Guidebook (https://its.ny.gov/nys-project-management-guidebook-release-2) including but not limited to: <ul style="list-style-type: none"> Scope Management Plan Project Staffing Plan Stakeholder Plan Communication Plan Development Methodology Budget Management Plan Development plan Risk And Issue Management Plan that includes a Risk, Activity, Issue, Decision & Change (RAIDC) Log Change Control Plan Quality Management Plan Acceptance Management Plan Organizational change management plan 	<p>Milestone 1: Initiation and Planning</p> <p>Within the first month. Updated with each approved project change request.</p>
D2	Project Schedule	<ul style="list-style-type: none"> The project schedule must be agreed to by HFA. It must be baselined and include, at a minimum: <ul style="list-style-type: none"> milestones and associated tasks start and completion dates for each task task dependencies duration resources percent complete Gantt charts other reports as necessary 	<p>Milestone 1: Initiation and Planning</p> <p>Within the first month. Updated weekly and with each approved project change request.</p>

Deliverable No.	Title	Description	Engagement Milestone
D3	Deliverable Expectations Document (DED)	<ul style="list-style-type: none"> This document tracks every deliverable in the Deliverables Matrix. At a minimum, the following must be included for each deliverable: deliverable number, name, type, and format brief description and table of contents (based on the descriptions/lists provided in this document) owner(s), reviewers, and approver status indication key dates submission date review/feedback due date updates due date approval date key decisions link to deliverable (in repository) 	<p>Milestone 1: Initiation and Planning</p> <p>Updated on a weekly basis or as deliverable are completed.</p>
D4	Project Kickoff	<ul style="list-style-type: none"> The project kickoff is a meeting with HCR staff and leadership to formally begin the project. 	<p>Milestone 1: Initiation and Planning</p> <p>Within two weeks of completing Milestone 1 planning.</p>
D5	Requirements Analysis and Management Plan	<ul style="list-style-type: none"> This document must follow the BABOK, NYS PM Guidebook (https://its.ny.gov/nys-project-management-guidebook-release-2) for SDLC or Agile/Hybrid equivalent deliverables and include, at a minimum: process for information gathering and verifying RFP requirements, such as staff interviews, and structured walkthrough how requirements, requirement attributes, and any work increments will be stored, maintained, and traced throughout the lifecycle of the project and the term of the contract. This includes the process for verifying RFP requirements. Requirements documentation must be comprehensive. Tasks and milestones must be reflected in the project schedule. 	<p>Milestone 1: Initiation and Planning</p> <p>Within the first 2 weeks.</p>
D6	Data Migration Plan	<ul style="list-style-type: none"> This document outlines tasks & responsibilities for migrating data from the current website to the new solution. Details 	<p>Milestone 1: Initiation and Planning</p>

Deliverable No.	Title	Description	Engagement Milestone
		<p>must be incorporated in the project schedule.</p> <ul style="list-style-type: none"> As part of the data migration plan, the Vendor must update and maintain a data dictionary listing each data element name, description, data type, field length, if the element is required or optional, and primary or foreign key designation. The plan must outline procedures for verifying that all data related to owners, listings, and lotteries have been migrated successfully. 	
D7	Content Migration Plan	<p>This document must:</p> <ul style="list-style-type: none"> describe, in detail, how existing site content (including, but not limited to page copy, page shortcuts, documents, and media files) will be audited, inventoried, and migrated to the new website. include a content migration spreadsheet or other type of file or media for use in mapping and transitioning content to the appropriate areas of the new website include an implementation plan to place into the site any images, video files or any other types of files that were created during the design phase that includes, but is not limited to, specifying how new materials/files will be made available to HFA for review in their proposed locations in the new website as development progresses include any migration scripts needed to execute the content migration plan and include a plan for any content that cannot be migrated with scripts that may need to be manually migrated by the successful Proposer 	Milestone 1: Initiation and Planning
D8	Go-live plan	<ul style="list-style-type: none"> The go-live plan must include, at a minimum: list of go-live activities and established acceptance criteria for successful go-live completion, to be used in go/no go meetings to approve readiness roles and responsibilities during each cutover and go-live transition period, including enhanced support 	Milestone 1: Initiation and Planning

Deliverable No.	Title	Description	Engagement Milestone
		<ul style="list-style-type: none"> If any functionality does not perform as required, the successful Proposer must provide an updated plan outlining the list of functions, activities, and expected completion date milestone. 	
D9	Release Management	<ul style="list-style-type: none"> This document is an outline of planned releases and upgrades. This plan must describe at minimum: plan for ensuring that application code and configuration migrations to pre-production and production environments originate from the version control solution and allow for controlled testing and roll-back. plans for maintaining project code base and supplying it to the build and release management system for converting to working, releasable software. 	Milestone 1: Initiation and Planning
D10	Training Plan	<ul style="list-style-type: none"> The successful Proposer is fully responsible to manage training needs for website development and the Support Call Center staff without HFA involvement. The training plan must include minimum training requirements for administrators and a website user guide for HCR staff. All other training needs will be as outlined in the Requirements spreadsheet. Conduct a post-training survey with attendees. 	Milestone 4: Full acceptance of solution
D11	Test Plan	<ul style="list-style-type: none"> This document captures all test documentation, processes, procedures, standards, and test results. <p>Test plan: At a minimum, the following must be included:</p> <ul style="list-style-type: none"> test overview, including stakeholders and participants test process flowchart test environment test tools dependencies expected results issues and mitigation plans actual results 	Milestone 1: Initiation and Planning

Deliverable No.	Title	Description	Engagement Milestone
		<ul style="list-style-type: none"> • approvals <p>Test Environments: There must be 3 test environments:</p> <ul style="list-style-type: none"> • Development • Test • Quality Assurance (UAT) pre- and post-release <p>Test website: This must be free of all “bugs” for user acceptance testing by HCR using a web server that is the same in all respects to the production web server or a sub-domain on the production web server.</p> <p>The website should be tested by a sample of actual renters and owners.</p>	
D12	Support and Maintenance Plan	<ul style="list-style-type: none"> • This plan describes in detail how the successful Proposer will assist Owners, Managing Agents, HCR staff and the Support Call Center to address all technical issues with the website. • Further details of expected technical support are outlined in the Service Level Agreement. • The plan must include details for an ongoing Search Engine Optimization (SEO) strategy. 	Milestone 1: Initiation and Planning
D13	Business Continuity (BC) Plan	<ul style="list-style-type: none"> • The successful Proposer will develop with select HCR staff a Business Continuity (BC) Plan for the hosted solution that is approved by HFA as per the Service Level Agreement. • The successful Proposer will conduct annual drills of the Business Continuity (BC) Plan, review results with HFA, remediate any gaps identified, and review the remediation actions with HFA as per the Service Level Agreement 	Milestone 1: Initiation and Planning
D14	Executive Status Report	<ul style="list-style-type: none"> • This document is a report of the project status at a level of detail agreed to by HFA that appropriately estimates agreed-upon metrics. Metrics for the reporting period include, at a minimum: • updated schedule • tasks complete 	Milestones- Milestone 1: Initiation & Planning Milestone 2: Requirements Analysis & Solution Design Milestone 3:

Deliverable No.	Title	Description	Engagement Milestone
		<ul style="list-style-type: none"> status of current tasks list of meetings conducted remaining work high-level project management items such as risks, issues, resourcing, and budget Reports must be provided to the HFA Project Manager and executives. 	<p>Go Live Readiness</p> <p>Milestone 4: Full acceptance of solution</p> <p>Every week</p> <p>Starts 1 week after D4 Project Kickoff.</p>
D15	Discovery Report	<ul style="list-style-type: none"> The document is based on an understanding of business and customer needs. The report must include, at a minimum: research on design patterns, industry best practice, sites with similar interactions which must be referenced during the design phase journey/experience/maps/storyboards/wireframes content audit to assist in the design of the site's new Information Architecture and content plan. 	<p>Milestone 2: Requirements Analysis & Solution Design</p>
D16	Information Architecture (IA)	<ul style="list-style-type: none"> The successful Proposer will develop, in conjunction with the HCR project team, an intuitive, easy-to-use, and editable IA that will serve as the foundation for the new website. This must include the following items: outline of the new website infrastructure/site map navigational schema that provides an improved navigational structure of the website which must reconcile with the content outline content strategy Search Engine Optimization (SEO) Blueprints/wireframes 	<p>Milestone 2: Requirements Analysis & Solution Design</p>
D17	Visual Design	<p>This document must:</p> <ul style="list-style-type: none"> provide a strategy based on a mobile first approach to improve the Website's visibility to external audiences share all templates and strategies that are designed for approval by the project team outline web standards including website governance 	<p>Milestone 2: Requirements Analysis & Solution Design</p>

Deliverable No.	Title	Description	Engagement Milestone
		<ul style="list-style-type: none"> design mockups, wireframes, and prototypes in modular/ template/ extensible manner so that visual templates and sections can be applied to cover all instances design visual mock-ups for, at minimum, homepage and three (3) down-level pages for three (3) top audience groups batch visual designs for reviewers 	
D18	Requirements Traceability Matrix (RTM)	<ul style="list-style-type: none"> This document provides bi-directional traceability between associated requirements as well as other development artifacts such as test descriptions and results. 	Milestone 2: Requirements Analysis & Solution Design
D19	Demonstrations	<ul style="list-style-type: none"> Presentations of functionality during development and testing phases. Demos must incorporate WebNY user acceptance testing guidelines. Any challenges encountered during development and testing, must be addressed with revised presentations incorporating feedback. 	Milestone 2: Requirements Analysis & Solution Design
D20	Testing Final Report	<ul style="list-style-type: none"> Overview of testing that was conducted. It should include goals of the test, results, and names of testers. A list of defects and how they were resolved. 	Milestone 3: Go Live Readiness
D21	Training Final Report	<ul style="list-style-type: none"> Overview of all training that was conducted, who received the training, and results of training survey. 	Milestone 3: Go Live Readiness
D22	Solution in Production (Go Live)	<ul style="list-style-type: none"> Solution is in production and available to the public and staff. 	Milestone 3: Go Live Readiness
D23	Transition to Production Support	<ul style="list-style-type: none"> Inform project team and all users that they should start using production support plan (D12). 	Milestone 4: Full acceptance of solution
D24	Project Close Out Report	<ul style="list-style-type: none"> Conduct Lessons Learned survey and session. Document recommendations for future enhancements. Provide project assessment report comparing all goals to achievements and note any discrepancies 	Milestone 4: Full acceptance of solution

Deliverable No.	Title	Description	Engagement Milestone
D25*	Website Statistics Report (Initial)	<ul style="list-style-type: none"> This document must include reports on the progress and overall performance of the website. Must include reports on web responsiveness and usability. 	Milestone 4: Full acceptance of solution
D26*	Support Desk Status Report (Initial)	<p>This document provides an overview of the week's support desk activities, including:</p> <ul style="list-style-type: none"> status of open tickets report of closed tickets status of change requests recently resolved tickets and identification of the root cause of the incident or defect recurring incidents and a plan for resolution 	Milestone 4: Full acceptance of solution

* D25 and D26 will be ongoing reports once the Solution is in production following the implementation project.

Attachment 4- Request for Proposals Key Role Staffing Matrix

The key roles identified for this Project are:

- Configuration Lead
- Engagement Manager
- Project Manager
- Lead Business Analyst
- Data Migration Lead
- Lead UX/UI Designer
- Lead Web Developer
- Lead Tester

RFP INFORMATION	
TITLE:	New York State Housing Search Request for Proposals
RFP Number:	

This matrix serves a twofold purpose. HFA has completed the first section for every key role with the role description and its required minimum qualifications. Respondents must complete the second section for every key role with their proposed staff and how that staff meets or exceeds each required qualification. Respondents should propose one staff per role and include relevant dates, client and project names, and a description of the staff's qualifications and responsibilities.

Respondents must submit the completed matrix with their Technical Response.

NEW YORK STATE HOUSING SEARCH RFP VENDOR STAFF QUALIFICATIONS	
Configuration Lead	
Role Description	<ul style="list-style-type: none"> • The Configuration Lead will be responsible for architecting all technical aspects of the Solution, leading the configuration and initial setup of the Software as a Service to meet the specific needs of the Agency, unit integration and system testing for this Project.
Qualifications	<ul style="list-style-type: none"> • Minimum of five (5) years of experience in a Configuration Lead role using the technologies comprising the Proposer's solution.
Proposed Staff Name and Title	
Proposed Staff Qualifications	
Engagement Manager	
Role Description	<ul style="list-style-type: none"> • Primary point of contact for HFA Leadership Team • Manages the contractual relationship with HFA, working closely with HFA stakeholders to develop consensus when needed • Oversees service delivery, ensuring quality and timeliness of all deliverables • Manages all contractor and subcontractor staff activities • Ensures effective project communication and risk management • Responsible for contract compliance • Provides regular Contractor Performance reports

NEW YORK STATE HOUSING SEARCH RFP VENDOR STAFF QUALIFICATIONS

Qualifications	<ul style="list-style-type: none"> • A minimum of five (3) years of experience in leading major consulting engagements • A minimum of ten (5) years of experience managing public sector projects
Proposed Staff Name and Title	
Proposed Staff Qualifications	
Project Manager	
Role Description	<ul style="list-style-type: none"> • Expertise as outlined in the Scope of Services section of this RFP as well as expertise in planning, organizing, coordinating, monitoring, guiding and leading the Proposer's team, effectively communicating with the Proposer's clients' project manager and escalating problem resolutions. • Coordinate with the HCR and ITS Project Manager(s), the NY.Gov Digital Team, ITS WebNY Team to ensure compliance with NYS direction, policies, and project goals. • Plans and manages all release activities and release documentation • Manages risks and resolves issues that affect release scope, schedule, and quality • Leads go-live activities, including the execution of deployment plans
Qualifications	<ul style="list-style-type: none"> • Must have a minimum of three (3) years of experience in project management or relevant professional experience • A current Project Management Institute (PMI) Project Management Professional (PMP) certification • Experience in ITIL, SDLC and Agile are preferred.
Proposed Staff Name and Title	
Proposed Staff Qualifications	
Lead Business Analyst	
Role Description	<ul style="list-style-type: none"> • Facilitates and manages the validation and refinement of business requirements and business rules • Develops functional specifications that will be used to facilitate system/software design and configuration. • Documents the user roles matrix • Provides direction to all Business Systems Analysts • Reviews all Business System Analyst deliverables
Qualifications	<ul style="list-style-type: none"> • A minimum of five (5) years of experience facilitating, gathering, documenting, managing, and tracking requirements from a diverse set of stakeholders, including external organizations, regulators, and/or the public • It is preferred that the Lead Business Analyst possess a Business Analysis certification, such as Certified Business Analysis Professional (CBAP) or PMI-PBA designation

NEW YORK STATE HOUSING SEARCH RFP VENDOR STAFF QUALIFICATIONS	
Proposed Staff Name and Title	
Proposed Staff Qualifications	
Data Migration Lead	
Role Description	<ul style="list-style-type: none"> • Designs, plans, monitors, and manages the data migration process • Oversees the identification and documentation of data migration requirements • Oversees the extraction, cleansing, transformation, loading, and validation of data from legacy system(s) to the new solution
Qualifications	<ul style="list-style-type: none"> • A minimum of five (5) years of experience leading data migration(s) • A total of ten (10) years of data experience, including work similar to the scope of this RFP
Proposed Staff Name and Title	
Proposed Staff Qualifications	
Lead UX/UI Designer	
Role Description	<ul style="list-style-type: none"> • Lead UX designer provides subject matter expertise to our team and the broader organization on the best approaches and tools for UX/UI design. • Coordinates user experience sessions with HCR staff and partners. • Develops UX/UI specifications that will be used to facilitate system/software design and development
Qualifications	<ul style="list-style-type: none"> • A minimum of five (5) years of experience leading data migration(s) • A total of ten (10) years of data experience, including work similar to the scope of this RFP
Proposed Staff Name and Title	
Proposed Staff Qualifications	
Lead Tester	
Role Description	<ul style="list-style-type: none"> • Manages testing activities, including UI automation, integration testing, performance, scalability testing, regression testing, and UAT planning and tracking • Defines testing roles and responsibilities, the testing cycle, and processes for migrating across environments • Defines and oversees testing environments

NEW YORK STATE HOUSING SEARCH RFP VENDOR STAFF QUALIFICATIONS

	<ul style="list-style-type: none"> • Responsible for test scheduling and reporting on the status of testing activities • Ensures requirements and deliverables are verified and validated at each testing phase and final acceptance
Qualifications	<ul style="list-style-type: none"> • Qualifications A minimum of seven (7) years of experience planning, designing, developing, and executing test plans based on business requirements and functional specifications • A minimum of five (5) experience coordinating, tracking, and analyzing testing activities • A minimum of five (5) years of experience as a Test/QA Lead working on large and highly technical projects • A minimum of three (3) years of experience using functional and performance test tools • A minimum of three (3) years of hands-on experience recording and scripting automated functional tests • Experience with an Application Lifecycle Management tool for tracking and managing defects
Proposed Staff Name and Title	
Proposed Staff Qualifications	

Attachment 5 – Contents of Technical Proposal

<i>Section</i>	<i>Required Content</i>	<i>Format</i>
Title Page	<p>Label this page “Technical Proposal” and include:</p> <ul style="list-style-type: none"> • RFP Title. • Proposer’s name and address. • Name, title, address, telephone number, and email address of Proposer’s contact person. • Date of Proposal. 	Proposer’s format
Table of Contents	Identify all proposal contents by page and section number.	Proposer’s format
Executive Summary /Company Background	<ul style="list-style-type: none"> • Name and address of contact. • Corporate structure identifying any parent company and affiliate(s) for Proposer and subcontractor(s). • Date and place of incorporation; where registered, licensed, as applicable; corporate headquarters; and other background information, including any mergers and/or acquisitions that occurred in the last three years. • Describe the corporate profile, core business, and state the number of years providing each service function for the Proposer and subcontractor(s), if any. • Organizational chart for Proposer and subcontractor(s), if any. • Overview of regulatory authorities supervising your firm, if any. • Identify location(s) of your firm that will be involved in providing services for the Solution, include names, titles, telephone numbers, and email addresses of contact persons for each location. If Proposer is utilizing subcontractors, identify each subcontractor and describe each subcontractor scope of work. • Indicate if Proposer and its subcontractor(s), if any, are State certified as an MWBE and/or SDVOB. Identify 	Proposer’s format

Section	Required Content	Format
	MWBE and/or SDVOB entity(ies) and principal(s), a description of the scope of work and intended amounts that will be directed to these entities.	
Proposer Experience	<ul style="list-style-type: none"> Provide the names and contact information of three to five references. HFA reserves the right to contact all references to ascertain the following information together with any additional information deemed relevant by the Agency. Include the following information for each reference: <ul style="list-style-type: none"> The name and location of the client; Type of entity (government, private, etc.); Dates of engagement; Describe the services provided under the engagement; Overall success of the Proposer's project(s). Reliability of cost estimates. Effectiveness of project management and collaboration with client staff. Reliability of schedule estimates and ability to maintain project schedules. Consideration for subsequent engagements Describe any best practices or innovative techniques that were learned and/or applied under the engagement that may be useful in achieving outcomes described in this RFP; and Name, title, and contact information for the individual who can provide a reference for the client and speak with authority to the Proposer's performance on the engagement. State whether or not the Proposer has had any other prior or present New York State contracts. If so, provide the name, address, contact and telephone number of the contracting Agency, a brief summary 	Proposer's format

Section	Required Content	Format
	of the nature of the contract and the approximate dollar value.	
Requirements	<ul style="list-style-type: none"> Provide a synopsis of the scope of any similar service(s) provided by the Proposer as a whole and/or in part, that proposed key personnel participated. 	Must be fully completed using the form in Attachment 2 and Attachment 2a. Each requirement must include a response for all required fields. Proposals with fields left blank may be deemed to be unresponsive.
Technical Approach	<ul style="list-style-type: none"> Describe in detail, for each of the sections in Attachment 2 and Attachment 2a, how your firm will meet the RFP requirements, for: <ul style="list-style-type: none"> Solution Functional Requirements; and Solution Non-functional Requirements. Describe the project methodology including, but not limited to, project management, software tools, risk assessment, subject matter expertise, and technical capabilities. Describe the proposed solution architecture in the form of diagrams and associated narrative that enables business and technical requirements as outlined in this RFP. Describe the Proposer's approach to delivering the configuration/programming/development aspects of the Project including an estimation of the timeline for delivery. Describe the Proposer's plan for managing and implementing the services as described in this RFP. Provide a statement affirming the Proposer's availability in the New York State area and for all aspects of services required in this RFP. Describe the Proposer's approach for system training and knowledge transfer 	Proposer's format to include narrative, resumes, organizational charts, screenshots, output samples, and graphical materials.

Section	Required Content	Format
	<p>along with post-production system support.</p> <ul style="list-style-type: none"> Describe any value-added features within the design of your firm's proposed solution that are not included within the Functional Requirements of this RFP. Explain how these features will enhance the efficiency of the website, Support Center and service delivery for HFA. 	
Service Approach	<p>Describe in detail how your firm will meet the Service Requirements, supporting your response Attachment 3 for, but not limited to:</p> <ul style="list-style-type: none"> Engagement/Project Management; Staffing; Testing; End User Training; Solution Maintenance Services; and Support Center Services. <p>The Service Approach should, at a minimum, specifically address the following:</p> <ul style="list-style-type: none"> Where employees for each of the areas listed above will be located. Will any employees be based in New York? For each area, which proposer staff will be shared with the Proposer's other clients, and which proposer staff will be dedicated specifically to HCR; Explain the Proposer's strategy for training. How will the Proposer approach the unique challenges of instructing staff from ,HCR its housing providers and potential Renters that are performing different functions, have varying levels of technological sophistication, and are scattered across many locations? How will training materials be updated and distributed, and how will new users be trained after the initial installation? Describe in detail the anticipated customer experience for the end user when accessing the Support Call Center. 	<p>Proposer's format, to include narrative, resumes, organizational charts, screenshots, output samples, and graphical materials.</p>

Section	Required Content	Format
	<p>New York State law requires call centers to be located in New York State. Will the Support Call Center be located in New York State? Will calls be answered by a person or an automated system such as an Interactive Voice Response (“IVR”) system? Will callers be placed on hold? If so, what is the typical wait time? Describe the communication flow between the Support Call Center and end users for resolving problems and incidents. (Please note that the successful Proposer will be required to submit a Support Call Center Service Plan).</p> <ul style="list-style-type: none"> The proposal must indicate that the proposed call center or customer service work connected with this Project will be within the State of New York and if not, describe in detail what efforts Proposer will make to locate them within the State of New York or describe in detail any other reason(s) why such work will not be able to be performed in the State of New York. 	
Service Level Agreement	Proposer must provide a Service Level Agreement that includes the Proposer’s guarantee to keep the website accessible and properly functioning, Proposer’s annual testing (and remediation) of the Disaster Recovery Plan and Proposer’s incident response and resolution times.	Proposer’s format
Key Personnel	Provide resumes and two professional references each for the Key Personnel identified in Attachment 4 in Proposer’s response to Service Requirements/Staffing Requirements. Resumes should be limited to no more than three pages in length.	Proposer’s format

Application Coversheet

Attach this form to the top of your proposal.

