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MASTER SERVICES AGREEMENT

BETWEEN

**NEW YORK STATE HOUSING FINANCE AGENCY
STATE OF NEW YORK MORTGAGE AGENCY
NEW YORK STATE HOUSING TRUST FUND CORPORATION**

and

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Conflicts among the schedules will be resolved in the following order of precedence:

1. [Agency's Standard Clauses for Contracts](#), Appendix I
2. [MWBE Participation Requirements and Procedures for Contracts](#), Appendix II
3. [Agency's Prompt Payment Policy](#), Appendix III
4. Scope of Work, Schedule 2.2
5. Service Level Agreement/Matrix, Schedule 3.4
6. Contractor's completed MWBE/SDVOB Utilization form, Exhibit B
7. Quarterly [Cumulative Payment Statement, PROC-6 Form](#), Exhibit C
8. Contractor's completed EEO Staffing Plan Form, Exhibit D
9. Quarterly [EEO Workforce Utilization Report, PROC-5](#) and [Instructions](#), Exhibit E

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MASTER SERVICES AGREEMENT

This Master Services Agreement (the “**Agreement**”) is made and entered into as of this _____ day of _____, 2025 (the “**Effective Date**”) by and between the **HOUSING FINANCE AGENCY**, a New York public benefit corporation, with its principal place of business at 641 Lexington Avenue, New York, NY 10022 (“**HFA**”), **STATE OF NEW YORK MORTGAGE AGENCY**, a New York public benefit corporation, with its principal place of business at [641 Lexington Avenue, New York, NY 10022] (“**SONYMA**”) and **NEW YORK STATE HOUSING TRUST FUND CORPORATION**, a New York public benefit corporation, with its principal place of business at 641 Lexington Avenue, New York, NY 10022, (“**HTFC**”) (individually or collectively, “**Agency**” or “**Agencies**”) (the “**Agency**”) and _____, a _____ corporation, with its principal place of business at _____ (“**Contractor**”) (each, a “**Party**,” and collectively referred to as the “**Parties**”).

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

WHEREAS, the Agency requires certain implementation and application management services (the “**Services**,” as further set out in Article 2) in connection with the Digitech Systems’ ImageSilo enterprise content management (“**ECM**”) system under licensure by the Agency (the “**ECM Applications**”);

WHEREAS, the Agency published its Request for Proposals No. 250623 for ImageSilo Enterprise Content Management System, dated June 23, 2025 (the “**RFP**”), setting forth its requirements with respect to the Services;

WHEREAS, Contractor 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:

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ARTICLE 1
GOALS AND OBJECTIVES; REFERENCES

- 1.1 Goals and Objectives. The Parties agree that the overall goal of the application management services initiative is for the Agency to achieve a high-degree of system stability after implementation (adaptive, corrective and preventative maintenance) with the option to enhance the system (perfective maintenance), all as further set out in the RFP.

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.

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- 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. Any conflicts among the Exhibits, Scope of Work and Schedules shall be resolved in the order set forth below the list of Schedules following the Table of Contents above.
- 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 Contractor's best and final proposal and any agreed upon amendments are collectively, the "**Proposal.**" The representations of Contractor in its best and final Proposal made to the Agency for work to be provided under this Agreement are hereby confirmed by Contractor and Contractor 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 or altered by the terms of this Agreement.
- 2.2 **Services.** Contractor shall provide the Services specified in Schedule 2.2 (Scope of Work) (the "**Scope of Work**"). The Agency's RFP together with Contractor's Proposal will serve as the Scope of Work; if there is a conflict between the RFP and Contractor's Proposal, the Agency's RFP will control.
- 2.3 **Deliverables.** Contractor shall provide the Agency with all deliverables set out in this Agreement including those set out in the Scope of Work (the "**Deliverables**"). Contractor shall cause all Deliverables to conform to and be in accordance with the terms of this Agreement, the RFP, the Proposal, and the requirements and specifications therefor set forth in the Scope of Work or agreed to by the Parties (collectively, the "**Specifications**"). For the avoidance of doubt, the term "Services" shall include Deliverables.
- 2.4 **Services Included In Scope of Work.** The Services to be provided by Contractor hereunder include: (a) the services, processes, functions and responsibilities described in this Agreement, including the Scope of Work for this Agreement; (b) any services, processes, functions or responsibilities not specifically described in this Agreement but which are an inherent, necessary or customary part of the Services and or that are required for the proper performance and delivery of the services or deliverables described in the preceding sub-clause (a); and (c) services or tasks described in the Proposal. For any services or tasks described in a Proposal to be determined out of scope of the Services, such services or tasks must be specifically identified as out of scope.
- 2.5 **New Services.** "**New Services**" shall mean additional Services that are related to any Services described in the Scope of Work as construed in accordance with Section 2.4 (Services Included In Scope of Work). The Agency, in its sole discretion, may, from time to time during the Term, request that Contractor perform a New Service. In requesting a New Service, the Agency may