DATE OF APPLICATION: _____

GENERAL INFORMATION ON FIRM:

Legal Name of Firm:

Firm's Mailing Address:

Firm's Website:

Firm's Main Telephone Number (including area code):

Federal Tax ID Number:

FINRA and/or SEC Registration Number (if applicable):

MWBE Registration Number (if applicable):

Service-Disabled Veteran-Owned Business Registration Number (if applicable):

MAIN CONTACT INFORMATION FOR THIS PROPOSAL:

Please list the individual that will be the main contact *regarding this proposal*:

Contact Name:

Contact Telephone Number (including area code):

Contact E-mail Address:

Contact Facsimile Number (including area code):

PRINCIPAL IN CHARGE:

Please list the primary staff person(s) who will provide services to HFA. Attach additional sheets if necessary.

Contact Name:

Contact Telephone Number (including area code):

Contact E-mail Address:

Contact Facsimile Number (including area code):

ADDITIONAL CONTACTS (if applicable):

Contact Name:

Contact Telephone Number (including area code):

Contact E-mail Address:

Contact Facsimile Number (including area code):

Contact Name:

Contact Telephone Number (including area code):

Contact E-mail Address:

Contact Facsimile Number (including area code):



Attachment 7 - Cost Proposal TAB 3
(Cost Proposal, Tab 3, to follow this page)

Table 7, Fee Schedule A - DDI Fixed Price

Engagement Milestone	Deliverables if applicable	Amount (USD)	Comments
Initiation and Planning Complete	D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13, and D14		Cumulative amount not to exceed 15% of total
Requirements Analysis and Solution Design Complete	D14, D15, D16, D17, D18, and D19		Cumulative amount not to exceed 30% of total
Go Live Readiness Complete	D14, D20, D21, and D22		Cumulative amount not to exceed 75% of total
Full Acceptance of Solution	D14, D23, D24, D25, and D26.		
Total			

Table 8, Fee Schedule B - Operations & Maintenance Fixed Fee(s)

Fixed Operations & Maintenance Annual Fee(s)**	Optional Five-Year Extension						
	Operation Years 1-2*	Operation Years 3-4	Operation Year 5	Operation Years 6-7	Operation Years 8-9	Operation Year 10	Total

*Note: Operation Year 1 starts from the day the Solution is first deployed to production.

**Note: Instructions



Table 9, Fee Schedule C - Systems Change Management Fixed Hourly Blended Rate

	Optional Five-Year Extension						
	Operation Years 1-2*	Operation Years 3-4	Operation Year 5	Operation Years 6-7	Operation Years 8-9	Operation Year 10	Total
Fixed Hourly Blended Rate							

*Note: Operation Year 1 starts from the day the Solution is first deployed to production.

Table 10, Total Contract Value

Schedule Total	USD
Fee Schedule A	
Fee Schedule B	
Fee Schedule C	
Grand Total	

Firm's Name: _____

Signature of Firm's Authorized Signatory: _____

Authorized Signatory's Name and Title (print): _____

Date: _____

MASTER SERVICES AGREEMENT

BETWEEN

NEW YORK STATE HOUSING FINANCE AGENCY

and

[NAME OF PROVIDER]

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MASTER SERVICES AGREEMENT

This Master Services Agreement (the “**Agreement**”) is made and entered into as of this _____ day of _____, 20____ (the “**Effective Date**”) by and between the **NEW YORK STATE HOUSING FINANCE AGENCY** a New York public benefit corporation, with its principal place of business at 641 Lexington Avenue, New York, New York 10022 (the “**Agency**”) and [NAME OF PROVIDER], a [State] [type of entity], with its principal place of business at [Provider Address] (“**Provider**”) (collectively referred to as the “**Parties**”).

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

WHEREAS, the Agency desires to contract with Provider to build a comprehensive website enabled market search and application portal solution to replace its current NYHousingSearch.gov (the “**Legacy Website**”) service to facilitate the listing and searching of affordable rental housing properties, run lotteries for received applications, manage waiting lists, provide back-office functionality for Agency staff and provide support for tenants, developers and landlords (as further set out in Article 2, the “**Services**”);

WHEREAS, as part of the Services, the Provider will provide ongoing technical support, including call center for internal and external users, maintenance and upgrades which may include COTS (Commercial off-the-shelf) solutions, and which may also include Software as a Service (SaaS) or Infrastructure as a Service (IaaS) solutions;

WHEREAS, the Services will include certain software licenses, software development, implementation, integration and configuration services, which may include certain SaaS and IaaS services, and certain other services as may be requested by the Agency from time to time;

WHEREAS, the Agency published its Request for Proposals, dated [•], 2022 (the “**RFP**”), setting forth its requirements with respect to the Services;

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

WHEREAS, the Members of the Board of the Agency have approved this Agreement substantially in the form set forth herein;

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

ARTICLE 1
GOALS AND OBJECTIVES; REFERENCES

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

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

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

1.2 Rules of Interpretation.

- 1.2.1 References to any law shall also mean references to such law in changed or supplemented form or to a newly adopted law replacing such law.
- 1.2.2 References to and mentions of the word "including" or the phrase "e.g." shall mean "including, without limitation".
- 1.2.3 All references in this Agreement to Articles, Sections, Exhibits or Schedules, unless expressed or indicated otherwise, are to the Articles, Sections, Exhibits or Schedules to this Master Services Agreement.
- 1.2.4 Words importing persons or entities include, where appropriate, firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

- 1.2.5 Words importing the singular include the plural and vice versa. Words of the masculine gender are deemed to include the correlative words of the feminine and neuter genders.
- 1.2.6 All references to a number of days mean calendar days, unless expressly indicated otherwise.
- 1.2.7 The recitals to this Agreement are deemed to be a part of this Agreement.
- 1.2.8 All references herein to this “Agreement” shall include the Exhibits, Scope of Work and Schedules attached to this Agreement. The Exhibits, Scope of Work and Schedules are deemed to be a part of this Agreement and are incorporated by reference herein.
- 1.2.9 The Article, Section, Schedule, Scope of Work and Exhibit headings, the Table of Contents and the Table of Exhibits and Schedules are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

ARTICLE 2 SERVICES

- 2.1 Proposals. The Provider’s best and final proposal and any agreed upon amendments are collectively, the “**Proposal.**” The representations of Provider in its best and final Proposal made to the Agency for work to be provided under this Agreement are hereby confirmed by Provider and Provider acknowledges that such representations shall be relied upon by the Agency in entering into this Agreement, and are hereby incorporated herein by this reference, except to the extent specifically described as being out of scope in the Scope of Work. The Parties acknowledge that the terms and provisions of the Scope of Work set forth in Schedule 2.3 and the Service Level Matrix set forth in Schedule 3.5.1 shall supersede and take precedence over any contrary terms or provisions within this Agreement.
- 2.2 Services. Provider shall provide the Services specified in Schedule 2.3 Scope of Work as further described in Section 2.3, below.
- 2.3 Scope of Services. The Services shall be set forth in the scope of work (the “**Scope of Work**”) attached hereto as Schedule 2.3¹. The Services to be provided by Provider hereunder include: (a) the services, processes, functions and responsibilities described in this Agreement, including the Schedules and Scope of Work for this Agreement, which shall include, by way of limited example, the license of the market search and application portal set out in the Proposal (the “**Market Search Portal Solution**”), including all updates, upgrades and other modifications thereto created by or on behalf of Provider; (b) call center services for internal and external users as well as any services, processes, functions or responsibilities not specifically described in this Agreement but which are an

¹ Note to Proposers: Scope of Work, Schedule 2.3, to be provided by Proposer that advance to the second round of the evaluation process.

inherent, necessary or customary part of the Services or that are required for the proper performance and delivery of the services described in the preceding sub-clause (a); and (c) any other services or tasks described in the Proposal. For any services or tasks described in the Proposal to be determined out of scope of the Services, such services or tasks must be specifically described in the Scope of Work as out of scope services; otherwise such services and tasks shall be considered part of the Services

2.4 **Deliverables.** Provider shall provide the Agency with deliverables as described in the Scope of Work, including, without limitation the Market Search Portal Solution and Documentation licensed to the Agency pursuant to the terms of this Agreement (**“Deliverables”**). Provider shall cause all Deliverables to conform to and be in accordance with the terms of this Agreement and the requirements and specifications therefor set forth in the Scope of Work or agreed to by the parties (**“Specifications”**)..

2.5 **Project Management Plan.**

2.5.1 Within ten (10) days after the Effective Date, Provider shall deliver to the Agency for review and comment a draft of a Project Management Plan, as specified in Scope of Work, [Schedule 2.3, [_____] through [_____]]², describing in detail how Provider shall perform the Services, the activities Provider proposes to undertake in order to provide the Services, including, where appropriate, those direction, supervision, monitoring, quality assurance, staffing, reporting, planning and overseeing activities the Provider shall provide under this Agreement, and further including their test strategy and Comprehensive Testing Plan as specified in Scope of Work, Schedule 2.3, [_____] and [_____]]³. Provider shall incorporate any comments and suggestions made by the Agency and shall deliver a proposed final Project Management Plan and Comprehensive Testing Plan within fifteen (15) days after receipt of the Agency’s comments. Upon the Agency’s written approval of Providers proposed final Project Management Plan and Comprehensive Testing Plan, such Project Management Plan and Comprehensive Testing Plan shall be incorporated by reference herein (the “Project Management Plan”). The Project Management Plan contains critical Deliverables.

2.5.2 Provider shall update the Project Management Plan throughout the Term to reflect agreed modifications to the procedures and resources used to provide such Services. Updates to the Project Management Plan shall also be provided to the Agency for review, comment and approval. To the extent that any agreed updates to the Project Management Plan require any modifications to deliverables incorporated in the Services, Provider shall update and deliver to the Agency such deliverables in accordance with a schedule agreed in such updated Project Management Plan.

² Blanks to be filled in based on finalized Scope of Work (See Footnote 1).

³ Blanks to be filled in based on finalized Scope of Work (See Footnote 1).

- 2.5.3 Provider shall perform the Services in accordance with this Agreement and the then-current version of the Project Management Plan. In the event of a conflict between the provisions of this Agreement and a Project Management Plan, the provisions of this Agreement shall control, and the Agency's acceptance of a Project Management Plan shall not be deemed a modification or waiver of any rights of the Agency in this Agreement.
- 2.6 [Intentionally Omitted].
- 2.7 New Services. **"New Services"** shall mean additional Services not described in the Scope of Work which are related to any Services described in the Scope of Work as construed in accordance with the Project Management Plan. The Agency, in its sole discretion, may, from time to time during the Term, request that Provider perform a New Service. In requesting a New Service, the Agency may communicate to Provider certain parameters governing performance thereof, including service levels. Upon receipt of such a request from the Agency, Provider shall provide the Agency with: (i) a written description of the work Provider anticipates performing in connection with such New Service and the performance parameters relating thereto; (ii) a schedule for commencing and completing the New Service; (iii) Provider's prospective charges for such New Service, which charges shall be stated in the pricing methodology specified by the Agency (e.g., time and materials, fixed price, "not to exceed"), and which charges shall be commensurate with the charges applicable hereunder for similar Services or Services requiring similar resources; (iv) the human resources necessary to provide the New Service; and (v) when applicable, acceptance test criteria and procedures for any new deliverables or services (a **"Change Proposal"**). Provider shall not begin performing any New Service, and the Agency shall not be obligated to pay for any New Service, until the Agency has provided Provider with written authorization from the Agency's Chief Technology Officer to perform the New Service. However, once the Agency provides Provider with written authorization to perform the New Service, Provider shall perform such New Service as required hereunder, and such New Service shall be deemed to be part of the "Services" for all purposes of this Agreement, including, without limitation, the provisions regarding Service Levels. Except as otherwise agreed by the parties, in the event that (a) the actual charges for any New Service provided by Provider exceed the estimate of the charges that were included in the Change Proposal for such New Service, Provider shall be responsible for the excess costs of such New Service.
- 2.8 No Obligations; Renewal of Services. The Agency shall be under no future obligation to acquire additional or future services from Provider. By entering into this Agreement, the Agency does not commit that Provider shall be the exclusive provider of the Services described herein.

ARTICLE 3 SERVICE DELIVERY AND SERVICE LEVELS

3.1 Transition.

3.1.1 Provider shall implement, as part of the detailed Project Management Plan, the plan for the transition (the “**Transition**”) of the Services and Deliverables, including, without limitation, the transition from the Agency’s Legacy Website to the Market Search Portal Solution, as set forth in the Project Management Plan (the “**Transition Plan**”). The Transition, with respect to the Services and Deliverables furnished by Provider shall successfully accomplish all of the criteria for (i) in the case of any software Deliverable, implementation of such software in a live production environment and (ii), in the case of any other Deliverable or Service, making such Service or Deliverable in its completed form available for use by the Agency in the manner contemplated by, and meeting substantially all requirements and specifications described in this Agreement and the Scope of Work (the “**Exit Criteria**”). Provider shall perform the applicable Services set forth in the Project Management Plan without causing any disruption to the Agency’s business or operations. The Project Management Plan will track Provider’s performance of the Transition. The Transition for any business application shall be complete upon the date of Provider’s successful completion and satisfaction, determined in the Agency’s sole discretion, of the Exit Criteria with respect to such business application, said date constituting the “**Commencement Date**”. The period between the Effective Date and the Commencement Date shall constitute the “**Transition Phase**”.

3.1.2 Notwithstanding anything in the Project Management Plan to the contrary, Provider will design and lead all aspects of the Transition process, including (i) preparation of required documentation, standard operating procedures and training materials; (ii) delivery of training programs; (iii) design of test plans; (iv) execution of test plans; (v) performance of operational readiness assessments; (vi) conversion to production operations; (vii) performance of post-implementation assessments; and (viii) ongoing productivity enhancements and process improvements, including update and maintenance of process documentation. The Agency’s contribution to these activities will be limited to providing (1) overall program management; (2) existing documentation and training materials; (3) subject matter experts to explain how business processes function at the Agency; (4) approvals of the way the functions will be performed by Provider; and (5) required work product approvals.

3.2 Knowledge Transfer. The parties agree that during the Transition Phase they will prepare and agree on a knowledge transfer plan which will be reasonably sufficient to allow for the following knowledge transfer: (i) transfer of the necessary knowledge regarding the Scope of Work to Provider for the purposes of performing the applicable Services hereunder, and (ii) transfer of knowledge from Provider to the Agency for the purposes of fully utilizing the Services and Deliverables.

- 3.3 Cooperation. Provider shall cooperate with the Agency and any third party designated by the Agency that performs services for, or provides products to, the Agency or otherwise participates in work related to the Scope of Work (the “**Third Parties**”), to the extent reasonably required by the Agency, including by providing: (a) assistance and support to the Agency and such Third Parties as part of the Services; and (b) access to the Provider systems or facilities to the extent that such access is required for the performance of the Agency and such Third Parties.
- 3.4 Compliance with the Agency External Requirements. Provider shall provide, as part of the Services, reasonable support services to support the Agency’s ability to meet all legal and regulatory requirements with respect to the Services, including internal and external audit and reporting requirements.
- 3.5 Service Levels.
- 3.5.1 Certain Definitions.
- (a) “**Service Levels**”, as applicable through the entire Term, shall mean the Service Levels designated for a particular Service in the applicable Service Level Matrix (including the Service Levels and Service Level Credits) (the “**Service Level Matrix**”). Scope of Work, Schedule 2.3, Tables [] – []⁴ provide the Service Levels and Service Level Credits for the Services in the Scope of Work.⁵
- (b) A “**Catastrophic Failure**” is defined in Section 3.6.3, below.
- (c) “**Service Level Credit**” is defined in Section 3.6.1 below.
- 3.5.2 Determination of Service Levels.
- (a) Service Levels. The parties have agreed to the Service Levels set forth in Schedule 3.5.1, to be effective as of the Effective Date and applicable through the entire Term, to the Services listed in the Scope of Work.
- 3.5.3 Earn-Backs. Provider may earn back Service Level Credits in accordance with the Service Level Matrix set forth in Schedule 3.5.1.
- 3.6 Service Level Credits; Catastrophic Failures.
- 3.6.1 Service Level Credits. Provider acknowledges and agrees that the Service Levels shall apply to the Services and the Deliverables as set forth in Schedule 3.5.1.
- 3.6.2 Measurement Cycle. Provider’s performance of the Services with respect to any business application will be measured against the Service Levels for such

⁴ Blanks to be filled in based on finalized Scope of Work (See Footnote 1).

⁵ Service Level Matrix to be proposed by Proposers and reflected in Scope of Work (See Footnote 1).

business application beginning on the Commencement Date for such business application.

3.6.3 Catastrophic Failures.

- (a) A “**Catastrophic Failure**” by Provider is any one or more of the following:
 - (i) a material breach by Provider of its obligation to provide the Services in accordance with this Agreement, including any detailed business operating procedures specified in a Schedule or Scope of Work;
 - (ii) a material breach or failure in delivery of the Services which, in the reasonable opinion of the Agency or any regulatory authority having jurisdiction over the Agency, undermines or prejudices the ability of the Agency to comply with the relevant regulatory regime or otherwise compromises the Agency’s ongoing relationship with any regulatory authority; or
 - (iii) a material breach or failure in delivery of the Services which exposes the Agency to a financial risk of loss which is unacceptable in the reasonable opinion of the Agency.
- (b) Provider will notify the Agency immediately (and in any event, in less than twenty-four (24) hours after Provider becomes aware) regarding any event or circumstance that impairs or threatens to impair the provision of the Services, including without limitation any Catastrophic Failure or Disaster (including any Force Majeure Event), which arises at any time during the Term of this Agreement.
- (c) If a Catastrophic Failure occurs, upon written notice to Provider, the Agency may invoke any one or more of its following rights (including a combination thereof):
 - (i) require Provider to remediate the problem and re-perform such obligation in the required manner as soon as possible but in all events within the time period set out in the Service Levels;
 - (ii) request Provider to develop and implement a “**Work Around Plan**,” which will be submitted to the Agency for comments and approval, and will include, without limitation: (i) details of resources to be allocated to work around the failure; (ii) time frames for resolution; and (iii) an indication of which aspects of the Service Levels will be complied with during implementation of the Work Around Plan;
 - iii) where Services are performed by Provider at a Site, place one or more members of the Agency’s personnel and/or consultants on-site at the Provider Site to work with the Provider’s personnel and to oversee and manage the provision of the Services that are the subject of the Catastrophic Failure (a

“Step-In”) until the Agency agrees in writing that the Catastrophic Failure has been remediated to its reasonable satisfaction (for the avoidance of doubt, the Agency need not request Provider to remedy the Catastrophic Failure or develop a Work Around Plan prior to invoking its Step-In rights);

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

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

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

- 3.7 Progress Reports and Meetings. Provider shall provide the Services specified in Scope of Work, Schedule 2.3, Section 3 Service Requirements.
- 3.8 Root Cause Analysis. Within five (5) days of receipt of a notice from the Agency with respect to Provider’s failure to provide the Services in accordance with the Service Levels, Provider shall: (a) perform a root cause analysis to identify the cause of such failure; (b) provide the Agency with a report detailing the cause of, and procedure for correcting, such failure; (c) correct such failure; (d) advise the Agency, as and to the extent requested by the Agency, of the status of remedial efforts being undertaken with respect to such problems; (e) provide the Agency with assurance satisfactory to the Agency that such failure will not recur after the procedure has been completed; and (f) take appropriate preventive measures so that the problem does not recur.
- 3.9 Measurement and Monitoring Tools. As part of the Services, Provider shall implement the necessary automated or other measurement and monitoring tools and procedures required to perform quality assurance testing on the Services, and measure and report Provider’s performance of the Services against the applicable Service Levels, in the format pre-approved by the Agency. Such measurement and monitoring shall permit reporting at a mutually agreed upon frequency and at a level of detail sufficient to verify compliance with the Service Levels and shall be subject to audit by the Agency. Provider shall provide the Agency with information and access to such tools and procedures on a real-time basis, for purposes of verification.
- 3.10 Continuous Improvement and Best Practices. Provider shall, on a continuous basis, as part of its total quality management process, (i) identify and implement ways to improve the Services and Service Levels, and (ii) identify and apply proven techniques and technology from within its operations or other third-party processes that would benefit the Agency either operationally or financially. Provider shall implement such processes at no charge to the Agency, excluding third party costs attributable thereto.

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

ARTICLE 4 FEES, EXPENSES, TAXES AND RECORDS

4.1 Fees.

4.1.1 Provider shall provide the Services for the fees specified in Schedule 4.1 attached hereto⁶.

(a) PAYMENT TERMS [To be filled in based on RFP cost proposal].

⁶ Note to Proposers: Schedule 4.1 to be provided by the Proposer based on its cost proposal (See Attachment 7 of RFP).

- 4.1.2 Most Favored Pricing. The Agency shall be entitled to receive the most favorable customer pricing that Provider offers at any time to any of its other customers. Provider represents and warrants that all of the fees and other pricing terms hereunder are comparable to or better than the equivalent provisions being offered by Provider to any of its other state and local government customers within two hundred and fifty (250) miles of the Agency's location which receive similar services under similar conditions as provided to the Agency, such similar conditions shall include but not be limited to size of the customer, scope of engagement and length of the term of the agreement. Travel costs will be excluded for this comparison. If Provider offers more favorable pricing provisions to any such entity during the Term of this Agreement, such provisions shall be deemed incorporated into this Agreement, and the Agency shall have the benefit thereof. Upon request, Provider shall provide the Agency with a certification by an officer of Provider certifying that all price-related provisions of this Agreement, including, but not limited to, the fees hereunder, are comparable to or better than the equivalent provisions being offered by Provider to any other entity as described above.
- 4.2 Cost of Performance. Except as set forth herein or in the Scope of Work, Provider shall have sole responsibility for all costs and expenses necessary for the performance of the Services or incurred as a result of performing the Services, including those of personnel, facilities, telecommunications network and software.
- 4.3 Payment.
- 4.3.1 All invoices for payment must be emailed to the Agency in PDF format to accounts.payable@hcr.ny.gov Unless otherwise specified in the Scope of Work, the charges or expenses invoiced in accordance with this Section, except for any amounts disputed by the Agency or otherwise withheld as provided in the Scope of Work, shall be payable by the Agency within thirty (30) days of receipt of each invoice, in accordance with the Agency's Prompt Payment Policy.
- 4.3.2 If the Agency in good faith believes there is a Dispute (as defined in Section 20.1 hereof) concerning the accuracy or applicability of any invoiced amount, they will notify Provider of the nature of such Dispute and will provide support for such Dispute within ten (10) business days after giving notice. In such an event, the Agency may withhold payment of such amount in Dispute but will continue to pay all undisputed amounts. No failure by the Agency to Dispute a charge or other invoiced amount prior to payment of an invoice will limit or waive any of its rights or remedies with respect thereto. The withholding of an amount in Dispute in accordance with this Section 4.3.2 will not be considered a basis for monetary or other default or grounds for termination under this Agreement.
- 4.4 Taxes.

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

- 4.6.1 Upon reasonable prior notice to Provider during or after the Term, the Agency and/or its designated representative may inspect and review the billing records and other documentation of Provider and its subcontractors underlying any Provider invoice for the purpose of evaluating the accuracy of such invoice and the Fees and expenses set forth therein (such inspection and review, a **"Billing Review"**). Provider will cooperate with and assist the Agency and/or its designated representative in any Billing Review and will provide access to such records, documentation, personnel and facilities as is reasonably necessary in connection with such Billing Review. Any Billing Review shall be conducted during Provider's normal business hours at the Provider premises where it maintains such billing records and other documentation, in such a manner as not to interfere with Provider's normal business activities, or, in the Agency's sole discretion, at a reasonably convenient location in the State of New York designated by the Agency. In the latter case, Provider will provide access to such records and documentation at Provider's expense.
- 4.6.2 If, as a result of any Billing Review, it is determined that Provider has overcharged the Agency for any Service, the Agency will notify Provider of the amount of such overcharge, and Provider will pay to the Agency the amount of the overcharge within fifteen (15) days of discovery of such overcharge. In addition, if the amount of the error is in excess of three percent (3%) of the amount invoiced, Provider will pay the costs of the Billing Review.

4.7 Performance.

- 4.7.1 Upon reasonable prior notice to Provider, with respect to the Scope of Work, the Agency and/or its designated representative may conduct a performance audit on Provider's premises or the Site of the Services (including those used by any subcontractors of Provider) to ensure Provider's compliance with the terms of this Agreement (including Service Levels) and applicable laws and regulations, to evaluate Provider's performance hereof, for the Agency's operational risk assessment, data security assessment, disaster recovery/business continuity assessment, information technology risk assessment, and as otherwise required for regulatory and reporting purposes (each such inspection and review, a **"Performance Audit"**). Provider will provide to the Agency and/or its designated representative all necessary access to the following information: Names of Provider's and subcontractors' employees and agents; Provider and its subcontractors' facilities and infrastructure; and all support reasonably necessary in connection with Performance Audit at no charge to the Agency and/or its designated representative for any reasonable use related to the Performance Audit. Any Performance Audit shall be conducted during Provider's normal business hours in such a manner as not to interfere with Provider's normal business activities.
- 4.7.2 Without limiting Provider's obligations or the Agency's rights and remedies provided elsewhere in this Agreement, or otherwise, if, as a result of any

Performance Audit or at any other time it is reasonably determined by the Agency that Provider has not complied with the terms of this Agreement or has failed to perform in accordance with the requirements thereof (each, a “**Performance Failure**”), the Agency will notify Provider, in writing, of such Performance Failure, and Provider shall: (i) notify the appropriate management levels that a problem has occurred; (ii) attempt to isolate the reason for the Performance Failure; (iii) identify potential areas for performance improvement; (iv) develop an action plan, including specific recommendations for performance improvement; (v) review the action plan with the Agency; (vi) reach agreement with the Agency on the action plan; and (vii) if approval is reached, begin implementation of the action plan and document results. If such Performance Failure is not remedied in accordance with the foregoing provision within twenty (20) business days after receipt of the Agency’s notice of such noncompliance, it shall be deemed a material breach. If Provider performs an internal audit or engages a third party to perform an audit, Provider will provide the Agency with the results of such audit to the extent they affect or relate to Provider’s performance under this Agreement. Further, Provider shall conduct annual security self-audits and shall submit to the Agency then-current copies of all materials related to such security audits and the results thereof on an annual basis, or immediately upon any change thereto.

- 4.8 Set-Off. With respect to any amount which (i) should be reimbursed to the Agency or (ii) is otherwise payable to the Agency pursuant to this Agreement, the Agency may upon notice to Provider deduct the entire amount owed to Provider against the charges otherwise payable or expenses owed to Provider under this Agreement. Any unused credits against future payments owed to the Agency by Provider pursuant to this Agreement shall be paid to the Agency within thirty (30) days of the expiration or termination of this Agreement.
- 4.9 Cost Savings. If general conditions or technology changes materially reduce Provider’s recurring costs in providing the Services, Provider shall renegotiate with the Agency to share those reduced costs with the Agency. Provider will pass through to the Agency reductions in the cost of delivery of the Services resulting from significant changes in technology or extraordinary reductions in the costs of delivering the Services which could not have been foreseen as of the applicable Commencement Date but which occur during the Term and would be generally available to users of similar services in-house or provided by other third party Providers providing services similar to those provided by Provider.
- 4.10 Record Retention. As part of the Services, Provider shall (i) retain records and supporting documentation sufficient to document the Services and the Fees and expenses paid or payable by the Agency under this Agreement during the Term and for a period of time following the expiration or termination of this Agreement, consistent with the Agency’s record retention policy and legal, regulatory or reporting requirements, but in no event less than six (6) years, and (ii) upon notice from the Agency, provide the Agency and the Agency’s designees with reasonable access to and/or copies of such records and documentation.

ARTICLE 5 DELIVERY

- 5.1 Delivery of Deliverables. Provider shall provide the Services to the Agency and deliver to the Agency the Deliverables in accordance with the Scope of Work.
- 5.2 Notification of Delays. In the event of any delay that causes or can reasonably be expected to cause a delay in Provider's performance hereunder, Provider shall, as soon as practicable after the occurrence of such delay, notify the Agency Project Manager (as defined in Section 8.1 hereof) in writing of the particulars of such delay or default and the estimated impact of such delay on the timetable under the Scope of Work.
- 5.3 Delays. In the event that any performance of any Service set forth in the Scope of Work is not met due to a delay caused by Provider, Provider agrees, at no charge to the Agency, to commit such additional resources and personnel as shall be necessary to ensure that such delay does not result in the slippage of any other Services pursuant to the Scope of Work and shall cooperate with the Agency by disclosing the details of such additional resources and personnel commitments.

ARTICLE 6 ACCEPTANCE

- 6.1 Services. For any Services for which Acceptance Criteria (as defined below) are not specified in the Scope of Work, acceptance of such Services shall be based on the Agency's reasonable satisfaction therewith. The Services provided by Provider under the Scope of Work shall meet or exceed the Service Levels set forth for such Services in the Scope of Work. Provider will provide the Agency with reports sufficient to measure and report on each Service Level set forth in the Scope of Work in the form annexed thereto.
- 6.2 Acceptance Criteria for Deliverables.
- 6.2.1 The Deliverables shall be subject to acceptance testing by the Agency to verify that such Deliverables satisfy the acceptance criteria mutually agreed to by the Agency and Provider (the "**Acceptance Criteria**").
- 6.2.2 The Acceptance Criteria, which shall be included in, or incorporated by reference to, the Scope of Work, shall be jointly developed and mutually agreed to by the Agency and Provider, provided, however, that, if the Agency and Provider cannot, after a reasonable period of time, agree on Acceptance Criteria with respect to any Deliverable, such Acceptance Criteria shall be as reasonably determined by the Agency. The Acceptance Criteria shall demonstrate to the Agency's reasonable satisfaction that, for software Deliverables, (i) all of the functions of and requirements for the software Deliverables set forth in the Scope of Work, and any change orders have been provided and the software Deliverable is in conformity with the Specifications therefor; (ii) all performance standards for the software Deliverables set forth

in the Scope of Work , and any change orders or the Specifications have been met or exceeded; and (iii) volume and capacity testing meets or exceeds the Agency's requirements and, with respect to all other Deliverables, such Deliverables are compliant with all applicable requirements set forth in the Scope of Work, and any change orders and this Agreement. Prior to beginning the work for each Deliverable, the Provider shall submit to the Agency for approval a Deliverable Expectations Document ("DED"). Each DED shall include the format, outline, applicable Acceptance Criteria and key content, including key figures, diagrams, and tables for the deliverable. The purpose of the DED is to ensure that a common understanding exists between the Agency and the Provider regarding the scope and content (depth and breadth) of the Deliverable prior to beginning the work thereon.

6.3 Acceptance Testing for Deliverables. If Provider is required to submit any Deliverables under the Scope of Work, then:

6.3.1 Acceptance testing for all the Deliverables shall commence on the date on which Provider notifies the Agency Project Manager, in writing, that all such Deliverables have been satisfactorily completed, in Provider's opinion, have been delivered, and are ready for acceptance testing by the Agency. Unless otherwise set forth in the Scope of Work, acceptance testing shall continue for a period of ten (10) consecutive Business Days from the date of the Provider's notice (the "**Acceptance Period**").

6.3.2 In the event that the Deliverables do not conform to the Acceptance Criteria during the Acceptance Period, the Agency shall give Provider written notice thereof. The Agency shall cooperate with Provider in identifying in what respects the Deliverables have failed to conform to the Acceptance Criteria. Provider shall, at no cost to the Agency, promptly, but, in any event, within five Business Days from the Agency's delivery of written notice of a failure to conform, correct any deficiencies which prevent such Deliverables from conforming to the Acceptance Criteria and correct such deficiency and the effects of such deficiency in any prior affected Deliverables or Services. Upon completion of the corrective action by Provider, and at no additional cost to the Agency, the acceptance test will be repeated until all the Deliverables have successfully conformed to the Acceptance Criteria. The Agency shall conduct each subsequent review of re-submitted Deliverables as provided in this Section 6.3.2, within five (5) Business Days. In the event that the Agency does not deliver a written notice that a Deliverable fails to conform to the applicable Acceptance criteria therefor within ten (10) Business Days from the date on which such Deliverable has been formally presented by the Provider as set forth in Section 6.3.1, above, Provider shall deliver written notice to the Agency (an "Acceptance Review Failure Notice") of such failure to respond. Such Acceptance Review Failure Notice shall state that a response is requested with respect to the review of a Deliverable and that the Agency's failure to respond to such notice within two (2) Business Days from the date thereof shall be deemed to constitute acceptance by the Agency of such Deliverable. In the

event that the Agency does not reject any Deliverable within two (2) Business Days after its receipt of an Acceptance Review Failure Notice with respect thereto, such Deliverable shall be deemed to be accepted by the Agency.

- 6.3.3 If any Deliverable does not conform to the Acceptance Criteria within forty-five (45) days after the end of the Acceptance Period described above, the Agency may (reserving all other remedies and rights under this Agreement and at law and in equity including the right to suspend Provider Services and contract with a third party for substitute services): (i) immediately terminate either this Agreement or the Scope of Work, in whole or in part, pursuant to Section 11.2 and, at the Agency's option, seek an alternative, or (ii) require Provider to continue to attempt to correct the differences, reserving the right to terminate as aforesaid at any time.

ARTICLE 7 PROVIDER PERSONNEL AND SERVICE LOCATION

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

- 7.1.1 For the Scope of Work, Provider shall appoint sufficient appropriately qualified and trained staff to provide the Services and meet the Service Levels and the other requirements of this Agreement, consistent with the level of skills and qualifications specified by Provider in the Proposal (the “**Provider Personnel**”). The number of individuals included in the Provider Personnel and a description of all responsibilities will be set forth in the Scope of Work. For the Scope of Work, Provider and the Agency shall agree on the designation of certain Provider positions and/or named individuals as “**Dedicated Provider Personnel**”, who shall be personnel dedicated by Provider to perform the Services for the Agency. Dedicated Provider Personnel shall include agents, supervisors and middle management personnel dedicated to the performance of the Services. For the Scope of Work, based on a scale of Services, the parties may also designate certain personnel as “**Key Provider Services Center Personnel**”, who shall be management-level personnel related to operations that are dedicated to providing support services to the Agency, as well as shared senior management resources representing shared functions such as technology, quality, human resources and administration that are dedicated by Provider to provide the Services. The Agency may from time to time change the positions and/or named individuals designated as Dedicated Provider Personnel or Key Provider Services Center Personnel. Subject to the provisions of Section 22.7 hereof, Provider shall not subcontract any Services hereunder, or perform such Services by individuals who are not bona fide employees of Provider, without the prior written approval of the Agency in each instance.

- 7.2 Qualifications. The Agency and Provider shall agree on skills and competencies for Provider Personnel in the Scope of Work based on the skills and competencies of Provider Personnel described in the Proposals. Prior to hiring or otherwise engaging any Provider

Personnel, including any person who is designated as Dedicated Provider Personnel or Key Provider Services Center Personnel (each, a “**Candidate**”), Provider shall provide the Agency with (a) a summary of the Candidate’s qualifications and a resume, (b) a description of the tasks the Candidate is to perform, (c) an opportunity to consult with Provider regarding the Candidate, and (d) upon the Agency’s request, an opportunity to interview the Candidate. Upon review of the Candidate’s qualifications, the Agency may reasonably reject the Candidate on the grounds that the Candidate is not sufficiently qualified to perform the contemplated tasks.

7.2.1 Provider acknowledges and agrees that the success of each project is dependent upon the continuity of personnel assigned to the Provider Personnel because such continuity will contribute to the timely delivery and successful completion of such project. Therefore, any removal or reassignment by Provider of the Provider Project Manager or those of its Dedicated Provider Personnel or Key Provider Services Center Personnel assigned to perform Services hereunder must be with one (1) month’s prior written notice to the Agency, and with the Agency’s prior written consent (which shall not unreasonably be withheld for reasons such as, but not limited to, disability, illness, promotion, family or personal reasons, determination by the Agency or Provider that such Key Provider Services center are not qualified) as to the removal or reassignment and as to any replacement personnel, provided, however, that Provider shall not replace or reassign the Provider Project Manager or any Dedicated Provider Personnel or Key Provider Services Center Personnel for two (2) years from the date such individual has been assigned to the Agency’s account unless the Agency has requested such replacement or reassignment or the Provider Project Manager or any Dedicated Provider Personnel or Key Provider Services Center Personnel: (i) voluntarily resigns from Provider, (ii) is dismissed by Provider for misconduct (e.g., fraud, drug abuse, theft), (iii) materially fails to perform his or her duties and responsibilities pursuant to this Agreement, or (iv) is unable to work due to his or her disability.

7.2.2 Provider shall have in place a contingency plan in the event that any person designated as the Provider Project Manager or any Dedicated Provider Personnel or Key Provider Services Center Personnel is no longer available to staff such position. Provider shall submit its employee retention strategy to the Agency for the Agency’s review and approval. With respect to Provider personnel who are not Dedicated Provider Personnel or Key Provider Services Center Personnel, Provider shall use commercially reasonable efforts to ensure the continuity of such personnel. Provider shall notify the Agency of the resignation of any personnel providing Services within five (5) days of such resignation. In the event Provider replaces any personnel with the Agency’s written consent, Provider will promptly provide said replacement.

7.3 Removal. If the Agency decides, in its reasonable discretion, that any Provider Personnel providing any portion of the Services should not continue in his or her position, the Agency may request removal of such personnel by giving Provider notice of the request and

Provider shall immediately remove said personnel and, if requested by the Agency, provide a replacement acceptable to the Agency, within five (5) days of said notice. Provider shall also remove and provide a replacement for any other Provider Personnel if the work product delivered by such personnel is reasonably determined to be unsatisfactory to the Agency.

- 7.4 Replacements. Any replacement personnel shall have substantially equivalent or better qualifications than the personnel being replaced. There will be no charge to the Agency for any replacement provided in accordance with the above Sections while the replacement personnel acquire the necessary orientation and training, which shall not exceed five (5) working days.
- 7.5 Service Level Failures. If Provider fails to meet the Service Levels persistently or continuously and if the Agency reasonably believes such failure is attributable in whole or in part to Provider's reassignment, movement, or other changes in the personnel allocated by the Agency to the performance and delivery of the Services and/or to the Provider subcontractors assigned to the Agency service team, the Agency will notify Provider of such belief. Without limiting any remedies the Agency may have under this Agreement with respect to such Service Level failure, upon receipt of such notice from the Agency, Provider (i) will promptly provide to the Agency a report setting forth Provider's position regarding the matters raised by the Agency in its notice; (ii) will meet with the Agency to discuss the matters raised by the Agency in its notice and Provider's positions with regard to such matters; and (iii) will diligently work to eliminate with respect to the Services any such Provider personnel practices and/or processes identified and agreed to by the parties as adversely impacting the performance and delivery of the Services by Provider.
- 7.6 Service Location. All Provider Personnel who are performing Services shall initially be located at the Provider Services Centers set forth in Section 2.3. Provider shall not perform Services from any other location without the Agency's prior written consent, which consent shall not be unreasonably withheld.
- 7.7 Visas. Provider will pay for and be solely responsible for obtaining and maintaining such visas as may be required for any personnel providing Services to enter and remain in the country in which Services are rendered in connection with this Agreement.
- 7.8 Specialized Personnel. As part of the Services, Provider shall, upon the Agency's request, provide to the Agency equal access to Provider's specialized personnel and resources consistent with Provider's other commercial customers receiving substantially similar goods and services.
- 7.9 Compliance by Provider Personnel. Provider shall advise personnel supplied hereunder of their obligation to comply with the rules, regulations, policies, and procedures of the Agency, including the Agency's Code of Conduct referred to in Schedule 9.2.
- 7.10 Labor Harmony. Provider shall conduct its activities in such a manner as to seek to avoid (a) any labor-related disruption of work or material non-compliance in the provision of any Services, and (b) any interference with the work or activities of the Agency or other

persons. Whenever Provider has knowledge of any actual labor dispute involving the employees of Provider, Provider's permitted subcontractors, or others that may materially affect the provision of Services, Provider shall so inform the Agency and the parties shall cooperate to minimize the effect of such dispute on the provision of Services, whether or not such labor dispute occurs at a Provider location, the Agency location or otherwise.

- 7.11 Employment Status. Provider or its respective subcontractors shall be the employer in law and in fact of all persons assigned to perform the Services. Provider shall take all necessary efforts and precautions to protect the Agency from co-employment status including, but not limited to: (i) establishing, maintaining and ensuring Provider's employer status with all of its employees through proactive measures; (ii) incorporating protective co-employment provisions into all of its employment and subcontracting agreements; (iii) monitoring all hours worked by persons performing the Services so as to avoid any potential finding of liability against the Agency; and (iv) taking any and all other steps necessary or prudent to ensure compliance with any other laws, rules or regulations regarding co-employment so as to protect the Agency from being found to be a co-employer of any person performing the Services. Provider, or its respective subcontractors, as applicable, will be responsible for payment of all payments to, and salaries and benefits of, its employees and independent contractors, including but not limited to social contributions, for the Provider Personnel and, in the case of discontinuance of their employment for any reason, the payment of any severance payments that may be due to such personnel. Provider shall also take all the required measures in order to avoid the claim by any Provider Personnel regarding any Intellectual Property Rights owned or otherwise used by Provider or the Agency hereunder.
- 7.12 Personnel Records. Provider shall maintain records relating to all personnel provided pursuant to this Agreement, which records shall include, at a minimum, verification of qualifications, licenses, certifications, and references, verifying that such personnel are qualified in light of applicable law, industry standards, and this Agreement, to perform the work contracted for herein. Provider shall also maintain records of in-service training and records of assignments. Upon the Agency's request, Provider shall promptly provide to the Agency copies of the records described herein. Provider shall also perform background checks (including criminal background checks and drug testing), in accordance with criteria reasonably established by the Agency, on any and all Provider Personnel that will have access to the Agency's data or access to the Agency's location, and will provide the Agency with a description and the results of such background checks. In the event the Agency makes a request for the Provider's personnel records, all such records shall be deemed "Confidential" and the Agency shall not release said records to another party, subject in each case to the Agency's obligations under the New York State Freedom of Information Law (Public Officers Law, Article 6, as amended) or other similar applicable laws ("FOIL").

ARTICLE 8 PROJECT MANAGEMENT

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

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

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

ARTICLE 9 FACILITIES

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

through the Agency's security gateways/firewalls; (b) it will not access, and will not permit unauthorized persons or entities to access, the Agency's computing systems and/or networks without the Agency's express written authorization, and any such actual or attempted access shall be consistent with any such authorization; (c) it will use the latest available, most comprehensive virus detection/scanning programs prior to any attempt to access any of the Agency's computing systems and/or networks, and upon detecting a virus, shall immediately cease all attempts to access the Agency's computing systems and/or networks and shall not resume such attempts until any such virus has been eliminated.