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communicate to Contractor certain parameters governing performance thereof, including service levels. Upon receipt of such a request from the Agency, Contractor shall provide the Agency with: (i) a written description of the work Contractor 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) Contractor'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. Contractor 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 Contractor with written authorization from the Agency's Chief Technology Officer to perform the New Service. However, once the Agency provides Contractor with written authorization to perform the New Service, Contractor shall perform such New Service as required hereunder, and such New Service shall be deemed to be part of the "Services" or "Deliverables" (as the case may be) 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 Contractor exceed the estimate of the charges that were included in the Change Proposal for such New Service, Contractor shall be responsible for the excess costs of such New Service.

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

ARTICLE 3

SERVICE DELIVERY AND SERVICE LEVELS

- 3.1 Knowledge Transfer. The Contractor shall be required to perform knowledge transfer in accordance with the requirements set out in the RFP.
- 3.2 Cooperation. Contractor 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**"), including by way of limited example, Digitech Systems, 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 Contractor systems or facilities to the extent that such access is required for the performance of the Agency and such Third Parties.
- 3.3 Compliance with the Agency External Requirements. Contractor shall provide, as part of the Services, reasonable support services 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.

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- 3.4 Service Levels. Contractor shall meet the service levels set out in (the "**Service Levels**") and provide service credits (the "**Service Credits**") in accordance with Schedule 3.4 (Service Level Matrix).
- 3.5 Continuous Improvement and Best Practices. Contractor 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. Contractor shall implement such processes at no charge to the Agency, excluding third party costs attributable thereto.
- 3.6 Compliance with the Agency Methodology. Contractor 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 utilize its project management methodology.
- 3.7 Time of the Essence. Contractor agrees that in the performance of Services under this Agreement, time is of the essence.

ARTICLE 4
FEES, EXPENSES, TAXES AND RECORDS

- 4.1 Fees.
- 4.1.1 Contractor shall provide the Services specified in the Scope of Work for the fees set out therein (the "**Fees**").
- 4.1.2 Most Favored Pricing. The Agency shall be entitled to receive the most favorable customer pricing that Contractor offers at any time to any of its other customers. Contractor 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 Contractor 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. Travel costs will be excluded for this comparison. If Contractor enters into an agreement with such government customers with more favorable pricing provisions during the Term of this Agreement, Contractor will so inform the Agency and provide a copy of such pricing provisions, and such provisions shall be deemed incorporated into this Agreement, and the Agency shall have the benefit thereof. Upon request, Contractor shall provide the Agency with a certification by an officer of Contractor 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 Contractor to any other entity as described above.
- 4.2 Cost of Performance. Except as set forth herein or in the Scope of Work, Contractor 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.

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4.3 Payment.

- 4.3.1 All invoices for payment must be emailed to Agency in PDF format to []. 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](#), Appendix III hereto.
- 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 Contractor 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 Contractor 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 Contractor personnel performing Services hereunder; (b) imposed on, with respect to, or in connection with Contractor'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 Contractor 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. Contractor's W-9 form is attached hereto as Exhibit F.

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4.4.3 Contractor 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 Contractor to challenge the imposition of any tax, the Agency will reimburse Contractor 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. Contractor 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 Contractor during or after the Term, the Agency and/or its designated representative may inspect and review the billing records and other documentation of Contractor and its subcontractors underlying any Contractor 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"**). Contractor 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 Contractor's normal business hours at the Contractor premises where it maintains such billing records and other documentation, in such a manner as not to interfere with Contractor'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, Contractor will provide access to such records and documentation at Contractor's expense.

4.6.2 If, as a result of any Billing Review, it is determined that Contractor has overcharged the Agency for any Service, the Agency will notify Contractor of the amount of such overcharge, and Contractor 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, Contractor will pay the costs of the Billing Review.

4.7 Performance Audit.

4.7.1 Upon reasonable prior notice to Contractor, with respect to the Scope of Work, the Agency and/or its designated representative may conduct a performance audit on Contractor's premises or the Site of the Services (including those used by any subcontractors of Contractor) to ensure Contractor's compliance with the terms of this Agreement (including Service Levels) and applicable laws and regulations, to

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evaluate Contractor'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"**). Contractor will provide to the Agency and/or its designated representative all necessary access to the following information: Names of Contractor's and subcontractors' employees and agents; Contractor 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 Contractor's normal business hours in such a manner as not to interfere with Contractor's normal business activities.