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

ARTICLE 10 CONTINUED PROVISION OF SERVICES AFTER DISASTER

- 10.1 Disaster Recovery Plan ("DRP") and Business Continuity Plan ("BCP"). The Services shall include and shall support the DRP and the BCP furnished by Provider as described in Schedule 10.1⁷. Provider will update the DRP and the BCP within thirty (30) days of each Commencement Date, such update to reflect the new Service commencing as well as any necessary updates to the DRP and/or BCP with respect to existing Services. Notwithstanding the foregoing, the DRP and the BCP shall in no case be updated less than once every six (6) months during the term of this Agreement. In addition, Provider shall:
- (a) annually confirm the operability of the DRP and BCP during every calendar year;
 - (b) certify to the Agency at least once during each such calendar year that the DRP and BCP are fully operational following an annual test of each of the DRP and the BCP, which tests shall be observed by a designated representative of the Agency; and
 - (c) implement the DRP and/or BCP upon the occurrence of a disruption in the Services or a disaster (as such term is defined in the DRP and BCP), at Provider's sole cost and expense. In the event of a disruption or a disaster (except as agreed by the Agency in the DRP and BCP), Provider shall not increase its charges under this Agreement or charge the Agency any additional fees (including any fees payable by Provider to any third party disaster recovery vendors) other than those already payable under Article 4 hereof.

⁷ Note to Proposers: Proposer to provide Schedule 10.1 based on its proposal.

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

ARTICLE 11 TERM AND TERMINATION

- 11.1 Term. The term (the “**Term**”) of this Agreement shall commence on the Effective Date and shall continue for an initial period of five (5) years. Thereafter, the Term shall automatically renew for successive two (2) year renewal terms for up to six (6) additional years (up to a total contract term of eleven (11) years), unless terminated by the Agency upon written notice delivered not less than one hundred and twenty (120) days prior to the last day of the then current term.
- 11.2 Termination for Cause. Notwithstanding any provision of Section 11.1 to the contrary, the Agency may terminate this Agreement, or a Scope of Work, for cause, in the manner described below, upon the occurrence of the following events, without payment of any termination charges (reserving all other remedies and rights under this Agreement and at law and in equity):
- (a). Provider fails to achieve the Exit Criteria during the Transition Phase in accordance with the timetable established in the Project Management Plan, but in any event prior to first anniversary of the Effective Date of this Agreement.
 - (b). There is no Scope of Work currently in effect.
 - (c). Any material breach, or failure of performance, by Provider of this Agreement other than breaches described in Paragraph (d) or (e), below, or any material failures to conform to the stated terms as described in the Request for Proposals (RFP) and the Provider’s proposal and related documents in response to the RFP, if within thirty (30) days after the giving of written notice to Provider, Provider has not cured such failure, provided that, if such failure is incapable of being cured, termination shall be effective upon receipt of such notice.

(d). Provider (i) fails to meet a Milestone which failure continues for more than thirty (30) days or (ii) delivers any Deliverable (or any portion thereof) that does not meet the Specifications, Exit Criteria, or Acceptance Criteria applicable thereto and such Deliverable is not corrected in accordance with this Agreement within the applicable time period set forth in this Agreement, in each case, upon not less than thirty (30) days' prior written notice thereof to Provider by the Agency.

(e). Provider fails to perform in accordance with the Service Levels for a period of three (3) consecutive calendar months, or a Catastrophic Failure occurs, in each case, upon not less than thirty (30) days' prior written notice thereof to Provider.

(f). Provider shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Provider or any of its affiliates seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of its or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or debtors, or seeking the entry of an order of relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property; or Provider shall take any corporate action to authorize any of the actions set forth above in this paragraph.

(g). The Provider Services Center is Non-Operational because of a Force Majeure Event or otherwise, upon not less than thirty (30) days prior written notice thereof to Provider; provided however that, without limiting any other remedy it may have, the Agency may, at any time that the Provider Services Center is Non-Operational, either perform the affected Services itself or contract with a third party for substitute services, in each case, at Provider's expense. This provision shall not be interpreted to limit Provider's obligations with respect to disaster recovery contained in this Agreement.

(h) A material adverse change in the financial condition of Provider has occurred which affects the ability of Provider to perform the Services, upon not less thirty (30) days prior written notice thereof to Provider.

(i) Upon the occurrence of:

(i) a change in Control of Provider, whether such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, by an entity that the Agency believes would adversely affect the Agency's public mission or the Services,

(ii) the acquisition by a third party of all or substantially all of the assets of Provider, or

(iii) the merger of the Provider with or into a third party,

upon not less than thirty (30) days' prior written notice thereof to the Provider which notice shall be delivered not more than six (6) months after the occurrence of any such event. For purposes of this paragraph, "**Control**" shall mean the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest, if not a stock corporation) of Provider.

(j). Provider shall or shall attempt to assign or transfer in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of this Agreement (other than pursuant to subcontractors that are approved in writing by the Agency) or any interest therein without, in any such case, the prior written consent of the Agency in accordance with Section 22.5, or Provider shall encumber in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of this Agreement, or any interest herein without, in any such case, the prior written consent of the Agency, upon not less than thirty (30) days prior written notice thereof to Provider.

(k). Provider or any of its affiliates, officers or controlling owners shall become the subject of any investigation by any governmental authority for violation of any law or regulation or shall commit any act that the Agency believes will reflect badly on the standing of the Agency or cause negative media attention on the Agency or its or their employees via acts or omissions arising from Provider activities, whether or not related to Services to be performed under this Agreement, upon not less than thirty (30) days prior written notice thereof to Provider.

(l). Any change in law or regulation occurs that results in circumstances that adversely affect Provider's ability to provide the Services in accordance with this Agreement, upon not less than thirty (30) days prior written notice thereof to Provider.

Notwithstanding anything herein, the Agency shall not be obligated to pay Provider for any Services not performed by Provider.

11.3 Termination for Convenience. The Agency may terminate this Agreement, in whole or in part, for convenience, and without cause, upon one-hundred twenty (120) days' prior written notice to Provider. Upon termination pursuant to this paragraph, the Agency shall be under no further obligation to Provider other than to pay 1) all amounts due for Services performed as of the effective date of such termination; and 2) A "Termination Fee" equal to the sum of \$_____.⁸

11.4 Termination by Provider. Provider shall have the right to terminate the Scope of Work solely in the event of a failure by the Agency to make timely payment of any Fees, due and payable under the Scope of Work and not subject to good faith dispute by the Agency, which breach is not cured within ninety (90) days of written notice thereof, which notice expressly states Provider's intention to so terminate.

⁸ Proposers to propose termination fee.

Due to the impact any termination of this Agreement, in whole or in part, would have on the Agency's business, the Agency's failure to perform its responsibilities set forth in this Agreement (other than as provided in Section 11.4 above) shall not be deemed to be grounds for termination by Provider. PROVIDER ACKNOWLEDGES THAT THE AGENCY WOULD NOT BE WILLING TO ENTER INTO THIS AGREEMENT WITHOUT ASSURANCE THAT IT MAY NOT BE TERMINATED BY PROVIDER AND THAT PROVIDER MAY NOT SUSPEND PERFORMANCE EXCEPT, AND ONLY TO THE EXTENT, PROVIDER TERMINATES PURSUANT TO SECTION **Error! Reference source not found.** The Agency's failure to perform any of its responsibilities set forth in this Agreement (other than as provided in Section 11.4, above) shall not be deemed to be grounds for termination by Provider; however, Provider's nonperformance of its obligations under this Agreement shall be excused if and to the extent (i) such Provider nonperformance results solely from the Agency's failure to perform its responsibilities, and (ii) Provider provides the Agency with reasonable notice of such nonperformance and uses commercially reasonable efforts to perform notwithstanding the Agency's failure to perform.

11.5 Effects of Termination.

11.5.1 Termination of this Agreement in part shall not affect the rights of the Agency and the obligations of Provider with respect to those portions of this Agreement not terminated. After receipt of a notice of termination and except as otherwise directed by the Agency, Provider shall:

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

- (e) If the Agency chooses to terminate this Agreement in part, the Fees payable under this Agreement will be equitably adjusted to reflect those services that are not terminated.

In addition to the other requirements of this Section 11.5, Provider hereby grants to the Agency at no cost a perpetual, fully paid, non-exclusive, enterprise-wide and royalty free license to use, reproduce, distribute, perform and display, disclose and otherwise use and exploit all or any part of the Developer Tools (as defined below) solely and strictly for Agency internal purposes in connection with its use of any Deliverables or components thereof, and deliver such Developer Tools to the Agency. In addition, the Agency shall have the right to transfer such license to a designated third party that the Agency selects to perform services covered by this Agreement. At the Agency's option and cost, Service Provider shall place the Developer Tools into escrow with a third-party escrow agent acceptable to the Agency (the "Escrow Agent"). **"Developer Tools"** shall mean any and all tools used by Provider as part of the process of creating the Deliverables and any such tools embedded or to be embedded in the Deliverables or which are necessary to install, use, support, create, revise, complete, modify or enhance the Deliverables, including without limitation, software engines, code libraries, methodologies, tools, knowledge, data, configuration data, specifications, listings, printouts, documentation, documents, notes, flow charts and programming techniques commonly employed by programmers. Notwithstanding any contrary terms or provisions above, the Agency shall not transfer any rights or license to the Provider's proprietary processes without expressly restricting such third party's use of the Provider processes solely and strictly for Agency internal purposes in connection with its use of any Deliverables or components thereof, with the further restriction that any such transfer or license shall clearly and expressly disclose that such processes are the proprietary property of the Provider and shall not be reproduced, copied, or used for any other purpose.

11.5.2 Data and Source Code Escrow

(a) Source Code Escrow

- (i) Delivery of Object Code. Provider will be required to provide the Deliverables to the Agency in object code form only.
- (ii) Escrow of Source Code. Within fifteen (15) Business Days' after delivering the object code of the Deliverables to the Agency, the Provider shall deposit one copy, on the Agency's behalf, of the Deliverables and Developer Tools in source code with an Escrow Agent specializing in software escrows. The Provider shall deliver a copy of the agreement with the Escrow Agent to the Agency within fifteen (15) Business Days' after the Effective Date of the Agreement.
- (iii) Updates of Source Code. In the event of a material update or modification to the Deliverables or Developer Tools, but at least annually, the Provider shall deposit one updated copy, on the Agency's behalf, of that update, enhancement, or modification, and

any documentation related to the update, enhancement, or modification, to the Escrow Agent.

- (iv) Escrow Account Fees. The agency agrees to reimburse the Provider for all fees necessary to establish and maintain the escrow.
- (v) Contingent License. The Provider hereby grants to the Agency a contingent license to receive the source code from the Escrow Agent and to use the source code to support its use of the Deliverables in machine-readable form if the Provider:
 - (1) whether directly or through a successor or affiliate, ceases to be in the software business;
 - (2) the Agency terminates the Agreement in accordance with Section 11.2. (g), (j) (k), and (l);
 - (3) becomes insolvent or admits insolvency or a general inability to pay its debts as they become due; or
 - (4) files a petition for protection under the U.S. Bankruptcy Code, or an involuntary petition is filed against it and is not dismissed within 60 Business Days.
- (vi) Restrictions on Use. Notwithstanding any contrary terms or provisions above, the Agency shall not transfer any rights or license to the Provider's proprietary processes without expressly restricting such third party's use of the Provider processes solely and strictly for Agency internal purposes, including Section 8 local administrators, vendors and subrecipients, with the further restriction that any such transfer or license shall clearly and expressly disclose that such processes are the proprietary property of the Provider and shall not be reproduced, copied, or used for any other purpose.

(b) Data Escrow

- (i) Escrow of Data. The Provider shall deliver a copy of the agreement with the data Escrow Agent to the Agency within fifteen (15) Business Days' after the Effective Date of the Agreement. The Provider shall work with the data Escrow Agent to create a weekly, automatic, read-only back-up copy of the Agency's data (the "Escrow Data"). The Provider shall deposit one copy, on the Agency's behalf, of the Escrow Data with an Escrow Agent specializing in data escrow services.

- (ii) Updates of Escrow Data. On a weekly basis, the Provider shall automatically deposit one updated copy, on the Agency's behalf, of Escrow Data to the data Escrow Agent.
- (iii) Upkeep of Data Escrow Account. The agency agrees to reimburse the Provider for all fees necessary to establish and maintain the data escrow.
- (iv) Restrictions on Use. Notwithstanding any contrary terms or provisions above, the Agency shall not transfer any rights or license to the Provider's proprietary processes without expressly restricting such third party's use of the Provider processes solely and strictly for Agency internal purposes in connection with its use of any Deliverables or components thereof, with the further restriction that any such transfer or license shall clearly and expressly disclose that such processes are the proprietary property of the Provider and shall not be reproduced, copied, or used for any other purpose.

ARTICLE 12 TERMINATION ASSISTANCE

12.1 Termination/Expiration Assistance. Unless otherwise specifically set forth in the Scope of Work, at the Agency's request, commencing six (6) months prior to expiration of this Agreement or the Scope of Work, or on such earlier date as the Agency may request, or commencing upon any notice of termination (in whole or in part) or of non-renewal of this Agreement (including notice based upon default by the Agency), and continuing for a period of at least six (6) months after such termination or expiration, as applicable (the "**Termination/Expiration Assistance Period**"), Provider will provide to the Agency, or at the Agency's request to the Agency's designee, at the hourly rate as agreed upon under this Agreement, the reasonable termination/expiration assistance requested by the Agency to allow the terminated or expired Services to continue without interruption or adverse effect and to facilitate the orderly transfer of such Services or the Deliverables thereof to the Agency or its designee ("**Termination/Expiration Assistance**"). Provider shall not increase the charges for such Services and Deliverables during any Termination/Expiration Assistance Period and shall reduce such charges to the extent Services are reduced during such Termination/Expiration Assistance Period. The quality and level of the Services shall not be degraded during the Termination/Expiration Assistance Period. After the expiration of the Termination/Expiration Assistance Period, Provider shall answer questions from the Agency regarding the Services on an "as needed" basis at Provider's then standard commercial billing rates.

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

- (a) Within thirty (30) days after the commencement of Termination/Expiration Assistance, Provider will provide a complete plan for turnover that enables

a smooth transition of the Services to the Agency or a successor to Provider (such plan, the “**Turnover Plan**”). The Turnover Plan will be provided to the Agency in both hardcopy and in an electronic format capable of being utilized by the Agency. Upon the Agency’s written approval of the Turnover Plan, not to be unreasonably withheld, Provider will provide Termination/Expiration Assistance in accordance with such Turnover Plan. Provision of Termination/Expiration Assistance will not be complete until the Agency Project Manager reasonably determines that all tasks and deliverables set forth in the Turnover Plan have been completed.

- (b) Provider will attend periodic review meetings called by the Agency, during which the parties at a minimum will review Provider’s performance of Termination/Expiration Assistance, including the completion of tasks and deliverables set forth in the Turnover Plan. Such attendance by the Provider may be telephonic or via any other regularly used webinar medium.
- (c) Provider will provide sufficient personnel with current knowledge of the Services to work with the appropriate staff of the Agency and, if applicable, the successor Provider to perform the turnover tasks defined in the Turnover Plan. Provider will cooperate with the Agency and any successor to Provider in transitioning the functions performed by Provider under this Agreement in the same manner as described in Section 3.3 for third parties performing the Services.
- (d) Provider will promptly cooperate and provide any information that is necessary to effectuate a smooth transfer of the Services performed and Deliverables delivered by Provider under this Agreement to the Agency or a successor to Provider, including as necessary for the Agency to prepare a request for proposal.
- (e) Provider shall identify and assist the Agency in procuring suitable functionally equivalent replacements for any shared hardware or software then used by Provider in providing the Services and shall provide a listing and detailed written description of all support and development tools and methodologies used in performing the Services.
- (f) Provider will obtain any necessary rights and thereafter make available to the Agency or its designee, pursuant to reasonable terms and conditions, any third-party services then being utilized by Provider in the performance of the Services including services being provided through subcontractors.

12.1.2 Upon the latter of the expiration or termination of this Agreement, in whole or in part, and the last day of the applicable Termination/Expiration Assistance Period, the rights granted to Provider in Section 14.4 and 14.6 shall immediately terminate to the extent no longer reasonably necessary by Provider to provide the Services, and Provider shall (a) deliver to the Agency, at no cost to the Agency, a current copy of all of the Agency Furnished

Materials in the form in use as of that time, (b) destroy or erase all other copies of the Agency Furnished Materials in Provider's care, custody or control, and (c) cease all use of the Agency Systems.

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

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

12.2 Requested Services. For a period of twelve (12) months following the effective date of termination/expiration of the Scope of Work, Provider shall provide, at the Agency's request, Services related to the termination and not set forth in Section 12.1 at the rates agreed to under this Agreement. Such Services shall be New Services.

12.3 Extension of Services. The Agency may elect once to extend this Agreement for up to twelve (12) months beyond the then-effective date of the expiration or termination of this Agreement (a "**Temporary Extension of Services**") by notifying Provider in writing of such election at least ninety (90) days prior to such effective date and paying Provider the Fees otherwise payable under this Agreement as set forth in the payment schedule to the Scope of Work. If the Agency elects to extend only a portion of the Services, the Fees for such services will be subject to good faith negotiations of the parties.

ARTICLE 13 CONFIDENTIAL INFORMATION

13.1 Confidential Information Defined. During the Term, subject to the terms of FOIL, the Agency may disclose to Provider or Provider may acquire or have access to certain Agency confidential information ("**Agency Confidential Information**"). Agency Confidential Information shall mean any information of the Agency, its employees and customers, and other third party licensors and contractors that is not generally known to the public and at the time of disclosure is identified, or would reasonably be understood by Provider, to be proprietary or confidential, whether disclosed in oral, written, visual, electronic or other form, and which Provider (or its contractors or agents) observes or learns in connection with this Agreement. The Agency Confidential Information includes (i) business plans, strategies, forecasts, projects and analyses; (ii) financial information and fee structures; (iii) business processes, methods and models; (iv) employee and Provider information; (v) the Agency Furnished Materials and the Agency Systems; (vi) Specifications; (vii) manufacturing, purchasing, logistics, sales, technical, product and marketing information; (viii) tenant, applicants and landlord data, including income documentation, bank accounts, and other sensitive, Personal Identification Information. (ix). Employee

Information; and (x) the existence, terms and conditions of this Agreement. The Agency Confidential Information shall be proprietary to the Agency. Provider may disclose to the Agency technical products, trade secrets and other information concerning Provider business activities, including without limitation, the Market Search Portal Solution in source code format and the Documentation and any other information specifically identified in Schedule 13.1 (“**Provider Confidential Information**”). Provider Confidential Information and the Agency Confidential Information may be referred to as “**Confidential Information**”).

13.2 Nondisclosure. Provider will not, without the prior written consent of the Agency, remove from the Agency’s premises or disclose the Agency Confidential Information to any third party, other than Provider’s, its affiliate’s and its and their subcontractors’ employees and agents with a need to know for performance hereunder. Provider shall not jeopardize the confidential nature of the Agency Confidential Information, and Provider shall not use such the Agency Confidential Information other than for the purposes of this Agreement. Provider agrees that all the Agency Confidential Information will be held in strictest confidence by Provider and that such Agency Confidential Information will not be copied, reproduced or altered either in whole or in part by any method whatsoever, unless agreed upon in writing by the Agency. Provider hereby agrees to maintain the confidentiality thereof using at least as great a degree of care as Provider uses to maintain the confidentiality of Provider’s own most confidential information, but in no event less than a reasonable degree of care. Provider shall cause its affiliates, its and their respective subcontractors and its and their employees and agents to whom the Agency Confidential Information is disclosed to be informed of and agree to be bound by the restrictions upon disclosure and use of the Agency Confidential Information as contained in this Agreement and to sign an agreement containing the terms set forth in Schedule 13.2 hereto. The Agency agrees that it will not, during or after the Term, permit the duplication or disclosure of any Provider Confidential Information to any person (other than an employee, agent or representative of the Agency who needs such information for the performance of the obligations or for the exercise of the rights granted hereunder), unless such duplication, use or disclosure is specifically authorized by Provider in writing.

13.3 Exceptions. The parties’ obligations set forth in Section 13.2 shall not apply to information to the extent such information:

13.3.1 has been legally in the recipient party’s possession prior to disclosure by the disclosing party and is not subject to any non-disclosure obligations;

13.3.2 has become part of the public domain through no fault of the recipient party;

13.3.3 has been developed subsequent to, and independent of, disclosure to the recipient party; or

13.3.4 has been released in writing by the disclosing party so that the recipient party may make public disclosure, or is otherwise deemed by the disclosing party, in writing, to no longer be confidential.

- 13.4 Required Disclosure. Notwithstanding anything to the contrary in this Article 13, if the recipient party learns that it is or may be required by applicable court order, law or regulation to disclose any Confidential Information, then the recipient party shall: (a) as promptly as possible after learning of a possible disclosure requirement, and in any case prior to making disclosure, notify the disclosing party of the disclosure requirement, in writing, so that the disclosing party or the appropriate party may seek a protective order or other appropriate relief, (b) provide such cooperation and assistance as the disclosing party may reasonably request in any effort by the disclosing party or the appropriate party to obtain such relief, and (c) take reasonable steps to limit the amount of Confidential Information so disclosed and to protect its confidentiality.
- 13.5 Injunctive Relief. Provider acknowledges that breach of this Article 13 or disclosure of other information which, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the Agency, and cannot be adequately compensated by the payment of money damages. Accordingly, the Agency may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available. Provider acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests of the Agency and are reasonable in scope and content.
- 13.6 No License. Nothing contained in this Agreement shall be construed to grant to Provider any right or license under any Intellectual Property Right of the Agency, except as expressly set forth in Section 14.4 hereof.
- 13.7 Return of Confidential Information. Upon the earlier of (i) a request of the disclosing party; or (ii) the expiration or termination of this Agreement or the Scope of Work, the recipient party will return all Confidential Information no longer reasonably required to provide or receive Services that are still in effect as of such expiration or termination, in whatever form or media, retaining no copies of the same in any form whatsoever, or shall destroy such Confidential Information and certify in writing to the disclosing party that such destruction has been effected. Recipient party's obligations hereunder regarding Confidential Information shall survive the return or destruction of such Confidential Information or termination of this Agreement or completion of the Services.
- 13.8 Confidentiality Pledge. All Provider personnel, and personnel of Provider's subcontractors, shall be required to complete and submit to the Agency a Confidentiality Pledge substantially in the form attached hereto as Exhibit A. Provider shall deliver an executed copy of a Confidentiality Pledge to the Agency for each employee and contractor of Provider, and each employee and contractor of Provider's subcontractors, performing Services under this Agreement prior to the date on which such employee or contractor commences to perform such Services.