4.7.2 Without limiting Contractor's obligations or the Agency's rights and remedies provided elsewhere in this Agreement, or otherwise, if, as a result of any Performance Audit or at any other time it is determined by the Agency that Contractor 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 Contractor, in writing, of such Performance Failure, and Contractor 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 fifteen (15) business days after receipt of the Agency's notice of such noncompliance, it shall be deemed a material breach. If Contractor performs an internal audit or engages a third party to perform an audit, Contractor will provide the Agency with the results of such audit to the extent they affect or relate to Contractor's performance under this Agreement.

4.7.3 Further, Contractor 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 Contractor deduct the entire amount owed to Contractor against the charges otherwise payable or expenses owed to Contractor under this Agreement, including, but not limited to, the Fees. Any unused credits against future payments owed to the Agency by Contractor 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 Contractor's recurring costs in providing the Services, Contractor shall be required to share those reduced costs with the Agency. Contractor will pass through to the Agency reductions in the cost of delivery of the Services resulting from significant changes in technology or extraordinary

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reductions in the costs of delivering the Services which could not have been foreseen as of the Effective 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 Contractors providing services similar to those provided by Contractor.

- 4.10 **Record Retention.** As part of the Services, Contractor 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.** Contractor shall provide the Services to the Agency and deliver to the Agency the Deliverables in accordance with the Scope of Work.
- 5.2 **Delays.** In the event of any delay that causes or can reasonably be expected to cause a delay in Contractor's performance hereunder, Contractor 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. Additionally, 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 Contractor, Contractor 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 Contractor under the Scope of Work shall meet or exceed the Service Levels set forth for such Services in the Scope of Work. Contractor 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 set out in the Scope of Work and as mutually agreed to by the Agency and Contractor (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

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and Contractor, provided, however, that, if the Agency and Contractor 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.

6.3 Acceptance Testing. Acceptance testing for the Deliverables shall be subject to the following procedures:

- 6.3.1 Acceptance testing for all the Deliverables shall commence within ten (10) working days of the later of (i) the date on which Contractor notifies the Agency Project Manager, in writing, that all such Deliverables have been satisfactorily completed, in Contractor's opinion, have been delivered, and are ready for acceptance testing by the Agency, or (ii) the Agency receives all necessary training from the Contractor in order for the Agency to perform meaningful acceptance testing. Unless otherwise set forth in the Scope of Work, acceptance testing shall continue for a period of fourteen (14) consecutive days (the "**Acceptance Period**").
- 6.3.2 In the event that the Deliverables do not conform to the Acceptance Criteria during the Acceptance Period, then the Agency shall give Contractor written notice thereof. The Agency shall cooperate with Contractor in identifying in what respects the Deliverables have failed to conform to the Acceptance Criteria. Contractor shall, at no cost to the Agency, promptly correct any deficiencies which prevent such Deliverables from conforming to the Acceptance Criteria and correct such deficiency and the effects of such deficiency in any prior affected Deliverables. Upon completion of the corrective action by Contractor, and at no additional cost to the Agency, the acceptance test will be repeated until all the Deliverables have successfully conformed to the Acceptance Criteria.
- 6.3.3 If any Deliverable does not conform to the Acceptance Criteria within thirty (30) days after the end of the Acceptance Period described above, the Agency may (reserving all other remedies and rights under this Agreement and at law and in equity including the right to suspend Contractor 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 11.2.1 and, at the Agency's option, seek an alternative service provider to bring the Deliverables into compliance with the Acceptance Criteria, or (ii) require Contractor to continue to attempt to bring the Deliverables into compliance with the Acceptance Criteria, reserving the right to terminate as aforesaid at any time.

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ARTICLE 7
CONTRACTOR PERSONNEL

- 7.1 Contractor Personnel; Offers of Employment to the Agency Employees. Contractor 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 Contractor in the Proposal (the “**Contractor Personnel**”). All Contractor Personnel will be physically located in the contiguous United States (“**CONUS**”) while providing any Services. The number of individuals included in the Contractor Personnel and a description of all responsibilities will be set forth in the Scope of Work. For the Scope of Work, Contractor and the Agency shall agree on the designation of certain Contractor positions and/or named individuals as “**Dedicated Contractor Personnel**”, who shall be personnel dedicated by Contractor to perform the Services solely for the Agency. Dedicated Contractor 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 Contractor Services Center Personnel**”, who shall be management-level personnel related to operations that are dedicated solely to the Agency, as well as shared senior management resources representing shared functions such as technology, quality, human resources and administration that are dedicated by Contractor to provide the Services. The Contractor, with the Agency's express written approval, may from time to time change the positions and/or named individuals designated as Dedicated Contractor Personnel or Key Contractor Services Center Personnel. Subject to the provisions of Section 22.7 hereof, Contractor shall not subcontract any Services hereunder, or perform such Services by individuals who are not bona fide employees of Contractor, without the prior written approval of the Agency in each instance.
- 7.2 Qualifications. The Agency and Contractor shall agree on skills and competencies for Contractor Personnel in the Scope of Work based on the skills and competencies of Contractor Personnel described in the Proposals. Prior to hiring or otherwise engaging any Contractor Personnel, including any person who is designated as Dedicated Contractor Personnel or Key Contractor Services Center Personnel (each, a “**Candidate**”), Contractor 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 Contractor 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 Contractor acknowledges and agrees that the success of each project is dependent upon the continuity of personnel assigned to the Contractor Personnel because such continuity will contribute to the timely delivery and successful completion of such project. Therefore, any removal or reassignment by Contractor of the Contractor Project Manager or those of its Dedicated Contractor Personnel or Key Contractor 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 when the reason for removal or reassignment is disability, illness, promotion, *bona fide* family or personal reasons, or a determination by the Agency or Contractor that such Key Contractor Services