ARTICLE 14 TITLE; PROPRIETARY RIGHTS

- 14.1 Reserved.

14.2 Reserved.

14.3 Reserved.

14.4 Agency Furnished Materials. Any materials, including any third party materials, furnished by the Agency in connection with this Agreement (and as further described in this Section 14.4, the “ **Agency Furnished Materials**”) are provided to Provider as the Agency Confidential Information, solely for the use by Provider to provide the relevant Services in furtherance of this Agreement for the duration of the Scope of Work, on a non-exclusive, non-transferable and non-sublicensable basis (except to authorized subcontractors who have a need to use the same for performance of this Agreement) and all rights, title and interest thereto shall, as between the parties, at all times remain in the Agency. All the Agency Furnished Materials are provided to Provider solely on an as-is, where-is basis without any warranty. All the Agency Furnished Materials, including drawings, forms, models, parts, drafts, reports, documentation, contents of computers, work stations and network-related devices, computer equipment, office equipment, software, data storage media, whether machine readable or otherwise, any Intellectual Property Rights and/or any other property acquired by Provider from the Agency in the rendition of Services hereunder, and all copies thereof, shall be the property of the Agency and shall be, at such times as may be specified by the Agency or the termination/expiry of the Scope of Work, delivered to the Agency. Provider shall not modify, decompile, translate or adapt, by reverse engineering or otherwise, the Agency Furnished Materials in any way or use the Agency Furnished Materials to create a derivative work or attempt to create the source code from the object code except as set forth in the Scope of Work. Provider shall use all the Agency Furnished Materials that are obtained by the Agency from third parties in accordance with the terms and conditions set forth in the applicable third-party licenses. Provider acknowledges that the Agency may revoke the licenses granted to Provider with respect to such third party with respect to the Agency Furnished Materials at any time if such Agency Furnished Materials are not necessary to Provider’s performance of the Services hereunder, and in any case, if the third party licensor terminates the Agency’s right to use or to sublicense such Agency Furnished Materials. Provider will be responsible for all consents and fees, if any, required to permit its authorized subcontractors to access the Agency Furnished Materials that are owned by third parties. Provider will be responsible for all consents and fees, if any, required to permit the Dedicated Provider Personnel to access the Agency Furnished Materials that are owned by third parties. “Intellectual Property Rights” shall mean copyright rights (including, without limitation, the exclusive right to use, make recordings of, reproduce, modify, adapt, edit, enhance, maintain, support, market, sell, rent, sell for rental, sublicense, distribute copies of, publicly and privately display and publicly and privately perform, exploit, exhibit, the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including, without limitation, trade names, trademarks, service marks and trade dress), trademark and service mark registrations and applications, patent rights (including without limitation the exclusive right to make, use and sell), patent registrations and applications, mask-work rights, trade secrets, moral rights, author’s rights, right of publicity, contract and licensing rights, rights in packaging, goodwill and other intellectual property rights, as may exist now and/or hereafter come into existence, and all renewals

and extensions thereof, regardless of whether any of such rights arise under the laws of the U.S or any other state, country or jurisdiction

- 14.5 Pre-Existing Materials. All pre-existing materials or information owned by Provider that are contained in the Deliverables or are necessary for the use of the Deliverables or for the performance of any Services (“**Pre-Existing Materials**”), shall remain the exclusive property of the Provider. To the extent that any Pre-Existing Materials are contained in any Deliverables or are necessary for the use of such Deliverables or for the performance of any Services, Provider shall obtain the Agency’s written consent before using such Pre-Existing Materials hereunder. Provider hereby grants to the Agency, at no present or future cost to the Agency, a perpetual, irrevocable, non-exclusive, worldwide, enterprise-wide, royalty-free license to: use, execute, display, copy, perform, modify and prepare derivative works of the Pre-Existing Materials.
- 14.6 The Agency Systems. Commencing on the Commencement Date and for the duration of the Scope of Work, the Agency will provide to Provider, the right to use and access the software and hardware currently used by the Agency, or necessary for Provider to perform the functions to be performed by Provider hereunder, on a non-exclusive, non-transferable basis, including the Software, and any successor systems, as listed in the Scope of Work (the “**Agency Systems**”) for use in performing Services thereunder, and all reasonably necessary support for Provider’s continued use and access thereof. Provider shall be responsible, at Provider’s expense, for obtaining any necessary consents or assignments from any third-party licensors of the Agency Systems prior to the date on which such use and access is necessary to enable Provider to use the Agency Systems in accordance with this Section. Provider shall be solely responsible for any fees and other amounts payable to any third party for the performance of Provider’s obligations under this Agreement unless the parties specifically agree to the contrary in the Scope of Work. Provider shall use the Agency Systems only for the purposes of this Agreement and in accordance with any restrictions on such use which may be stated in the Scope of Work or provided by the Agency to Provider from time to time. Provider shall not modify, decompile, translate or adapt, by reverse engineering or otherwise, the Agency Systems in any way or use the Agency Systems to create a derivative work or attempt to create the source code from the object code except as set forth in the Scope of Work. Provider acknowledges that the Agency Systems are the sole and exclusive property of the Agency or its licensors, including all applicable Intellectual Property Rights inherent therein and appurtenant thereto. Title in and to the Agency Systems and any copies thereof shall be and remain the sole and exclusive property of the Agency or its licensors. Provider shall not sell, transfer, publish, disclose, display, rent, lease, loan, license, or otherwise make available any portion of the Agency Systems to others, and shall not permit any other party access or use of such the Agency Systems, other than the employees and agents of Provider and its approved subcontractors who have a need to access or use such Systems for performance of this Agreement. Provider agrees to secure and protect the Agency Systems in a manner consistent with the maintenance of the Agency’s or its licensors’ rights therein and to take appropriate action by instruction or agreement with all persons who are permitted access to the Agency Systems to satisfy its obligations hereunder. Provider shall comply with the terms of any third-party agreements with respect to the Agency Systems and shall be responsible for breaches thereof by Provider employees or subcontractors. Provider

acknowledges that the Agency Systems are the Agency Confidential Information and contain proprietary trade secrets of the Agency or its licensors. Provider agrees to comply with the terms of any agreement required by any third party licensor of the Agency Systems which Provider is required to execute by such third party.

- 14.7 Use of Third-Party Content or Technology. Provider shall not use any Third Party Content or Third Party Technology in the Deliverables or the provision of Services unless: (a) Provider is expressly permitted to use such Third Party Technology or Third Party Content pursuant to written agreements with all third party rights holders; and (b) Provider has acquired for Provider and the Agency all rights, permissions, clearances, releases or other authorizations necessary to use such Third Party Technology or Third Party Content, as contemplated by this Agreement. Provider shall be responsible for all payments in connection with such licenses of Third-Party Technology or Third-Party Content, unless otherwise agreed to by the Parties. For purposes of this Agreement, “**Third Party Content**” shall mean all content, if any, for which rights, licenses, permissions, or other clearances need to be obtained from any persons other than the parties hereto for the use of such content in the Deliverables as contemplated herein. “**Third Party Technology**” shall mean all systems, tools and/or software, if any (including, without limitation, documentation, source code, compilers, diagnostics and data base products) (i) which are required to be licensed from persons other than the parties hereto if the Deliverables require the use of such Third Party Technology, (ii) with which the Deliverables are designed or are based on, or (iii) which are required for or used in the provision of the Services. Third Party Content and Third-Party Technology shall not include any content or technology that the Agency expressly undertakes to obtain from the Agency’s licensors, as set forth in Section 14.6 above. Notwithstanding any contrary terms or provisions stated above, the Agency’s rights of licensing or use of any third-party software included or imbedded within all work product or documentation provided by the Provider and disclosed to the Agency shall be governed by the applicable third-party software providers’ licensing agreement.

14.8 Market Search Portal Solution and Documentation.

14.8.1 Certain Definitions.

- (a) “**Documentation**” means manuals, configuration guides, flow charts, diagrams, user instructions, help information, service descriptions, system requirements information, and other materials that facilitate the end users’ use of the Market Search Portal Solution, Services, and other similar information.
- (b) [Intentionally Omitted].

- 14.8.2 Grant of Rights to Market Search Portal Solution. Provider, under its Intellectual Property Rights, hereby grants to the Agency a worldwide, exclusive, sublicensable, transferable perpetual, license to access and use the Market Search Portal Solution, the Services and any other Deliverables for the purposes specified in or contemplated by the RFP and Agency’s business.

- 14.8.3 Grant of Rights to Documentation. Provider, under its Intellectual Property Rights and during the Term, hereby grants to the Agency a worldwide, exclusive, sublicensable, transferable, perpetual license to access, modify, distribute and use the Documentation for the purposes specified in or contemplated by the RFP and Agency's business.
- 14.8.4 Limitations on Use of Market Search Portal Solution. The Agency's use of the Market Search Portal Solution shall be subject to the following restrictions: Agency shall not decompile, disassemble, or reverse engineer the Market Search Portal Solution.
- 14.8.5 Ownership of Market Search Portal Solution and Documentation. Except as expressly granted in this Section 14.8 (Market Search Portal Solution and Documentation), as between the Parties, Provider is, and shall remain, the sole owner of all right, title, and interest in and to the Market Search Portal Solution and Documentation, together with all modifications, revisions, changes, copies, partial copies, translations, compilations, partial copies with modifications and derivative works of the foregoing.
- 14.9 Residuals. Nothing in this Agreement shall prevent the Agency from using the Residuals (defined below) resulting from the receipt or use of the Services hereunder. As used herein, "**Residuals**" shall mean information in non-tangible form, which may be developed or retained by persons who have provided or received the Services, including ideas, concepts, know-how or techniques. The term "Residuals" shall not include any Provider Confidential Information.
- 14.10 Source Code Escrow.
- (i) Escrow of Source Code. Within fifteen (15) Business Days after acceptance of the Deliverables by the Agency, the Provider shall deposit one copy, on the Agency's behalf, of the Deliverables in source code format (the "**Escrow**") with a third party software escrow agent reasonably satisfactory to the Agency (the "**Escrow Agent**") pursuant to a software escrow agreement the terms of which are reasonable satisfactory to the Agency (the "**Escrow Agreement**"). The Provider shall deliver an executed copy of the Escrow Agreement to the Agency within fifteen (15) Business Days' after the Effective Date of the Agreement.
 - (ii) Updates of Source Code. In the event of a material update or modification to the Deliverables, but at least annually, the Provider shall deposit one updated copy, on the Agency's behalf, of that update, enhancement, or modification, and any documentation related to the update, enhancement, or modification, to the Escrow Agent.

- (iii) Upkeep of Escrow Account. The Agency shall reimburse the Provider for all fees necessary to establish and maintain the Escrow.
- (iv) Contingent License. The Provider hereby grants to the Agency a contingent license to receive the Escrow from the Escrow Agent and to use the Escrow to support its use of the Deliverables in machine-readable form if:
 - (1) the Provider, whether directly or through a successor or affiliate, ceases to be in the software business;
 - (2) the Agency terminates the Agreement in accordance with Section 11.2. (c), (e), (f), (g), (h), (j) (k), and (l);
 - (3) becomes insolvent or admits insolvency or a general inability to pay its debts as they become due; or
 - (4) files a petition for protection under the U.S. Bankruptcy Code, or an involuntary petition is filed against it and is not dismissed within 60 Business Days.

ARTICLE 15 PRIVACY AND DATA SECURITY

15.1 Certain Definitions.

- (a) **“Client Information”** shall mean all information and data pertaining to a prospective, current or past customer, applicant, agent, or other intermediary of the Agency, including but not limited to such person’s address, telephone number, bank account information, and other contact information, image, gender, age, account or other identifying numbers or attributes, and financial, health and insurance information, and other information about an individual, including the fact that the individual is or was a client or applicant of the Agency.
- (b) **“Data”** shall mean any and all data in any form, that is collected, copied, processed, transferred or otherwise used by or on behalf of Provider in performing the Services, including without limitation, Client Information, Employee Information, Personal Data, trade secrets or corporate proprietary information of any kind whatsoever, which is made available directly or indirectly to Provider in connection with the performance of the Services.
- (c) **“Data Privacy and Security Laws”** shall mean: (a) all national and New York State privacy, security and data protection laws, rules and regulations, including without limitation, U.S. and New York State laws applicable to data privacy and security, as well as applicable security breach and identity theft notification laws of any applicable jurisdiction (including without

limitation, the European Union), and all then-current industry standards, guidelines and practices with respect to privacy, security and data protection including the collection, processing, storage, protection, use and disclosure of Data, forensic imaging and, electronic server and system data extraction; and (b) the applicable privacy policies of either party as well as the Agency's policies and guidelines applicable to any of the foregoing which are provided to Provider in written form from time to time or posted on the Agency's web site.

- (d) **“Employee Information”** shall mean all information and data pertaining to a prospective, current or past employee or contractor of the Agency and Dedicated Provider Personnel, including but not limited to such person's address, telephone number and other contact information, image, gender, age, account or other identifying numbers or attributes, information regarding compensation, benefits and other terms of employment, financial, health and insurance information, and other information about such person, including the fact that the person is or was an employee or contractor of the Agency.
- (e) **“Personal Data”** shall mean any information that, alone or in combination with other information, relates to a specific, identifiable individual person. Personal Data includes without limitation, individual names, social security numbers, telephone numbers, home address, driver's license number, account number, email address, and vehicle registration number. Any information that can be associated with Personal Data shall also be Personal Data. For example, an individual's age alone is not Personal Data, but if such age were capable of being associated with one or more specific identifiable individuals then such age would be deemed Personal Data.

15.2 **Ownership; Restrictions on use of Data.** All Data used or created in the operation of the Market Search Portal Solution or in the provision of Services, including, without limitation, all Client Information, Employee Information, and Personal Data shall be the property of the Agency. Provider agrees that (i) at all times during the Term and thereafter, it will comply with its obligations under all applicable Data Privacy and Security Laws, (ii) Data will not be utilized by Provider or any Provider Personnel for any purpose other than for the purpose of rendering the Services to the Agency under this Agreement, and shall be accessible by Provider Personnel on a need-to-know basis only, (iii) the Agency is solely responsible for determining the purposes for which and the manner in which Data is or is to be processed under this Agreement, and (iv) Provider shall treat all Data as the Agency Confidential Information subject to Provider's other obligations pursuant to this Agreement. The Agency reserve the right to review the Provider policies, procedures and practices used to maintain the privacy, security and confidentiality of Data.

15.3 **Security Measures.** Without limiting Provider's other obligations under this Article 15, Provider shall, and shall contractually require and cause Provider Personnel to: (i) implement and maintain reasonable technical and organizational security measures, procedures and practices appropriate to the nature of the Data and take such other actions

as are necessary to maintain conformance with high industry standards of security and to ensure the security and confidentiality of the Data, protect against any anticipated or actual threats or hazards to the security or integrity of the Data and prevent unauthorized and unlawful access to, processing or destruction, damage, loss, use, modification and disclosure of Data, and (ii) otherwise keep the Data confidential in accordance with the terms of this Agreement and any applicable Data Privacy and Security Laws. Without limitation of the above, Provider shall (and shall cause Provider Personnel to) take all precautions and adopt all safety measures to avoid the foregoing risk, through: (a) proactive monitoring of known vulnerability reporting services, (b) engaging qualified, independent and reliable third parties to regularly audit and validate the applicable safety measures, (c) subject to Section 15.7(f) below, encrypting Data consisting of, without limitation, financial account information, social security number, driver's license or non-driver identification card number, mother's maiden name, date of birth, passwords, biometrics, electronic serial number, personal identification number or code and/or any other account information and/or account activity information or other information or data that can be used for identity theft (even that which is not personally identifiable) and other sensitive information with industry standard encryption levels at all times while in transit or stored, (d) prohibiting Provider Personnel from bringing, transporting or transmitting Data to their homes or personal computers, e-mail accounts, devices or media, and (e) adopting up-to-date and leading edge technologies in consultation with, or otherwise at the request of, the Agency for the safe, secure and accurate collection, processing, storage, and distribution of all Data, including but not limited to by changing default security settings (including, without limitation, passwords) and promptly installing all updates, patches and security enhancements made available by the vendors of any of the third party products used in connection with such collection, processing, storage and distribution. It is the sole responsibility of the Provider to ensure that all data stored on behalf of the Agency is secured in compliance with all relevant data privacy and security laws. The provider is responsible for tracking any changes to requirements, and for taking proactive and timely steps to upgrade its security measures and safeguard client data in compliance with any new or revised regulations. The Services provided under this Section 15.3 shall be considered managed services and shall be billed according to the Managed Services Schedule as outlined in the Scope of Work.

- 15.4 Requests for Data and Information. If Provider should receive any legal request or process in any form seeking disclosure of Data, Provider shall provide the Agency with prompt prior notice of such request so that the Agency may seek a protective order or pursue other appropriate remedies to protect the confidentiality of such information. Provider agrees to furnish only that portion of the information which is legally required to be furnished and, in consultation with the Agency, to use all reasonable efforts to assure that the information is maintained in confidence by the party to whom it is furnished. Provider shall: (i) upon the request of the Agency or any regulatory entity, promptly provide the Agency or such regulatory entity with information regarding its security measures; (ii) immediately provide the Agency or any such regulatory entity with detailed information regarding any failure or breach of its security measures including, without limitation, how and when such failure or breach occurred and what actions Provider is taking to remedy such failure or breach; (iii) cooperate in the investigation of the failure or breach of such security measures at the

Agency's or any regulatory entity's request; and (iv) reimburse the Agency for its costs of notifying any individuals of the security breach if the Agency or any regulatory entity considers notification necessary or appropriate, as described in greater detail in Section 15.5 below.

- 15.5 Notification of Security Breach and Incident Response. Without limitation of the foregoing, Provider shall immediately advise the Agency in the event that it learns or has reason to believe that there has been unauthorized access to or use of, or any security breach relating to or affecting, Data, or that any person who has had access to Data has violated or intends to violate the terms of this Agreement, and Provider shall, at its own expense, cooperate with the Agency in investigating and responding to the foregoing, notifying customers or other affected individuals as required by law, and seeking injunctive or other equitable relief against any such person or persons who have violated or attempted to violate the security of Data. Provider bears the full and complete risk and liability for all loss, theft or destruction to any Data including, without limitation, whilst in transit to the Agency, and shall implement the BCP and DRP that enable Provider to take appropriate actions to address incidents of unauthorized access or misuse of Data. In the event any Data is modified, lost or destroyed due to any act or omission of Provider, or Provider Personnel, including without limitation, any breach of the security procedures described in this Article 15, Provider shall be responsible for the prompt regeneration or replacement of such Data. If Provider fails to correct or regenerate the lost or destroyed Data within the time reasonably set by the Agency, then the Agency may obtain data reconstruction services from a third party, and Provider shall cooperate with such third party as requested by the Agency. In addition to any other damages incurred by the Agency, Provider will be responsible for the actual costs incurred by the Agency for the reconstruction of Data by a third party. In the event it is determined that Data has been modified, lost or destroyed as a result of the willful conduct or negligence of Provider or Provider Personnel, the Agency may, in addition to and not in lieu of any other remedies afforded to it hereunder or at law or in equity, terminate this Agreement for cause pursuant to Section 11.2 of this Agreement.

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

available to the Agency at law or in equity, including but not limited to Provider's indemnification obligations set forth in Section 15.7(e) and Article 17 below.

15.6 Disposal.

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

15.7 Other Provider Obligations.

Provider shall:

- (a) and shall ascertain that all Provider Personnel and subcontractors shall, comply with any written request by the Agency to:
 - (i) provide information about Provider's or Provider Personnel's processing of Data;
 - (ii) otherwise provide reasonable assistance to the Agency as necessary to allow the Agency to comply with applicable Data Privacy and Security Laws or the requests of a competent supervisory authority;
 - (iii) cooperate with any competent supervisory authority in the course of its enquiries and abide by the advice of the supervisory authority with regard to the processing, collection or use of any Data;
- (b) promptly notify the Agency in writing if any complaints are received about the processing of Data from third parties and Provider shall not make any admissions or take any action which may be prejudicial to the defense or settlement of any such complaint and provide to the Agency such reasonable assistance as it may require in connection with such complaint;
- (c) only process Data in accordance with written instructions given by the Agency and correct or delete inaccurate Data as requested by the Agency;
- (d) hold in its possession such Data as is required for performance of its obligations hereunder only for such time as is required for performance of its obligations hereunder or as instructed by the Agency;

- (e) without limitation of the indemnification obligations set forth in this Agreement, Provider hereby agrees to indemnify, defend and hold harmless the Agency Indemnitees from and against any and all third party claims, including any Losses arising from any such third party claims (collectively, “**Claims**”), including without limitation actions by regulatory agencies and private Claims, where such Claims arise out of a Security Event (as defined below). For purposes of this Paragraph, a “**Security Event**” is an event where Data is accessed or received by an individual or entity who is not authorized to access or receive such information;
- (f) ensure that any Data is encrypted at the level that the Agency can accept (or split into two or more physical or data files, as applicable, with identifying keys provided to the Agency such that neither file on its own contains readable Data) prior to the transmission or delivery of such Data to the Agency over a public network or on physical media;
- (g) use such shipping company or other method of transportation for delivery of Data, as the Agency shall instruct, and procure appropriate insurance from insurers as stipulated by the Agency;
- (h) take reasonable steps to ensure the credentials, qualifications and reliability of those Provider Personnel that have access to Data, by performing background checks as appropriate;
- (i) ensure that all Provider Personnel who have access to Data execute the Agency’s applicable confidentiality agreement; and ensure that each contract that Provider executes with Provider Personnel shall reflect the terms of this Agreement to the extent that they apply to the Services to be supplied by Provider Personnel or to the extent that Provider Personnel have access to Data, and shall include provisions in favor of the Agency which are no less onerous than those in this Agreement, including this Section; and
- (j) ensure that all Provider Personnel who have access to Data have undergone (and continue to undergo) reasonably adequate training in the care and handling of Data.

ARTICLE 16 WARRANTIES

- 16.1 Provider Warranties. Provider represents and warrants that: (a) Provider will perform the Services with qualified personnel using due care, skill, and diligence, in accordance with the requirements set forth in this Agreement and at a level equivalent to international industry best standards and practices; (b) Provider has, or will have at the relevant time, the resources, capacity, expertise and ability in terms of equipment, software, know-how and personnel to provide the Services; (c) in rendering the Services, it and its personnel have all necessary rights, authorizations, licenses and Permits (as defined herein) to

provide the Services hereunder and to provide all related materials and services required under this Agreement; (d) each individual assigned to perform the Services shall have the proper skill, training, education, experience and background so as to be able to perform Services in a competent, professional and ethical manner; (e) reserved; (g) the Deliverables shall be delivered in a manner consistent with good commercial practice, reasonably free from defects in material and workmanship, and shall substantially conform to the Specifications for same and shall substantially meet the functional, performance and reliability requirements of the Agency as set forth in the Scope of Work or Specifications; and (h) Provider will perform the Services in line with the ethics codes and best practices rules applicable to the Agency and its Providers as set out in Schedule 9.2, as updated by the Agency from time to time, and as may otherwise be delivered by Agency to Provider from time to time.

- 16.2 Continuous Improvement and Cost-Effectiveness. Provider represents, covenants and warrants that it shall meet the continuous process improvement requirements set forth in Section 3.10 and that it will use commercially reasonable efforts to use efficiently the resources or services necessary to provide the Services in the most cost-effective manner consistent with the required level of quality and performance.
- 16.3 Warranty Period. Without limiting any of the Provider's maintenance and support obligations, unless otherwise specifically set forth in the Scope of Work, until one (1) year after Acceptance of a Deliverable (including, but not limited to, the Market Search Portal Solution and Documentation) (the "**Warranty Period**"), Provider will, at no charge to the Agency, furnish such materials and services as shall be necessary to correct any defects in the Deliverables, promptly correct any deficiencies which prevent such Deliverables from conforming or the Acceptance Criteria or Specifications or operating fully and correctly in conformance with the Specifications for same on the combination of the computer hardware, telecommunications equipment, the programming language and/or operating system environment specified in this Agreement or the Scope of Work, and correct such deficiency and the effects of such deficiency in prior affected Deliverables.
- 16.4 Additional Warranties. Provider represents and warrants that, it will provide the Services using proven, current technology that will enable the Agency to take advantage of technological advancements in its industry and support the Agency's efforts to maintain competitiveness in the markets in which it competes.
- 16.5 Non-Infringement. Provider represents, covenants and warrants that the Services and the Deliverables will not infringe or misappropriate any Intellectual Property Right or other proprietary rights of the Agency or any third party.
- 16.6 Viruses. Provider represents and warrants that it will ensure that no Viruses are coded or introduced into the Agency Systems or the Deliverables. Provider agrees that, in the event a Virus is found to have been introduced into the Agency Systems or the Deliverables, Provider shall use all commercially reasonable efforts at no additional charge to assist the Agency in eradicating the Virus and reducing the effects of the Virus, and if the Virus causes a loss of operational efficiency or loss of data, assist the Agency to the same extent to mitigate and restore such losses. If a Virus is found to have been introduced into the

Agency Systems or the Deliverables by virtue of Provider's breach of the foregoing representation or warranty, Provider shall reimburse the Agency for all Losses (as defined herein) incurred by the Agency as a result of such breach. "**Virus**" shall mean: (i) any program code, programming instruction or set of instructions intentionally constructed by any party, including, but not limited to the Provider and its contractors, and associates, affiliates or employees with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations; or (ii) any other code typically designated to be a virus.

- 16.7 Disabling Code. Provider represents and warrants that, without the prior written consent of the Agency, Provider will not insert into Deliverables or the Agency Systems any code which would have the effect of disabling or otherwise shutting down all or any portion of the Deliverables or the Agency Systems ("**Disabling Code**"). Provider further represents and warrants that Provider will not invoke such Disabling Code at any time. If any Disabling Code is found to have been included in the Deliverables or the Agency Systems by virtue of Provider's breach of the foregoing representation or warranty, Provider will indemnify the Agency for Losses incurred as a result of such breach.
- 16.8 Certifications Industry recognized certifications, as applicable, will be identified and made necessary at the time of contract.
- 16.9 Permits. The parties acknowledge that the Services and certain software and technical data to be provided under this Agreement and certain transactions under this Agreement may be subject to export controls under the laws and regulations of the U.S. and other jurisdictions. Provider will be responsible, as part of the Services, for securing all permits, licenses, regulatory approvals and authorizations, whether domestic or international, and including all applicable import/export control approvals (collectively, "**Permits**") required for Provider to provide the Services to the Agency or its designees and will take all lawful steps necessary to maintain such Permits during the Term. Provider will have financial responsibility for, and will pay, all fees and taxes associated with obtaining such Permits. The Agency will cooperate with Provider in securing such Permits. If Provider is not able to secure the Permits in its own name, the Agency will undertake to secure such Permits at the reasonable direction of Provider and at Provider's expense. Provider shall be solely responsible for compliance with all laws and regulations relating to data protection and privacy and/or trans-border data flow, as described in greater detail in Article 15.
- 16.10 Additional Warranties. In the Scope of Work, the parties may agree upon warranties which will apply to the Services and Deliverables to be provided, in addition to those set forth in this Article 16 ("**Additional Warranties**"). The warranties required by this Article 16 shall apply, whether or not the Scope of Work sets forth Additional Warranties.
- 16.11 Remedies for Breach of Warranties. In the event that the Deliverables or Services do not conform to the above warranties or any warranties in the Scope of Work, Provider shall, without prejudice to the Authority's other remedies under this Agreement or at law or equity, provide, at no charge, the necessary Deliverables and Services required to attain the levels or standards set forth in said warranties; provided, however, that Provider shall have no obligation to provide such necessary Deliverables and Services to the extent the

nonconformance is due to repairs or modifications that have been performed by persons not authorized by Provider (including the Authority and the Section 8 Affiliates) unless such repairs were performed with the written consent of Provider.

- 16.12 Notice of Problem. In the event that during the Term Provider becomes aware of an event, occurrence, error, defect or malfunction which Provider reasonably and in good faith anticipates would adversely and materially affect the Agency, then Provider will promptly provide the Agency with written notice of the event, occurrence, error, defect or malfunction and the adverse effect anticipated by Provider, as well as a proposed remedy therefor.
- 16.13 Business Disruption. In performing its Services hereunder, Provider will use diligent efforts to perform such services in a manner that minimizes the risk of undue disruption to the normal business operations of the Agency.
- 16.14 Duly Authorized. Provider makes the following representations:
- 16.14.1 Provider is a [_____] duly [formed/organized/incorporated] and in good standing under the laws of the State of [_____] and is qualified and in good standing as a foreign corporation under the laws of [the State of New York and] any jurisdiction where the ownership of its assets or the conduct of its business require Provider to be so qualified;
- 16.14.2 There is no action, suit or proceeding pending or threatened against or affecting Provider before or by any court, administrative agency or other governmental authority which in any way will impair Provider's ability to perform all of its obligations under, or which otherwise brings into question the enforceability or validity of the transactions contemplated by this Agreement;
- 16.14.3 Provider's execution, delivery, and performance of this Agreement has been duly authorized by all appropriate [corporate/limited liability company] action on the part of Provider. Provider has duly executed and delivered this Agreement and this Agreement constitutes the valid and binding obligation of Provider enforceable against Provider in accordance with the terms thereof and hereof;
- 16.14.4 Neither the execution and delivery by Provider of this Agreement, nor the consummation by Provider of the transactions contemplated hereby, nor compliance by Provider with the provisions hereof, shall conflict with or result in a breach of any of the provisions of the [certificate of or articles of incorporation or by-laws/certificate of formation or limited liability company agreement] of Provider or any amendments thereto, or any applicable law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or of any agreement or other instrument to which Provider is a party or by which it is bound, or constitute a default under any provision thereof;

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

ARTICLE 17 INDEMNIFICATION

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

17.2 Indemnification and Defense.

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

- (a) that any of the Services, Deliverables, Developer Tools, Pre-Existing Materials, Third Party Content or Third-Party Technology provided to the Agency or designees by Provider infringe upon the Intellectual Property Rights of any the Agency Indemnitee or a third party;
- (b) alleging a violation of laws or regulations by Provider, including any applicable U.S. or New York State employment and labor laws, or a failure by Provider to obtain required permits, rights or licenses or otherwise, including as set forth in Section 16.9;
- (c) alleging a breach by Provider of any obligation, representation or warranty made by Provider in this Agreement or Provider's, its subcontractors' or its or their employees' or agents' obligations with respect to the Agency Confidential Information, and in particular, breach of Provider's obligations under Section 14.6 or Article 15;
- (d) alleging a breach by Provider, its subcontractors or its or their employees or agents of the Agency's written policies or procedures as set out in Schedule 9.2, as may be amended from time to time, or any other policies and procedures adopted by the Agency and delivered to Provider from time to time;
- (e) arising out of or in connection with the injury of or damage to any person or real or tangible personal property to the extent such injury or damage is

caused by the negligence or willful misconduct of any person for whose conduct Provider is liable;

- (f) arising out of or in connection with any claim for payment of compensation, salary or benefits, including social contributions and severance payments, asserted by an employee or agent of Provider or its subcontractors, or arising out of removal of any personnel under Section 7.3 or any other claims or demands made, or actions brought, by an employee or agent of Provider or its subcontractors in connection with his or her employment;
- (g) arising out of or related to occurrences Provider is required to insure against pursuant to Article 19;
- (h) for payment of compensation (including benefits) or salary asserted by any employee or agent of Provider or its subcontractors associated with a determination by any federal, state or local governmental agency, any court or any other applicable entity that the employees or agents of Provider or its subcontractors are employees of the Agency for any purpose or that the Agency is a co-employer of such personnel;
- (i) for premiums, contributions, or taxes payable under any workers' compensation, unemployment compensation, disability benefit, old age benefit, or tax withholding or failure to withhold for which the Agency may be adjudged liable as an employer with respect to any employee or agent of Provider or any Provider subcontractor or for taxes, interest and penalties for which Provider is liable;
- (j) made based on acts or omissions, events, matters or circumstances of Provider or any Provider subcontractor or its or their employees or agents thereof or failure of Provider to comply with Section 17.3;
- (k) for theft or misconduct by an employee or agent of Provider or its subcontractors; or
- (l) asserted against any the Agency Indemnitee but resulting from an act or omission of Provider or its subcontractors in its capacity as an employer or prospective employer of a person, including claims of harassment, discrimination or wrongful discharge.

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

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

- 17.3 Indemnity by Subcontractors. Provider shall cause to be included in each subcontract for Services the provisions of this Article 17 for the benefit and protection of the Agency, except that the wording of such indemnity shall state that the benefits thereof run from the subcontractor to the Agency as a third-party beneficiary.
- 17.4 No Remedies Exclusive. The remedies of the Agency with respect to any matter under this Agreement shall not be limited to the remedies set forth herein; provided, that the Agency shall not receive a duplicative recovery.

ARTICLE 18 LIMITATIONS OF LIABILITY

- 18.1 Damages. EXCEPT AS SET FORTH IN SECTION 18.3 BELOW AND IN THE STANDARD CLAUSES, THE MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT OF EITHER PARTY FOR ANY DAMAGES AND COSTS SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE FEES DUE AND OWING BY THE AGENCY TO PROVIDER UNDER THIS AGREEMENT
- 18.2 No Consequential Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES.
- 18.3 Exclusions. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS SET FORTH IN SECTIONS 18.1 AND 18.2 ABOVE SHALL NOT APPLY TO (a) PROVIDER'S OBLIGATIONS UNDER Article 17 (INDEMNIFICATION), (b) CLAIMS OR CAUSES OF ACTION WHICH ARISE FROM PROVIDER'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, OR THAT OF ITS SUBCONTRACTORS, ESCROW AGENT OR ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, (c) BREACH OF PROVIDER'S OBLIGATIONS UNDER Article 13 (CONFIDENTIAL INFORMATION), (d) BREACH OF PROVIDER'S OBLIGATIONS UNDER Article 15 (PRIVACY AND DATA SECURITY), (e) PROVIDER'S FAILURE TO COMPLY WITH APPLICABLE LAWS

OR REGULATIONS, AND (f) WRONGFUL TERMINATION OR ABANDONMENT OF THIS AGREEMENT BY PROVIDER OR REFUSAL OF PROVIDER TO PROVIDE TERMINATION ASSISTANCE. IN ADDITION, THE LIMITATIONS SET FORTH IN SECTIONS 18.1 AND 18.2 ABOVE SHALL NOT APPLY TO THE AGENCY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION PAID OR TO BE PAID UNDER THIS AGREEMENT.

- 18.4 Further Exclusions. NOTWITHSTANDING ANYTHING TO THE CONTRARY, the following AMOUNTS SHALL NOT be counted toward Provider's liability cap SET FORTH IN SECTION 18.1 ABOVE: (i) deliverable credits or service level credits; (ii) amounts withheld by the Agency due either to incorrect charges by Provider or non-conforming Services; (iii) amounts paid by the Agency but subsequently recovered from Provider due either to incorrect charges by Provider or non-conforming Services; or (iv) invoiced charges and other amounts that are due and owing to Provider for Services provided hereunder.

ARTICLE 19 INSURANCE

- 19.1 Insurance. Provider agrees, at its own expense, to provide and keep in full force and effect during the term of this Agreement and for a period of five (5) years thereafter, the kinds and minimum amounts of insurance coverages as indicated below or as required by law, whichever is greater, with insurers in good standing, possessing an A.M. Best rating of not less than A VIII, and authorized to do business under the laws of the United States and of the State of New York and of the state in which performance of the Services occurs, and if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency.

19.1.1 Comprehensive General Liability written on an occurrence coverage form, including, without limitation, Bodily Injury and Property Damage Liability, Products and Completed Operations Liability, Contractual Liability and Personal and Injury Liability. The minimum limits are One Million U.S. Dollars (USD 1,000,000) per each occurrence, Two Million U.S. Dollars (USD 2,000,000) aggregate (Products and Completed Operations) and Four Million U.S. Dollars (USD 4,000,000) general aggregate. If coverage is written under a blanket policy, an aggregate per location endorsement is required. The policy should be written on the current edition of ISO occurrence form CG 00 01, or its equivalent, and must not include any exclusions or limitations other than those incorporated in the standard form. Coverage shall include, but not be limited to, the following:

- (a) Premises liability;
- (b) Independent contractors;
- (c) Blanket contractual liability, including tort liability of another assumed in a contract;

- (d) Defense and/or indemnification obligations, including obligations assumed the Contract;
- (e) Cross liability for additional insureds; and
- (f) Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by the Contract.

19.1.2 Workers' Compensation and Employers' Liability with statutory coverage for Workers' Compensation and minimum limits of One Million U.S. Dollars (USD 1,000,000) per accident, One Million U.S. Dollars (USD 1,000,000) disease (each employee), and One Million U.S. Dollars (USD 1,000,000) disease (policy limit) for Employers' Liability or coverage and limits complying with all regional, country, state and local requirements applicable to the Services. Such coverage must be evidenced by the following:

- (a) CE-200 – Certificate of Attestation for New York Entities with No Employees and Certain Out-of-State Entities that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required; or
- (b) C-105.2 – Certificate of Workers' Compensation Insurance (or U-26.3 if insured through the State Insurance Fund); or
- (c) SI-12 – Certificate of Workers' Compensation Self-Insurance (or GSI-105.2 Certificate of Participation in Workers' Compensation Group Self-Insurance); or
- (d) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.

19.1.3 Technology Errors and Omissions Liability (or Professional Liability) insurance with limits of not less than \$1,000,000 for each claim and \$2,000,000, in the aggregate. The coverage must include the following:

- (a) Insure loss arising from any claim or claims made arising out of the scope of services during the policy period by reason of any covered error, omission or negligent act committed in the conduct of the insured's professional business during the policy period;
- (b) If coverage is written on a claims-made policy, Provider warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than five years from the end of the Term; Written proof of this extended reporting period must be provided to the Agency prior to the policy's expiration or cancellation;
- (c) The policy shall cover professional misconduct or lack of ordinary skill for the positions defined in the Scope of Work; and
- (d) This policy requirement applies to both primary and excess liability policies, as applicable.

- 19.1.4 Data Breach and Privacy/Cyber Liability Insurance, in an amount not less than One Million U.S. Dollars (\$1,000,000) each claim, including coverage for failure to protect confidential information and failure of the security of Provider's computer systems due to the actions of Provider which results in unauthorized access of the data. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. Said insurance shall provide coverage for damages arising from, but not limited to the following:
- (a) Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
 - (b) Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
 - (c) Privacy notification costs;
 - (d) Regulatory defense and penalties;
 - (e) Website media liability; and
 - (f) Cyber theft of customer's property including, but not limited to, money and securities.
- 19.1.5 Umbrella/Excess Liability with minimum limits of \$1,000,000 for each claim and in the aggregate.
- 19.1.6 Automobile Liability One Million U.S. Dollars (USD 1,000,000) per person One Million U.S. Dollars (USD 1,000,000) per accident covering bodily injury (including death), and property damage for all vehicles that Provider owns, hires or leases.
- 19.1.7 Commercial Blanket Fidelity Bond Insurance, which shall include a customer protection endorsement, with minimum limits of Seven Hundred and Fifty Thousand U.S. Dollars (USD \$750,000). Such policy must be provided on a "loss sustained form" or "loss discovered form," and coverage must include the following:
- (a) Allowance for reporting of circumstances or incidents that might give rise to future claims;
 - (b) An extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy;
 - (c) Any warranties required by the insurer must be disclosed and complied with. Such coverage shall extend coverage to include the principals (all directors, officers, agents and employees) of Provider;
 - (d) Coverage for third party fidelity; and
 - (e) A provision that arrest and conviction shall not be a coverage condition.
- 19.1.8 The Agency and its directors, officers, employees, and agents shall be named as an additional insured under each such policy of insurance obtained by Provider under 19.1.1, 19.1.3, 19.1.4, and 19.1.5 above.

19.1.9 The foregoing insurance requirements set forth the minimum amounts and scopes of coverage to be maintained by Provider and are not to be construed in any way as a limitation on Provider's liability under this Agreement. The insurance coverages listed 19.1.1 and 19.1.5 shall be primary and will not participate with nor will be excess over any valid and collectable insurance or program of self-insurance carried or maintained by the Agency; for the coverages listed in Section 19.1.1, 19.1.2 and 19.1.5, the Provider shall provide a waiver of subrogation satisfactory to the Agency.

19.1.10 Provider shall furnish Certificates of Insurance issued by the applicable insurance carriers, not local agents thereof, evidencing all of the foregoing insurance coverages prior to or upon execution of an Agreement. Certificates shall name the Agency, at 641 Lexington Avenue, 5th Floor, New York, New York 10022 as a loss payee. Full copies of the policies required above shall be furnished to the Agency upon request. All of the above described policies shall provide (through affirmative endorsement to the policies) that no less than thirty (30) days' prior written notice of cancellation, material modification, reduction in coverage or non-renewal shall be given to the Agency. The failure of Provider to comply with any of the terms of these policies shall not adversely affect the Agency's coverage thereunder. Certificates of Insurance evidencing any modification, renewal or replacement of any of these insurance coverages shall be furnished to the Agency within ten (10) days after such modification, renewal or replacement. Certificates must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions shall not exceed \$100,000.00. Such approval shall not be unreasonably withheld, conditioned or delayed. Provider shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. Any failure on the part of the Provider to provide Certificates of Insurance to the Agency in accordance with the terms of this Article 19 shall be deemed a remediable material breach by the Provider under the terms of 11.2 (b). In the event that any Services under an Agreement are to be rendered by persons other than the Provider's own employees, Provider shall arrange for such persons to forward to the Agency, prior to commencement of Services by them, Certificates of Insurance evidencing such amounts, in such form, and with such insurance companies as are satisfactory to the Agency. Provider shall not, without the prior written approval of the Agency, provide the required insurance through self-insurance.

ARTICLE 20 DISPUTE RESOLUTION

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

commence as of the date a party informs the other party in writing of the existence of a Dispute (**“Dispute Commencement Date”**).

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

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

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

20.4 Governing Law and Jurisdiction. Notwithstanding anything to the contrary in this Agreement, if either Party is unable to resolve a Dispute in accordance with Section 20.2 (Informal Dispute Resolution) and Section 20.3 (Failure to Resolve Dispute) then either

party shall be entitled to seek relief, including preliminary or final injunctive relief solely in a court of competent jurisdiction located in New York County, or Albany County, New York. Each of the parties waives any objection that it may have based on improper venue or forum non conveniens to the conduct of any such action or proceeding in such court.

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

ARTICLE 21 COMPLIANCE WITH LAWS; STANDARD CLAUSES

21.1 Compliance with Laws and Regulations Generally.

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

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

promptly remedy such noncompliance. Provider will be responsible for any fines and/or penalties incurred by the Agency arising from Provider's noncompliance with Applicable Laws or the Agency's noncompliance with Applicable Laws due to use by the Agency of any Services.

21.2 Agency's Standard Terms. Provider shall comply in all respects with the Agency's Standard Contract Clauses (the "**Standard Clauses**") set forth in **Appendix I** attached hereto and incorporated by reference herein.

21.3 Conflict. In the event of a conflict between the terms of this Agreement, including the Scope of Work, and the terms of the Standard Clauses, the terms of the Standard Clauses shall govern.