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Center Personnel are not qualified) as to the removal or reassignment and as to any replacement personnel, provided, however, that Contractor shall not replace or reassign the Contractor Project Manager or any Dedicated Contractor Personnel or Key Contractor 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 Contractor Project Manager or any Dedicated Contractor Personnel or Key Contractor Services Center Personnel: (i) voluntarily resigns from Contractor, (ii) is dismissed by Contractor 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 Contractor shall have in place a contingency plan in the event that any person designated as the Contractor Project Manager or any Dedicated Contractor Personnel or Key Contractor Services Center Personnel is no longer available to staff such position. Contractor shall submit its employee retention strategy to the Agency for the Agency's review and written approval. With respect to Contractor personnel who are not Dedicated Contractor Personnel or Key Contractor Services Center Personnel, Contractor shall use commercially reasonable efforts to ensure the continuity of such personnel. Contractor shall notify the Agency of the resignation of any personnel providing Services within five (5) days of such resignation. In the event Contractor replaces any personnel with the Agency's written consent, Contractor will promptly provide said replacement.

7.3 Removal. If the Agency decides, in its sole discretion, that any Contractor 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 Contractor notice of the request and Contractor shall immediately remove said personnel and, if requested by the Agency, provide a replacement acceptable to the Agency, within five (5) days of said notice. The Agency shall be the sole judge as to performance capability of any replacement. Contractor shall also remove and provide a replacement for any other Contractor Personnel if the work product delivered by such personnel is unsatisfactory to the Agency.

7.4 Replacements. Any replacement personnel shall have substantially equivalent or better qualifications than the personnel being replaced. There will be no charge to the Agency for the time incurred by the replacement personnel to acquire the necessary orientation and training, which shall not exceed five (5) working days.

7.5 Service Level Failures. If Contractor 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 Contractor'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 Contractor subcontractors assigned to the Agency service team, the Agency will notify Contractor of such belief. Upon receipt of such notice from the Agency, Contractor (i) will promptly provide to the Agency a report setting forth Contractor'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 Contractor's positions with regard to such matters; and (iii) will diligently work to eliminate with respect to the Services any such Contractor personnel practices and/or processes identified and

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agreed to by the parties as adversely impacting the performance and delivery of the Services by Contractor.

- 7.6 Visas. Contractor 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.
- 7.7 Specialized Personnel. As part of the Services, Contractor shall, upon the Agency's request, provide to the Agency equal access to Contractor's specialized personnel and resources consistent with Contractor's other commercial customers receiving substantially similar goods and services.
- 7.8 Compliance by Contractor Personnel. Contractor shall advise personnel supplied hereunder of their obligation to comply with the rules, regulations, policies, and procedures of the Agency, including the Agency's Code of Conduct referred to in Section 9.1.
- 7.9 Labor Harmony. Contractor 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 Contractor has knowledge of any actual labor dispute involving the employees of Contractor, Contractor's permitted subcontractors, or others that may materially affect the provision of Services, Contractor 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 Contractor location, the Agency location or otherwise.
- 7.10 Employment Status. Contractor or its respective subcontractors shall be the employer in law and in fact of all persons assigned to perform the Services. Contractor 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 Contractor'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. Contractor, 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 Contractor 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. Contractor shall also ensure that it owns all right, title and interest, legal and equitable, to all Intellectual Property rights used by Contractor or created by Contractor Personnel in the course of providing Services.
- 7.11 Personnel Records. Contractor 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. Contractor shall also maintain records of in-service training and records of assignments.