21.4 Liens.

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

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

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

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

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

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

qualification, (II) take such actions as shall be necessary to resolve such circumstances as soon as practicable, and (III) permit the Agency and their external auditors, to perform such procedures and testing as are reasonably necessary for their assessment of the operating effectiveness of Provider's policies, procedures and internal controls.

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

For the avoidance of doubt, there shall be a direct connection between the type of Services provided by Provider to the Agency and the contents in the Type II report referred to above, including mainframe platform, distributed systems platforms, network platforms, Internet and Virtual Private Network platforms, and general controls and security practices procedures. In the event that the Provider must perform an audit on a third party's behalf, the Provider and the Agency shall negotiate in good faith a reasonable fee for such audit's cost.

- 21.6 International Considerations. When Provider provides Services from outside of the United States, without limiting any of Provider's other obligations set forth in this Agreement, Provider shall be responsible for compliance with all Applicable Laws governing the Services in the location(s) from which the Services will be provided and shall be responsible for compliance with all export laws and import laws of the location(s) from which Services will be performed.
- 21.7 Privacy Laws. Without limitation to the provisions of this Article 21 and Article 15, Provider shall comply with all Applicable Laws relating to the Confidential Information and privacy rights of the Agency, and/or its customers, employees and consumers, including Title V of the Gramm-Leach-Bliley Act, 15 USC §6801 et. seq. and the Economic Espionage Act, 18 USC §1831 et. seq. Provider acknowledges that the Agency may be regulated as a New York State corporate governmental agency constituting a public benefit corporation under Applicable Laws.

21.8

DEFINITIONS

The following defined terms are defined in the indicated Sections of this Agreement. Defined terms may be added or removed as appropriate based on the scope of work.

<u>Defined Term</u>	<u>Section in which Defined</u>
Acceptance	6.3.2
Acceptance Criteria	6.2
Acceptance Period	6.3.1
Additional Warranties	16.10
Agreement	Preamble
Applicable Law	21.1.1
Auditor Attestation	21.5(b)
Benchmarking	3.11
Billing Review	4.6.1
Provider Services Centers	2.2
Candidate	7.2
Catastrophic Failure	3.5.1(b)
Change Proposal	2.6
Change Request	2.6
Claims	15.7(e)
Commencement Date	3.1.1
Confidentiality Agreement	Article 13
Confidential Information	13.1
Control	11.2(i)
Customer Information	15.1(a)
Data	15.1(b)
Data Privacy and Security Laws	15.1(c)
DED	6.2.2
Dedicated Provider Personnel	7.1
Deliverables	Error! Reference source not found.
Developer Tools	11.5.1
Disabling Code	16.7
Dispute	20.1
Dispute Commencement Date	20.1
Divested Entity	22.4.2
Effective Date	Preamble
Employee Information	15.1(d)
Fees	4.1.1
FOIL	7.12
Force Majeure Event	22.14
Intellectual Property Rights	14.4
IT Laws	21.1.2
Key Provider Services Center Personnel	7.1
Legacy Website	Preamble
Losses	17.1
Milestones	2.2

<u>Defined Term</u>	<u>Section in which Defined</u>
New Services	2.7
Non-Operational	10.2
Object Code	5.1
the Agency	Preamble
the Agency Confidential Information	13.1
the Agency Data	Article 15
the Agency's Equipment and Facilities	9.1
the Agency Furnished Materials	14.4
the Agency Indemnatee	17.2.1
the Agency Marks	22.16
Agency Project Manager	8.1
the Agency Systems	14.6
Performance Audit	4.7.1
Performance Failure	4.7.2
Permits	16.9
Personal Data	15.1(e)
Pre-Existing Materials	14.5
Procedures Manual	2.5
Progress Report	3.7
Project	Preamble
Proposal	2.1
Residuals	14.9
Section 404	21.5(a)
Security Event	15.7(e)
Service Levels	3.5.1(a)
Service Level Credits	3.6.1
Service Level Matrix	3.5.1(a)
Services	Preamble
Site	2.2
SOA	21.5(a)
Source Code	5.1
Specifications	Error! Reference source not found.
Scope of Work	2.2
Steering Committee	8.4
Step-In	3.6.3(c)
Provider	Preamble
Provider Confidential Information	13.1
Provider Personnel	7.1
Provider Project Manager	8.2
Temporary Extension of Services	12.3
Term	11.1
Termination/Expiration Assistance	12.1
Termination/Expiration Assistance Period	12.1
Third Parties	3.3

<u>Defined Term</u>	<u>Section in which Defined</u>
Third Party Content	14.7
Third Party Technology	14.7
Transition	3.1.1
Transition Plan	3.1.1
Transition Services	3.1.1
Turnover Plan	12.1.1(a)
Virus	16.6
Warranty Period	16.3
Work Around Plan	3.6.3(c)

ARTICLE 22 MISCELLANEOUS

- 22.1 Similar Services. During the Term and following the expiration and/or termination of this Agreement, the Agency may enter into, and Provider shall not oppose the Agency's entering into, an arrangement with a third party or third parties pursuant to which such third party or third parties may provide services similar to the Services. Provider shall have no responsibility to Agency with respect to such Services.
- 22.2 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Agreement.
- 22.3 Modification of Agreement. Except as otherwise provided herein, this Agreement may be modified only by a writing signed by both parties to this Agreement.
- 22.4 Assignment.
- 22.4.1 This Agreement shall be binding on the parties' respective successors and permitted assigns. The Agency shall have the right without any requirement to obtain consent hereunder, to assign this Agreement to any affiliate or any successor by merger, acquisition or consolidation, or to an acquirer of all or substantially all of the assets of the Agency. Provider may not assign or transfer all or any portion of this Agreement in any manner, either voluntarily or involuntarily, by operation of law or otherwise, or any interest, payment or rights hereunder without the prior written consent of the Agency and any assignment or transfer not so approved shall be considered null and void *ab initio*.
- 22.4.2 In the event an entity or unit of the Agency or the business or part of an entity or unit of the Agency is sold or otherwise divested (the "**Divested Entity**"), Provider shall, upon the Agency's written request, provide all or part of the Services and Deliverables to the Divested Entity, on the terms and conditions

set forth in this Agreement and the Scope of Work for the period requested by the Agency, which period shall not exceed the Term hereof.

22.5 Subcontracting.

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

PRE-APPROVED SUBCONTRACTORS

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

Subcontractor Corporate Name	Subcontractor Address	Subcontractor contact information

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

- 22.7 Independent Provider. Provider is acting, in performance of this Agreement, as an independent contractor and nothing herein shall create an agency, partnership, joint venture or other relationship between the parties. Personnel supplied by Provider hereunder are not the Agency's employees or agents and Provider assumes full responsibility for their acts. The Agency shall not be liable to any such employees for any purposes, including for claims or causes of action arising out of or related to their assignment to the Agency or release therefrom. Provider shall be solely responsible for the payment of compensation of Provider's employees assigned to perform Services hereunder and such personnel shall be informed that they are not entitled to the provision of any Agency employee benefits. The Agency shall not be responsible for payment of workers' compensation, disability benefits, social security contributions, severance payments or unemployment insurance or for withholding and paying employment taxes for any Provider employee, but such responsibility shall be solely that of Provider. In the event that any Provider employee performing Services hereunder is found to be not an employee of Provider for any purpose, including tax purposes, Provider shall immediately take appropriate corrective action or remove said employee from performing services hereunder and, if requested by the Agency, provide a qualified replacement as set forth in Article 7.
- 22.8 Governing Law, Jurisdiction and Service of Process. This Agreement shall be governed exclusively by and construed in accordance with the laws of New York. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. The parties consent and agree that all legal proceedings arising out of or relating to this Agreement shall be exclusively maintained in either the federal or state courts located in New York County, New York. Provider hereby designates its office at [INSERT PROVIDER ADDRESS] for service of process in any action or proceeding arising under this Agreement and waives any international treaty provisions with respect to such service of process. Service of process in any action or proceeding arising hereunder shall be by mail only.
- 22.9 Validity. To the extent any provision of this Agreement shall be held to be void, illegal or unenforceable by any court or regulatory agency, the same shall have no effect on the validity or enforceability of the remaining provisions and this Agreement shall be carried out as if any such invalid or unenforceable provision was not contained herein.
- 22.10 Remedies Cumulative. The enumeration of specific remedies shall not be exclusive of any other remedies under this Agreement or available under law or equity.
- 22.11 Notices. Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (a) if by hand delivery, upon receipt thereof by an authorized officer of the recipient party, (b) if mailed, ten (10) days after deposit in the mail, first class, postage prepaid, certified mail return receipt requested, (c) if by next day express delivery service, upon such delivery or (d) if by facsimile upon confirmation of receipt. All notices shall be addressed as follows (or such other address as either party may in the future specify in writing to the other):

the Agency:

New York State Housing Finance Agency
641 Lexington Avenue
New York, NY 10022
Attn: SVP and Counsel

If to Provider at:

- 22.12 Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all prior or contemporaneous agreements, understandings, negotiations or warranties or representations between the parties in connection with the subject matter of this Agreement, if any. In the event of a conflict between the terms and conditions of this Agreement and the Scope of Work attached hereto, then the terms of the Scope of Work shall prevail. Any amendment to this Agreement in the Scope of Work shall only be effective by a specific reference to the Section of this Agreement being amended.
- 22.13 Waiver. The failure of either party to promptly enforce or seek remedy for the breach of any provision of this Agreement shall not constitute a waiver of such provision or any part thereof. No term or provision shall be deemed waived, and no breach hereof shall be deemed consented to, unless such waiver or consent shall be in writing and signed by the party which has given such waiver or consent. Any such waiver or consent shall not constitute a waiver of, or consent to, any other term or provision.
- 22.14 Force Majeure. Subject to Provider's obligations under Article 10 hereof, neither party shall be liable to the other for any delay or failure to perform due to causes beyond its reasonable control (each such cause, a "**Force Majeure Event**"). Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay, provided that in the event Provider is delayed in its performance by reason of such cause, no such extension shall be made unless notice thereof is presented by Provider to the Agency in writing within five (5) business days after the start of the occurrence of such delay, no payment shall be made by the Agency for any fees or expenses incurred by Provider by reason of such delay, and Provider shall use best efforts to perform its obligations during such period of delay.
- 22.15 Publicity. Provider agrees that it will not, without prior written consent of the Agency in each instance (i) use in advertising, publicity or otherwise the name of the Agency or any director, officer, employee or agent of the Agency nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction, or simulation thereof owned by the Agency, (ii) represent directly or indirectly that any product or service provided by Provider has been approved or endorsed by the Agency, or (iii) refer to the existence of this Agreement in press releases, advertising or materials distributed to prospective customers.

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

terminate this Agreement immediately upon notice and to recover in addition to any other damages which the Agency may otherwise be entitled, the full amount of such fee, compensation, remuneration or reimbursement.

- 22.19.3 Provider represents and warrants that (i) it has not violated and will not violate any the Agency policies of which Provider has been or may be given notice regarding the offering of inducements, gift or gratuities in connection with this Agreement; (ii) it has disclosed to the Agency any relations it has with third parties which could jeopardize its ability to provide its services to the Agency fully and on a timely basis; (iii) no officer, director or employee, or any member of his or her immediate family, has or will have, any financial interest in any service provider engaged by the Agency pursuant to Provider's recommendation; and (iv) it will not, without the Agency's prior written consent, accept any rebate, commission or other consideration related to the Services from any third party without passing along the full benefit of any such rebate, commission or consideration to the Agency.
- 22.19.4 Provider agrees and shall instruct its personnel that any Provider recognition, awards or other Provider logo-marketing items may not be distributed by its personnel on-site at any the Agency location.
- 22.20 Surviving Articles and Sections. All provisions of Sections 3.2, 3.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.10, 7.1, 7.11, 7.12 and 11.5, and Article 12, Article 13, Article 14, Article 15, Article 16, Article 17, Article 18, Article 20 and Article 22 shall survive the termination of this Agreement for any reason or the completion of Services.

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

22.22 New York State Executive Law Article 15-APursuant to New York State (“NYS”) Executive Law Article 15-A, the Agency recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified minority-and women-owned business enterprises (“MWBEs”) in the performance of the Agency’s contracts. For purposes of this Agreement, the Agency hereby establishes an overall goal of 30% for MWBE participation. Attached hereto as Exhibit B, is the Provider’s Utilization Plan, PROC-2 form. Thereafter, the Provider is required to submit a quarterly Cumulative Payment Statement, PROC-6 form, on a quarterly basis during the implementation of the Market Search Portal Solution for documenting the progress made towards achievement of the MWBE goal of this Agreement. The quarterly Cumulative Payment Statement, PROC-6 form, attached hereto as Exhibit C, must be submitted to report this information for the quarters ending March 31st, June 30th, September 30th and December 31st. Quarterly Cumulative Payment Statements shall be submitted, in PDF format, to Econ.Opportunity@hcr.ny.gov by April 10th, July 10th, October 10th, and January 10th. The Provider shall comply with the provisions of the Agency’s Participation by Minority Group Members and Women Requirements and Procedures for Contracts, attached hereto and incorporated herein as Appendix II. In accordance with 5 NYCRR §142.13, the Provider acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in this Agreement, such finding constitutes a breach of this Agreement and the Agency may withhold payment from the Provider as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Provider achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under this Agreement.

The PROC-6 form may be downloaded at the following address:

<https://hcr.ny.gov/system/files/documents/2019/02/proc6-cumulativepaymentstatement.xlsx>

22.23 Equal Opportunity Requirements and Procedures. The Provider’s completed [EEO Staffing Plan, PROC-1 form](#) is attached hereto as Exhibit D. Thereafter, this information is to be submitted on a quarterly basis during the term of this Agreement to report the actual workforce utilized in the performance of this Agreement by the specified categories listed including ethnic background, gender, and Federal occupational categories. The quarterly [EEO Workforce Utilization Report, PROC-5 form](#) and [Instructions](#), attached hereto as Exhibit E, must be submitted to report this information for the quarters ending March 31st, June 30th, September 30th and December 31st. Quarterly Workforce Reports shall be submitted, in PDF format, to Econ.Opportunity@ny.hcr.gov by April 10th, July 10th, October 10th, and January 10th.

The PROC-5 form and Instructions may be downloaded at the following addresses:

<https://hcr.ny.gov/system/files/documents/2019/02/proc5-workforceutilization.xlsx>
and

https://hcr.ny.gov/system/files/documents/2022/07/proc-5-instructions_for_workforce_utilization_form_eeo-1_final.pdf .

The Provider shall comply with the provisions of the Human Rights Law, and all other New York State and Federal statutory and constitutional non-discrimination provisions. The Provider shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

NEW YORK STATE HOUSING FINANCE AGENCY

By: _____ Date: _____
Name:
Title:

AGREED AND ACCEPTED TO:

[NAME OF PROVIDER]

By: _____ Date: _____
Name:
Title:

Approved as to Form by Legal:

By: _____
[_____]
Supervising Attorney

Schedule 2.3
Scope of Work

STATEMENT OF WORK

[Proposers to submit their proposed Scope of Work in this Schedule 2.3, which shall address all of the requirements in Section 9 and the Requirements Matrix in Attachment 2 of the RFP.]

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Schedule 3.5.1
Service Levels

[Proposers to submit their proposed Service Levels in this Schedule 3.5.1, which shall address all of the requirements in Section 9 and the Requirements Matrix in Attachment 2 of the RFP.]

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Schedule 4.1
Fees

[Proposers to their proposed fees in this Schedule 4.1, based on Attachment 7 of the RFP.]

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Schedule 9.1
Software and Tools of the Agency and Provider

(Software and Tools are detailed in the SOW, Schedule 2.3 of this MSA)

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Schedule 9.2
The Agency's Code of Conduct

NEW YORK STATE HOUSING FINANCE AGENCY
Vendor Code of Conduct

It is the responsibility of any on-site vendor to maintain a professional work environment at all times when present at any of the Agency's facilities or otherwise engaged in conduct on behalf of the Agency's business ("Agency" is defined collectively as Housing Trust Fund Corporation; New York State Division of Housing and Community Renewal, Affordable Housing Corporation, State of New York Mortgage Agency, and the Housing Finance Agency). On-site vendors are expected to consistently exercise the highest level of professionalism and to exhibit the highest ethical standards. All on-site vendors are expected, at a minimum, to consistently perform at a satisfactory level in their position.

On-site vendors are required to treat Agency staff with dignity and respect and to conduct themselves in a courteous and professional manner at all times. On-site vendors are never to harass or verbally abuse Agency staff or those with whom the Agency does business including, without limitation, other vendors, service representatives and the general public.

The Agency maintains a professional work environment. On-site vendors must dress in a manner appropriate for the conduct of the Agency's business. Outlandish or overly casual attire is prohibited. Smoking (including e-cigarettes) is prohibited in all enclosed areas of the Agency. Personal use of Agency communication and information systems must be minimized.

On-site vendors are prohibited from taping work-related conversations, whether such conversations are by telephone, in person or by any medium without the written permission of the Agency's Counsel.

Certain types of conduct may result in immediate removal of the vendor from the Agency site(s) and business. This type of conduct includes, but is not limited to, the following:

1. Fighting, instigating a fight, threatening violence, disruptive behavior, harassment or verbally abusing Agency staff, other vendors, or those with whom the Agency does business;
2. Use of or possession of illegal drugs, alcohol or other controlled substances on Agency property or being under the influence of same on an Agency site(s);
3. Possession of firearms or other weapons on Agency property;
4. Abuse or misuse of Agency property or equipment including, but not limited to, the Agency's information or communication systems;
5. Theft or attempted theft of Agency property, information (proprietary or otherwise) or time or the property of another on-site vendor or removing or attempting to remove Agency property or information from the premises without proper authorization;
6. Falsification of documents or any other misleading information on documents or records;
7. Providing false information in an official Agency investigation or inquiry or willfully failing to cooperate with such investigation;
8. Any actions that cause or contribute to an unsafe condition or health hazard or any lack of due and proper care that may affect Agency staff;
9. Any illegal or unethical behavior, whether in the course of the on-site vendor's presence at the Agency or not, that creates potential liability to the Agency by continuing to allow the on-site vendor access to the Agency or which projects an unfavorable image of the Agency to the public;
10. Unauthorized use of the Agency's names, stationeries and/or logos for any purpose;
11. Unauthorized use of the on-site vendor's association with the Agency for the purpose of or in furtherance of personal business or beliefs;
12. Conviction of a crime that creates potential liability to the Agency if the Agency continues to allow the on-site vendor access to the Agency or the Agency's business from the actions of the convicted on-site vendor or which projects an unfavorable image of the Agency to the public;
13. Unauthorized dissemination of Agency information in violation of Agency policy and procedures including, without limitation, those pertaining to outside contacts;
14. All forms of illegal discrimination are prohibited. Sexual Harassment and/or other illegal discriminatory acts including, but not limited to, creating or contributing to a hostile work environment. On-site vendors and Agency staff have the right to a work environment free from illegal intimidation and harassment. Sexual harassment of Agency staff or others with whom the Agency does business or engaging in acts of illegal discrimination is prohibited. The Agency prohibits any form of illegal physical, verbal, or visual

harassment. On-site vendors who are found to have sexually harassed others; conducted themselves in a sexually improper manner; engaged in any form of illegal discrimination; or otherwise violated the Agency's policies and procedures prohibiting sexual harassment and discrimination in the workplace may be subject to removal from the Agency site(s) and business.

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NEW YORK STATE HOUSING FINANCE AGENCY

INFORMATION SYSTEMS POLICY

September 2008

I. INTRODUCTION

The Information Systems of the New York State Housing Finance Agency (and affiliated Agencies) are made available to on-site vendors as a tool in conducting the Agency's business. The standards described below apply to all on-site vendors of the Agency. They are intended to illustrate the range of acceptable and unacceptable uses of the Agency's Information Systems and are not necessarily exhaustive. Questions about specific uses not enumerated in this policy should be directed to the Program Manager and/or the Information Technology Department. Failure to adhere to the Information System Policy can result in suspension from use of the Agency's information systems and/or disciplinary action up to, and including, removal from the Agency site(s) and business.

This Policy may be revised and supplemented on an as needed basis as determined by the Agencies. This Policy replaces and supersedes the Agency's prior policy, "Information Systems Policies," dated August 2000, as well as policies set forth by the memoranda, "Use of Agency's E-Mail System," dated November 9, 1998, and "Electronic Mail Policy," distributed October 11, 1996.

II. DEFINITIONS

Information Systems include, but are not necessarily limited to:

- Hardware (e.g., PCs, servers, laptop computers, printers, scanning equipment, fax machines, photocopiers, telephones, cell phones, and Blackberries)
- Software (e.g., Windows, Word, WordPerfect, Excel, GroupWise, PowerBuilder, .NET systems, vendor-supplied systems)
- Data (e.g., word processing files, spreadsheet files, database files, graphical images, audio files, video files, emails, faxes and voicemails)
- Storage media (e.g., disk drives, flash drives, CDs, DVDs, diskettes and tapes)
- Information Services (e.g., the Internet, LexisNexis, ADP, Bloomberg, and online banking services accessed via the Agency's hardware).

III. BUSINESS AND PERSONAL USE OF THE AGENCY'S INFORMATION SYSTEMS

Non-business use of the Information Systems is only permitted as specifically provided in these Policies. The Agency's Information Systems are not private and are subject to monitoring by authorized Agency personnel and agents.

Whenever using the Agency's Information Systems for business or permitted personal purposes, whether logged in from the office or a remote location, all on-site vendors must consistently exercise sound judgment in the use of the Agency's Information Systems. The Agency's Information Systems must be used in a responsible, professional, ethical, lawful, appropriate and secure manner.

On-site vendor use of the Agency's Information Systems, whether for business or personal purposes, is conditional and a privilege, not a right. The Agencies expressly reserve the right, in their sole discretion, to determine on-site vendor eligibility to use the Agency's Information Systems as well as the nature and extent of utilization, and may revoke or modify on-site vendor usage privileges at any time.