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Upon the Agency's request, Contractor shall promptly provide to the Agency copies of the records described herein. Upon the Agency's request, Contractor shall also perform background checks (including criminal background checks and drug testing) on some or all the Contractor Personnel 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 Contractor'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 Contractor. The initial Agency Project Manager shall be listed in the additional provisions on governance set out in Schedule 8.1 (Governance).
- 8.2 Contractor Project Manager. In addition to the Contractor Personnel, the Dedicated Contractor Personnel and the Key Contractor Services Center Personnel, Contractor will appoint a qualified member of its staff to act as project manager for the Scope of Work (the "**Contractor Project Manager**") who will: (i) have overall managerial responsibility for the Services; (ii) act as primary liaison between the Agency and Contractor; and (iii) coordinate, oversee and monitor the Contractor Personnel. Contractor's appointment of the Contractor Project Manager shall be subject to the Agency's prior written consent. The initial Contractor Project Manager shall be listed in the additional provisions on governance set out in Schedule 8.1 (Governance).
- 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. If requested by the Agency, the Parties shall maintain a management steering committee (the "**Steering Committee**"). The Steering Committee shall include each Agency Project Manager, each Contractor 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 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 Contractor's provision of the Services.

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- 8.5 Frequency of Steering Committee Meetings. The Steering Committee shall meet in the manner described in Section 8.4 above as requested by the Agency. Such meetings shall include discussions relating to the progress of the Services and to resolve any disputes.

ARTICLE 9 FACILITIES

- 9.1 Use of the Agency's Equipment and Facilities. As a general rule, Contractor shall use its own equipment and facilities in the provision of any Service ("Contractor Sites"), which shall be at Contractor's sole cost. The Agency shall provide to Contractor the use of those equipment and facilities specifically set forth in the Scope of Work ("**Agency's Equipment and Facilities**"). Contractor shall use the Agency's Equipment and Facilities for the sole and exclusive purpose of providing the Services. Use of such facilities by Contractor does not constitute a leasehold interest in favor of Contractor. Contractor 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. Contractor 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, Contractor shall return same to the Agency in substantially the same condition as when Contractor began use thereof.
- 9.2 Access and Security. To the fullest extent permitted by applicable law, Contractor 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 9.1 (Agency's Code of Conduct), 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. Contractor and its subcontractors and its and their employees shall not knowingly access any Agency information not required for performance hereunder. If any such Agency unnecessary information is accessed, Contractor will so inform Agency and cooperate with any steps Agency deems necessary.
- 9.3 Contractor Sites. All of the Contractor Sites will be in CONUS. As part of the Services, Contractor shall maintain and enforce at the Contractor 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 Contractor Services Center shall have physical and cyber security measures in place to manage security and confidentiality concerns.
- 9.4 Shared Sites. If Contractor provides the Services to the Agency from a Contractor Site that is shared with a third party or third parties and any part of the business of Contractor or any such third party is now or in the future competitive with the Agency's or any Agency Affiliate's business, then Contractor, 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

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Confidential Information so that Contractor or Contractor subcontractors providing services to such competitive business shall have no access to the Agency's Confidential Information.

- 9.5 Telecommunications Connection. The Agency and Contractor shall establish a telecommunications connection to provide Contractor 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. Contractor represents and warrants that: (a) all Contractor 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 Contractor discovers or is notified of (a) a breach or potential breach of security involving the Agency's computing systems, facilities and/or networks, (b) actual or potential unauthorized or illegal activities by personnel of Contractor or a third party to obtain money or information from or through the Agency's computing systems, facilities and/or networks, or (c) actual or potential unauthorized access by a third party to Confidential Information, Client Information, Data, Employee Information, or Personal Data (as these terms are defined in Sections 13.1 and 15.1). Contractor will immediately notify the Agency, will assist in ascertaining, containing, and mitigating any damage, and will cooperate fully with the Agency and its designees in any investigation or action relating to such breach or potential breach, or unauthorized or illegal activities. Further relevant provisions relating to Security Events, Security Breach, and Incident Response are set forth in Article 15.

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 Contractor as described in Schedule 10.1 (DRP and BCP). Contractor will update the DRP and the BCP within thirty (30) days of each new Service commencing (the "**Service Commencement Date**") 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, Contractor 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

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- (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 Contractor'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), Contractor shall not increase its charges under this Agreement or charge the Agency any additional fees (including any fees payable by Contractor to any third party disaster recovery vendors) other than those already payable under Article 4 hereof.

10.2 Disaster or Force Majeure Event. If in the event of a disaster or a Force Majeure Event affecting the performance of the Services at the Contractor Services Center, and following the implementation of the DRP and BCP, the Contractor Services Center is still Non-Operational, the Agency may, at any time, terminate the affected portion of this Agreement and either perform the affected Services itself or, at any time, contract with a third party for substitute services. The Agency shall not be obligated to pay Contractor for the Services not performed by Contractor and Contractor shall reimburse the Agency for all costs related to transitioning the affected Services to the Agency or a third party and the difference between the charges for the affected Services and the Agency's costs to obtain the substitute services, whether performed by the Agency or a third party. **"Non-Operational"** shall mean an environment where the Contractor Services Center is not able to conduct normal business processes for 15% (fifteen percent) or more of the Services for a duration of twenty-four (24) hours or more, and there is no reasonable expectation that delivery of such Service will resume in the subsequent twenty-four (24) hour period through execution of the DRP or BCP or otherwise.

10.3 Allocation of Resources - First Priority. Whenever a Force Majeure Event or a disaster causes Contractor to allocate limited resources between or among Contractor, Contractor'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 Contractor 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 a five-year period, with two optional two-year renewals, and one optional one-year renewal, subject to the approval by the Agency's Boards of Directors, unless terminated earlier in accordance with this Agreement. The Agency may exercise its option to renew, subject to the annual approval by the Agency's Boards of Directors, by providing at least thirty (30) days prior written notice to Contractor to the last day of the then current Term, unless terminated for cause by the Contractor as provided in Section 11.2.2.

11.2 Termination. Notwithstanding any provision of Section 11.1 to the contrary, this Agreement may be terminated as follows:

11.2.1 The Agency may terminate this Agreement in its sole discretion at any time upon thirty (30) days prior written notice, without cause.

11.2.2 Contractor 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

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breach is not cured within ninety (90) days of written notice thereof, which notice expressly states Contractor's intention to so terminate.

11.2.3 Due to the impact any termination of this Agreement, in whole or in part, would have on the Agency's business, the Agency's failure to perform its responsibilities set forth in this Agreement (other than as provided in Section 11.2.211.2.2 above) shall not be deemed to be grounds for termination by Contractor. CONTRACTOR ACKNOWLEDGES THAT THE AGENCY WOULD NOT BE WILLING TO ENTER INTO THIS AGREEMENT WITHOUT ASSURANCE THAT IT MAY NOT BE TERMINATED BY CONTRACTOR AND THAT CONTRACTOR MAY NOT SUSPEND PERFORMANCE EXCEPT, AND ONLY TO THE EXTENT, CONTRACTOR TERMINATES PURSUANT TO SECTION 11.2.211.2.2. The Agency's failure to perform any of its responsibilities set forth in this Agreement (other than as provided in subsection 11.2.2 above) shall not be deemed to be grounds for termination by Contractor; however, Contractor's nonperformance of its obligations under this Agreement shall be excused if and to the extent (i) such Contractor nonperformance results from the Agency's failure to perform its responsibilities, and (ii) Contractor provides the Agency with reasonable notice of such nonperformance and uses commercially reasonable efforts to perform notwithstanding the Agency's failure to perform.

11.3 Effects of Termination.

11.3.1 Termination of this Agreement in part shall not affect the rights of the Agency and the obligations of Contractor 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, Contractor 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.

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

11.3.2 In addition to the other requirements of this Section 11.3, Contractor hereby grants to the Agency at no cost a perpetual, fully paid, non-exclusive, enterprise-wide and royalty free license to use, reproduce, distribute, perform and display, disclose and otherwise use and exploit all or any part of the Developer Tools (as defined below) and deliver such Developer Tools to the Agency. In addition, the Agency shall have the right to transfer such license to a designated third party that the Agency selects to perform services covered by this Agreement. At the Agency's option, Service Contractor shall place the Developer Tools into escrow with a third-party escrow agent acceptable to the Agency. "**Developer Tools**" shall mean any and all tools used by Contractor as part of the process of creating the Deliverables and any such tools embedded or to be embedded in the Deliverables or which are necessary to install, use, support, create, revise, complete, modify or enhance the Deliverables, including without limitation, methodologies, tools, knowledge, data, configuration data, specifications, listings, printouts, documentation, documents, notes, flow charts and programming techniques commonly employed by programmers. Notwithstanding any contrary terms or provisions above, the Agency shall not transfer any rights or license to the Contractor's proprietary processes without expressly restricting such third party's use of the Contractor processes solely and strictly for Agency purposes with the further restriction that any such transfer or license shall clearly and expressly disclose that such processes are the proprietary property of the Contractor 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**"), Contractor will provide to the Agency, or at the Agency's request to the Agency's designee, at no additional charge, the reasonable termination/expiration assistance requested by the Agency to allow the terminated or expired Services to continue without interruption or adverse effect and to facilitate the orderly transfer of such Services or the Deliverables thereof to the Agency or its designee ("**Termination/Expiration Assistance**"). Contractor 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, Contractor shall answer questions from the Agency regarding the Services on an "as needed" basis at Contractor's then standard commercial billing rates.