Personal Use

Personal use of the Agency's Information Systems is any use other than use for the Agency's business. Incidental personal use of the Agency's Information Systems is permitted on a limited basis. Reimbursement is required for such things as personal long-distance telephone calls and fax usage. The Agencies may monitor the Agency's Information Systems, including telephone usage, for both excessive personal usage and compliance with these Policies. Personal use can be revoked at will at any time by the Agency.

Principles of Acceptable Use:

- The Agency's Information Systems may be used for incidental and necessary personal purposes, such as sending personal email messages and making telephone calls, provided that such use is in a limited amount, does not conflict with the proper exercise of the on-site vendor's duties, and does not interfere with the business use and needs of the Agencies.
- Incidental personal data of a very limited quantity may be stored on the Agency's Information Systems equipment. Personal data which may not be stored on the Agency's equipment includes, but is not limited to, audio files (e.g., mp3 and wma files), video files (e.g., wmv and avi files), large sets of multiple photographs, and large graphical image files (e.g., jpg and gif files).

Unacceptable Personal Use includes but is not limited to:

- Utilization of the Agency's Information Systems for any unlawful or improper purpose, or a purpose prohibited by Agency's rules, regulations, policies and procedures, e.g.:
- Any improper, illegal, fraudulent or malicious conduct through use of the Agency's Information Systems, or use of Agency's Information Systems in the-commission of a crime;

- Sending, receiving, storing, browsing or viewing material that is improper, illegal, discriminatory, harassing, defamatory, obscene or in any manner inappropriate or inconsistent with the professional standards of the Agencies;
- Use of the Agency's Information Systems that interferes with productivity, conflicts with the Agency's mission, or constitutes a nuisance or distraction to the orderly conduct of the Agency's business;
- Use of the Agency's Information Systems that consumes significant system resources or storage capacity; involves large file transfers; or otherwise materially depletes system resources, e.g., downloading or transferring mp3 files, video files, large sets of multiple photographs, and large graphical image files (e.g. Jpg and gif files);
- Use of the Agency's Information Systems for dissemination or storage of commercial or personal advertisements, blogging, solicitations, promotions, destructive programs (viruses or self-replicating codes), political material, or any other unauthorized use, including the unauthorized dissemination of any of the Agency's information including but not limited to, trade secrets, confidential or proprietary material, e-mail addresses, and staff lists.

IV. COMMUNICATIONS

On-site vendors are reminded that communications transmitted electronically (e.g., by email, instant messaging, telephone, fax or the Internet) are also covered by all other Agency's policies and procedures that apply to the content of communications in general. Communications and transmissions, the content of which violate these other policies and procedures, constitute improper use of the Agency's Information Systems.

Unacceptable Communication includes but is not limited to:

- Utilizing the Agency's Information Systems in any way that violates the Agency's policies and procedures governing external communications, including but not limited to, sexual harassment and anti-discrimination policies, Code of Conduct, external communications procedures, prohibitions on political use, and unauthorized use of the Agency's name;
- Utilizing the Agency's Information Systems to defame the Agencies;
- Abusing or harassing another on-site vendor through the use of the Agency's Information Systems;
- Sending bulk emails, faxes, voice mails or other electronic communications that are not authorized by the Program Manager;
- Utilizing the Agency's Information Systems to represent the Agencies in any manner without the written approval of the Agency's Communications Director.

Email

A State email address may be issued to a vendor for access to such items, such as SharePoint project sites. Email is intended to be used to conduct Agency business. Limited personal use of the Agency's email is permitted as provided in Section II of this document, "BUSINESS AND PERSONAL USE OF THE AGENCY'S INFORMATION SYSTEMS."

Email messages are not private. Email system administrators will not routinely monitor individual staff member's email and will take reasonable precautions to protect the privacy of email. However, program managers and technical staff may access an on-site vendor's email to transact legitimate Agency business (e.g., the need to obtain Agency information when an on-site vendor is absent); diagnose and resolve technical problems within the Agency's email system; investigate possible misuse of email or other misconduct; or in conjunction with another approved investigation. Email messages sent or received in conjunction with Agency business may also be releasable to the public under the Freedom of Information Law and may be subject to discovery proceedings in legal actions.

All email users should act in a courteous manner and follow accepted standards of etiquette; protect others' privacy and confidentiality; consider Agency policies and procedures before sending, filing, or destroying email messages; and remove personal messages and transient records in a timely manner.

There are times when there is information of a personal nature which generally affects a large number of on-site vendors and for which it may be appropriate to communicate to the Agency at large, e.g., announcements of births, deaths, marriages, or the appearance of an Agency on-site vendor in a news event. Such information may be distributed to the entire Agency via email only after the announcement is submitted to and approved by the Program Manager and the Human Resources Director or his designee.

Email may also occasionally be used for lost-and-found purposes. To send a message for such a purpose, the on-site vendor should contact the Facilities and Administrative Services Unit which administers the Agency's Lost-and-Found.

Unacceptable Use of Email (in addition to the prohibitions relating to "Personal Use" and "Communications") includes but is not limited to:

- Use of email for illegal, disruptive, unethical or unprofessional activities or for personal gain or for any purpose that would jeopardize the legitimate interests of the State or conflict with the mission of the Agencies;
- Sending, forwarding or saving emails that contain sexually graphic, lewd, lascivious or pornographic information; or which promote hatred, violence or discrimination;
- Sending or forwarding emails to solicit funds or support for any political or religious purpose;

- Sending or forwarding “mass emails” to groups of recipients for any political, religious or other non-Agency purpose;
- Sending or forwarding “chain emails” (i.e., personal emails sent to multiple recipients with instructions to forward to additional recipients) for any purpose whatsoever;
- Accessing another user's email without his or her permission, except as provided above in furtherance of Agency business.
- Email Management and Retention Policy

Emails and their attachments created in the normal course of official business and retained as evidence of official policies, actions, decisions or transactions are records subject to records management requirements under the appropriate statutes and specific program requirements.

- Examples of messages sent by email that typically are records include policies and directives; correspondence or memoranda related to official business; work schedules and assignment, agendas and minutes of meetings; drafts of documents that are circulated for comment or approval; any document that initiates, authorizes or completes a business transaction; and final reports or recommendations.
- Examples of messages that typically do not constitute records are: Informal messages and announcements; copies or extracts of documents distributed for convenience or reference; and announcements of social events.

Records communicated using email need to be identified, managed, protected and retained as long as they are needed to meet operational, legal, audit, research or other requirements. Records needed to support program functions should be retained, managed and accessible in an existing filing system outside the email system in accordance with the department's standard practice (e.g., a department standard might be to save all board-related documents in a shared network-directory-under a-standardized-name).

Agency Senior Management will ensure that policies are implemented by the departments relating to electronic record retention. Program and Project Managers will develop and/or publicize record-keeping practices in their area of responsibility, including the routing, format, and filing of records communicated.

V. INTERNET USE

The Internet is intended to be used to conduct Agency business. Internet usage is no different from any other work functions and is subject to all other Agency's rules, regulations, policies and procedures governing on-site vendor conduct. Limited personal accessing of the Internet is permitted as provided in Section II of this document, “BUSINESS AND PERSONAL USE OF THE AGENCY'S INFORMATION SYSTEMS.”

Internet usage is not private. The Agencies routinely monitor Internet use for compliance with this Policy.

Information sent or received over the Internet is neither confidential nor secure. On-site vendors must be aware that there are a variety of ways an Internet communication can be disclosed to people other than the intended recipient, and on-site vendors should take appropriate measures to use the Internet in a responsible and secure manner. Users are also cautioned that many Internet pages include offensive, sexually explicit, and other inappropriate material. On-site vendors accessing the Internet do so at their own risk and may be subject to discipline up to and including termination for accessing improper or inappropriate Internet material.

Due to limits on bandwidth needed for Agency business, accessing streaming media (audio or video) or downloading any audio or video files from the Internet is permitted only for Agency-related business.

Unacceptable Use of the Internet (in addition to the prohibitions relating to “Personal Use” and “Communications”) includes:

- Accessing inappropriate websites such as sexually graphic, lewd, lascivious or pornographic sites which promote hatred, violence or discrimination; social networking or dating sites; or any other site that is inconsistent with proper and professional on-site vendor conduct at work;
- Utilizing Agency’s Information Systems for the purpose of engaging in business other than the Agency’s business. This includes, but is not limited to, securities trading, and other activity for personal profit;
- Using Instant Messaging (“IM”) systems for any purpose;
- Accessing streaming media (audio or video), or downloading any audio or video files for any purpose other than Agency-related business.
- Maintaining a personal blog.

VI. SYSTEM CARE AND SECURITY

A. Protection and Care of Equipment

The Agencies require that all on-site vendors take reasonable precautions to keep food and drink away from Agency computer equipment; use care in handling portable storage media and equipment; and take reasonable measures to keep equipment clean and dust free.

B. Portable Equipment

Portable computer equipment (e.g., laptop computers, cell phones, Blackberries and two way radios) that may be issued to an on-site vendor on a short- or long-term basis to assist the on-site vendor in conducting Agency business. Once issued, portable equipment is the sole responsibility of the on-site vendor until returned to the custody of the Agencies. An on-site vendor issued portable equipment may be held liable for the cost of repair or replacement if damaged or lost due to the on-site vendor's negligence. To avoid such liability, the on-site vendor must ensure that the equipment and storage media are properly

secured and free from risk of damage, and that only authorized personnel have access to them.

C. Remote Access

Remote access to the Agency's voicemail and email system may be available to an on-site vendor. Remote access to other of the Agency's Information Systems is available only to on-site vendors having the express written permission of the Program Manager and the Human Resources Director. Unauthorized accessing of the Agency's Information Systems through communication lines, the Internet, or otherwise is expressly prohibited.

D. Software

1. Agency's Oversight

Only software purchased or otherwise obtained by the Agency is to be installed on the Agency's equipment, except as otherwise provided in these Policies or authorized in writing by the on-site vendor's Program Manager or Project Manager, having been approved through ITS. This includes, but is not limited to, personal software, business software, and games. In the event authorization is obtained for software installation on Agency's equipment, a member of ITS must complete the installation. Any software installed on the Agency's equipment in violation of these Policies may be removed by the Agency or ITS without notice.

On-site vendors are prohibited from copying Agencies-developed or licensed software from one computer to another, or removing such software from the Agencies, without the prior written authorization of an ITS representative.

Any software developed by an Agency on-site vendor through the use of the Agency's Information Systems is the exclusive property of the Agencies and is not to be sold or given to any person or organization without the prior written authorization of the Agency's Program Manager.

2. Licensing/Copyright Protection

The Agency's use or purchase/acquisition of hardware and software is conditioned on acceptance and agreement of licensing agreements and provisions of copyright laws. All on-site vendor usage of the Agency's Information Systems shall be in strict accordance with applicable licensing agreements and copyright protections.

E. Agency's Data

Any and all data stored on or transmitted through the Agency's Information Systems is the exclusive property of the Agency's and is not to be sold or given to any person or organization without the prior authorization of the

Department Head. Except as otherwise determined by the Program Manager, all data owned by the Agency or produced or generated by an on-site vendor on

Agency's equipment shall be stored on centralized file servers. No such data is permitted to reside exclusively on any user's State supplied PC or individual data storage media without prior authorization from the Program Manager. Upon separation from Agency's service or transfer to another assignment within the Agency, on-site vendors shall not move or transfer any of the Agency's data without the authorization of the Program Manager and an ITS representative.

F. User IDs and Passwords

User IDs are required to access the Agency's overall computer network as well as individual components on the network.

The misuse of any User ID supplied to a vendor may constitute forgery, computer trespass, and misrepresentation.

Vendors are responsible for maintaining the security and secrecy of their individual passwords. The Agency's computer network will require that each user change his or her sign-on password every 90 days. Other specialized passwords must also be changed on a periodic basis. All passwords should be at least eight positions in length and consist of a combination of alphabetic and numeric characters. Passwords should not contain the

User ID within them or any other information that could easily identify the user (e.g., the user's name, date of birth, address information, spouse's or children's names, and the Agency's names). ITS will notify users when certain specialized passwords must be changed. Failure to cooperate fully with ITS in changing the password will result in denial of access. If the user needs assistance in changing passwords, setting up screen savers, or any other information security matter, the user should call the ITS help desk at 844-891-1786.

Occasionally, due to an oversight, a vendor may have access to a system or directory for which the user is not authorized. When this occurs, it is the vendor's responsibility to inform the Program Manager and ITS immediately so that corrective action may be taken.

There are additional precautions that each user must take in order to secure access to his or her PC. These precautions include:

- Using a password protected screen saver on the PC at all times. The screen saver should be set to activate after no longer than 15 minutes.
- Signing off all application systems and shutting down the PC each night when leaving the office. Each user must also sign off from all systems and log out of the network when the computer is unattended or not going to be used for an extended period of time during the day.
- Maintaining the secrecy of passwords. Passwords should never be stored in a computer file on the Agency's network or on a PC's disk drive, nor

should passwords be written down and stored in a location that is accessible to others.

On-site vendor misconduct or negligence in maintaining the security and secrecy of passwords may result in removal from the Agency site(s) and business.

Improper conduct as to Computer Care and Security includes but is not limited to:

- Attempting to remove, modify, tamper with, damage, sabotage, vandalize or disrupt in any way the operation of the Agency's Information Systems including but not limited to, computer equipment, data communications equipment or data communications lines;
- Misuse of a User ID or allowing an unauthorized individual access to a User ID and/or password;
- Obtaining, providing or using another vendor's or Agency staff User ID and/or password without the written authorization of the Program Manager or ITS representative;
- Sharing a User ID and/or password with another vendor or Agency staff member unless authorized in advance, in writing by the Program Manager or ITS representative;
- Failure to maintain the security and secrecy of one's password;
- Failure to cooperate fully with ITS requests to change a password or to comply with ITS staffs' instructions regarding the required characteristics of the user's password (e.g., password and user ID should not be the same);
- Attempting without proper authorization to access, remove, copy or modify data files, databases, directories or software programs;
- Attempting to test, circumvent, or defeat security, firewalls, auditing systems, or protective features of the Agency's Information Systems or those of any other organization;
- Knowingly accepting or using software, including but not limited to unlicensed software, or data which has been obtained by illegal or improper means;
- Unauthorized copying of software owned by or licensed to the Agencies;
- Installing software of any kind on the Agency's computer network without the express written authorization of an ITS representative.
- Modifying or attempting to modify software developed by or licensed to the Agencies without prior written authorization of an ITS representative;

- Misusing, or using without proper authorization from the Department Head, paid information services such as LexisNexis and other paid information services;
- Removing-information--systems--computer equipment, or any-part thereof, from the Agency's premises without prior written authorization from the Program Manger or an ITS representative.
- Requesting technical assistance from ITS with respect to an on-site vendor's personal computer equipment or software.
- Any violation of these Policies (as amended from time to time) as well as additional rules and regulations governing usage established by Department Heads, the Chief Information Officer or the Chief Operating Officer may result in the suspension from use of the Agency's Information Systems, and/or removal from the Agency site(s) and/or business. On-site vendors are encouraged to report suspected misconduct and/or inappropriate computer use to the Program Manager or the Project Manager.

Due to existing security conditions, be advised of the following information that exists to ensure safety.

1. Proper Identification

An appropriate ID must be present at ALL TIMES (agency ID, building ID, driver license, etc.). Be patient and cooperative with security personnel and law enforcement if you are questioned or asked for identification. Additionally, please ensure that your ID meets the requirements specified by the building's policies and procedures, as below.

- a. All Agency issued cards must be signed for, ensuring that the name on the card is spelled correctly, and that the card number is the same as the number printed on the ID request form.
- b. A holder of an Agency issued card is responsible for maintaining ID in good working condition. DO NOT punch any type of hole or affix tape to the ID. This can render the card defective.
- c. A replacement fee of \$15.00 will be charged for all lost, damaged or defective cards after the initial card is issued and received by the on-site vendor.
- d. Cards or passes are to be carried ALL TIMES to gain access to the building.
- e. Guards are PROHIBITED to give access to anyone who doesn't have a card. If you do not have a card, you must visit the Security Desk in the lobby for clearance.
- f. All cards are the property of the Agency. The Agency reserves the right to confiscate a card from anyone who is in possession of a card not assigned to him or her.

2. Fire Safety Plan

All building occupants and (and their visitors, if in the building at the time) must participate in drills. Be aware of any instructions given by your respective floor Fire Warden and Deputy Fire Wardens:

Fire Wardens and Deputy Fire Wardens are individuals who have been provided information regarding safety and directions in the case of an emergency and will coordinate the evacuation of staff from the Agency premises, if such need should arise.

3. What to Do If You Hear An Alarm Sound

- A) If the sound you hear is an inquiry tone, DO NOT evacuate your floor or office unless notified to do so by announcement over the public address system or our Fire Warden, building staff, or Fire Department personnel on your floor.
- B) If the sound you hear is a continuous warbling siren, this is the evacuation tone, which indicates that an alarm device was activated on your floor or the floor immediately below. Evacuation procedures should commence immediately.

4. Evacuation Procedures

- A) Follow the normal evacuation procedure or as directed by announcement over public address system by your Fire Warden/Deputy Fire Warden, building personnel or Fire Department personnel on your floor.

Whenever possible, an emergency evacuation should be supervised via instructions received from the Fire Command Station Operator, Fire Department, or Floor Warden. However, in no event will evacuation be delayed if instructions from the above personnel are not forthcoming. Should the Fire Warden or occupants of a floor see fire, smoke or any other condition they deem dangerous, they should evacuate immediately.

- B) Keep calm and proceed in an orderly fashion.
- C) Leave quickly and forget about trying to remove personal property. **DO NOT GO BACK** for anything left behind.
- D) If a smoke condition exists, put a cloth over your mouth and keep low. Smoke is heavier at higher levels.
- E) Check stairwell for smoke and heat before entering. If contaminated, use another stair. **DO NOT USE ELEVATORS.**

Schedule 13.2
Confidentiality Terms

DRAFT

APPENDIX I

New York State Housing Finance Agency's Standard Clauses for Contracts

(Appendix I follows this page and may be downloaded at
https://hcr.ny.gov/system/files/documents/2022/08/appendix-i_agencies-standard-contract-clauses_august-2022_final.pdf

APPENDIX II

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

(Appendix II follows this page and may be downloaded at
<https://hcr.ny.gov/system/files/documents/2019/02/appendixiimwbeparticipation.pdf>)

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CONFIDENTIALITY PLEDGE

I, [____], am an employee of _____ with an office at _____ (the “Employer”) and I am not an employee of the New York State Housing Finance Agency (“Agency”).

In the course of my employment with Employer, I will perform certain official duties for the Agency and have executed this Confidentiality Pledge (“Pledge”) as of this [____] day of _____, 202__ in order to induce the Agency to allow me to access Data so that I may use such Data in the performance of my official duties for the Agency while an employee of Employer.

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

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

In addition, in the course of my employment with Employer, I will perform certain official duties for the Agency (“Agency’s Engagement”). I shall not accept any engagement in conflict with the Agency’s interest in the subject matter of the Agency’s Engagement.

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

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

_____, **SERVICER AND EMPLOYER**
Print Name of Vendor/Servicer

Signature

Printed Name

Phone Number

_____, **EMPLOYEE OF SERVICER/EMPLOYER**
Employee’s Signature

Print Name of Employee

Employee’s Phone Number

EXHIBIT B

MWBE Utilization, PROC-2 Form

(Provider's Exhibit B follows this page)

DRAFT

EXHIBIT C

Cumulative Payment Statement, PROC-6 Form

(Exhibit C follows this page and can be downloaded at
<https://hcr.ny.gov/system/files/documents/2019/02/proc6-cumulativepaymentstatement.xlsx>)

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EXHIBIT D

Provider Staffing Plan

(Provider's Exhibit D to follow this page)

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EXHIBIT E

EEO Workforce Utilization Report, PROC-5 Form and Instructions

(Exhibit E to follow this page and also be downloaded and
<https://hcr.ny.gov/system/files/documents/2019/02/proc5-workforceutilization.xlsx> and
[https://hcr.ny.gov/system/files/documents/2022/07/proc-5-
instructions_for_workforce_utilization_form_eeo-1_final.pdf](https://hcr.ny.gov/system/files/documents/2022/07/proc-5-instructions_for_workforce_utilization_form_eeo-1_final.pdf))

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EXHIBIT F

W-9 Form

(Provider's W-9 Form follows this page)

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Attachment 9

LIST OF EXCEPTIONS TO MSA

(to be completed by proposal in accordance with Section 11.4.1 titled "Required Documents, number 3)



Attachment 10 - Proposal Checklist

CHECKLIST FOR VARIOUS REQUIRED FORM RELATED ITEMS TO BE COMPLETED AND RETURNED:

- ☐ Intent to Submit Proposal, Attachment 1
- ☐ Tab 1 – Proposal Coversheet (Use the form attached below), Schedule I
- ☐ Tab 1 - Cover Letter (not to exceed 2 pages)
- ☐ Tab 2 – Technical Proposal (not to exceed 30 pages excluding resumes)
- ☐ Tab 3 – Cost Proposal Worksheet (using template provided)
- ☐ Tab 4 - Administrative Proposal
- ☐ [Vendor Information Form](#)
- ☐ [Lobbying Reform Law Form 1](#)
- ☐ [Lobbying Reform Law Form 2](#)
- ☐ [Non-Collusive Bidding Certification Form](#)
- ☐ [Vendor Responsibility Questionnaire – For Profit Business Entity](#) OR [Non-Profit Entity](#).
- ☐ [Vendor Assurance Form of No Conflict of Interest and Detrimental Effect](#)
- ☐ [Executive Order#16 – Prohibiting Contracting with Businesses Conducting Business in Russia](#)
- ☐ Evidence of Insurance (required upon contract award) or affirmation that insurance will be acquired
- ☐ Financial Statements
- ☐ Tab 5 - Diversity Proposal
- ☐ [EEO Staffing Plan, PROC-1](#)
- ☐ [Utilization, PROC-2](#)
- ☐ [MWBE & EEO Policy Statement, PROC-4](#)
- ☐ [Company Demographic Profile, PROC-7](#)
- ☐ [EEOC Statement, PROC-8](#)
- ☐ [Diversity Practices Questionnaire, PROC-9](#)