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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, Contractor will provide a complete plan for turnover that enables a smooth transition of the Services to the Agency or a successor to Contractor (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, Contractor will provide Termination/Expiration Assistance in accordance with such Turnover Plan. Provision of Termination/Expiration Assistance will not be complete until the Agency Project Manager agrees that all tasks and deliverables set forth in the Turnover Plan have been completed.
- (b) Contractor will attend periodic review meetings called by the Agency, during which the parties at a minimum will review Contractor's performance of Termination/Expiration Assistance, including the completion of tasks and deliverables set forth in the Turnover Plan.
- (c) Contractor will provide sufficient personnel with current knowledge of the Services to work with the appropriate staff of the Agency and, if applicable, the successor to perform the turnover tasks defined in the Turnover Plan. Contractor will cooperate with the Agency and any successor to Contractor in transitioning the functions performed by Contractor under this Agreement in the same manner as described in Section 3.2 (Cooperation) for third parties performing the Services.
- (d) Contractor will promptly cooperate and provide any information that is necessary to effectuate a smooth transfer of the Services performed and Deliverables delivered by Contractor under this Agreement to the Agency or a successor to Contractor, including as necessary for the Agency to prepare a request for proposal.
- (e) Contractor shall identify and assist the Agency in procuring suitable functionally equivalent replacements for any shared hardware or software then used by Contractor 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) Contractor 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 Contractor 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 Contractor in Section 14.4 and 14.6 shall immediately terminate to the extent no longer reasonably necessary by Contractor to provide the Services, and

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Contractor 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 Contractor'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, Contractor 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, Contractor shall deliver all Pre-Existing Materials, Third Party Content and Third-Party Technology relating to the terminated portion of this Agreement, to the Agency or its designee.

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

12.2 Requested Services. For a period of twelve (12) months following the effective date of termination/expiration of the Scope of Work, Contractor shall provide, at the Agency's request, Services related to the termination and not set forth in Section 12.1 at Contractor's direct cost, including overhead, plus ten percent (10%). Such Services shall be New Services.

12.3 Extension of Services. The Agency may elect once to extend this Agreement for up to twelve (12) months beyond the then-effective date of the expiration or termination of this Agreement (a "**Temporary Extension of Services**") by notifying Contractor in writing of such election at least ninety (90) days prior to such effective date and paying Contractor 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 Contractor or Contractor may acquire or have access to certain Agency confidential information ("**Agency Confidential Information**"). Agency Confidential Information shall mean any information of the Agency, any Agency Affiliate, its and their employees and customers, and other third party licensors and contractors that is not generally known to the public and at the time of disclosure is identified, or would reasonably be understood by Contractor, to be proprietary or confidential, whether disclosed in oral, written, visual, electronic or other form, and which Contractor (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 Contractor information; (v) the Agency Furnished Materials and the Agency Systems; (vi) Specifications;

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(vii) manufacturing, purchasing, logistics, sales, technical, product and marketing information; (viii) Work Product; and (ix) the existence, terms and conditions of this Agreement. The Agency Confidential Information shall be proprietary to the Agency. Contractor may disclose to the Agency technical products and information concerning Contractor business activities specifically identified in Schedule 13.1 (Contractor Business Activities) (the “**Contractor Confidential Information**”). Contractor Confidential Information and the Agency Confidential Information may be referred to as “**Confidential Information**”).

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

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

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

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

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

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

13.4 Required Disclosure. Notwithstanding anything to the contrary in this Section, if the recipient party learns that it is or may be required by applicable court order, law or regulation to disclose any Confidential Information, then the recipient party shall: (a) as promptly as possible after learning of a possible disclosure requirement, and in any case prior to making disclosure, notify

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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.** Contractor acknowledges that breach of this Section or disclosure of other information which, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the Agency, Agency Affiliates, and/or the owner of such information, and cannot be adequately compensated by the payment of money damages. Accordingly, the Agency, such Agency Affiliate or such other party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests of the Agency and Agency Affiliates and are reasonable in scope and content.
- 13.6 **No License.** Nothing contained in this Agreement shall be construed to grant to Contractor any right or license under any Intellectual Property Right of the Agency or any Agency Affiliate, except as expressly set forth in Section 14.4 (Agency Materials).
- 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.** If requested by Agency, some or all Contractor personnel, and personnel of Contractor's subcontractors, may be required to complete and submit to the Agency a Confidentiality Pledge substantially in the form attached hereto as Exhibit A. If so requested, Contractor shall deliver an executed copy of a Confidentiality Pledge to the Agency for each employee and contractor of Contractor designated by the Agency.

ARTICLE 14

TITLE; PROPRIETARY RIGHTS

- 14.1 **Work For Hire.** All work performed hereunder, including but not limited to, the Services, business methods or processes, programs, systems, processes, data development, modification and enhancement of systems, computer programs, operating instructions, ideas, designs, concepts and all other documentation developed for or relating to the Agency, any Agency Affiliate and all documents, data and other information of any kind, including information incorporating, based upon, or derived from the foregoing, including reports and notes prepared by Contractor, its subcontractors, or its or their employees and agents, and all software Deliverables and other Deliverables developed, prepared, produced or created for the Agency by Contractor hereunder (whether or not completed) together with all modifications, revisions,

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changes, copies, partial copies, translations, compilations, partial copies with modifications and derivative works of the foregoing (collectively, the **"Work Product"**) are, shall be and shall remain the property of the Agency and may not be used by Contractor, its subcontractors, or its and their employees and agents for any other purpose except for the benefit of the Agency. Contractor shall not sell, transfer, publish, disclose, display, rent, lease, loan, license or otherwise make available to others any part of the Work Product, or copies thereof and Contractor shall treat the same as the Agency Confidential Information. All applicable Intellectual Property Rights (as defined below) in and to the Work Product are, shall vest in and shall remain in the Agency, and neither Contractor, its subcontractors, nor its or their employees or agents shall have any property interest in the Work Product, and same are to be considered works made for hire. Contractor will be responsible for providing, acquiring, operating and maintaining all hardware, equipment and software required for performance of the Services hereunder.

"Intellectual Property Rights" shall mean copyright rights (including, without limitation, the exclusive right to use, make recordings of, reproduce, modify, adapt, edit, enhance, maintain, support, market, sell, rent, sell for rental, sublicense, distribute copies of, publicly and privately display and publicly and privately perform, exploit, exhibit, the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including, without limitation, trade names, trademarks, service marks and trade dress), trademark and service mark registrations and applications, patent rights (including without limitation the exclusive right to make, use and sell), patent registrations and applications, mask-work rights, trade secrets, moral rights, author's rights, right of publicity, contract and licensing rights, rights in packaging, goodwill and other intellectual property rights, as may exist now and/or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the U.S or any other state, country or jurisdiction.

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

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written consent of the Agency. Without limiting the foregoing, Contractor hereby waives any and all claims that Contractor may now or hereafter have in any jurisdiction to so-called "**moral rights**" or rights of "**droit moral**" with respect to the results and proceeds of the Work Product and Contractor's services hereunder.

- 14.3 Inventions. During the Term, Contractor shall disclose promptly to the Agency any inventions or improvements made or conceived by Contractor that result from work done under this Agreement or as a result of information supplied to Contractor, directly or indirectly, by the Agency. At the Agency's request, Contractor shall assign, and shall cause Contractor, its subcontractors and its and their employees and agents to assign, all right, title, and interest in and to any and all such inventions and improvements and to execute such documents as may be required to file applications and to obtain patents in the name of the Agency or its nominees, in any countries, covering such inventions or improvements. Contractor represents it does not have any commitments to others under which Contractor is obligated to assign to such others inventions or improvements or rights therein in conflict with Contractor's obligations to the Agency pursuant to this Agreement.
- 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 Contractor as the Agency Confidential Information, solely for the use by Contractor 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 Contractor 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 Contractor from the Agency or any Agency Affiliates in the rendition of Services hereunder, and all copies thereof, shall be the property of the Agency and shall be, at such times as may be specified by the Agency or the termination/expiration of the Scope of Work, delivered to the Agency. Contractor 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. Contractor acknowledges that the Agency may revoke the licenses granted to Contractor with respect to such third party the Agency Furnished Materials at any time if such third party the Agency Furnished Materials are not necessary to Contractor's performance of the Services hereunder, and in any case, if the third party licensor terminates the Agency's right to use or to sublicense such third party the Agency Furnished Materials. Contractor 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. Contractor will be responsible for all consents and fees, if any, required to permit the Dedicated Contractor Personnel to access the Agency Furnished Materials that are owned by third parties.
- 14.5 Pre-Existing Materials. To the extent that any pre-existing materials or information owned by Contractor or any third party are contained in the Deliverables or are necessary for the use of the

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Deliverables or for the performance of any Services (“**Pre-Existing Materials**”), Contractor shall obtain the Agency's written consent before using such Pre-Existing Materials hereunder. Further, Contractor warrants that it has or will acquire the right to grant and will grant to the Agency, before delivery of the Deliverables, and at no present or future cost to the Agency, a perpetual, irrevocable, non-exclusive, worldwide, enterprise-wide, royalty-free license to: (i) use, execute, display, copy, perform, modify and prepare derivative works of the Pre-Existing Materials, and (ii) authorize others (including without limitation Agency Affiliates) to do any, some, or all of the foregoing. Contractor shall be responsible for all payments in connection with such licenses of Pre-Existing Materials, and the Agency shall have the right to review all such Contractor agreements with third parties to ensure their acceptability, and Contractor shall deliver such agreements to the Agency within five (5) days of the Agency's request therefor. Also, upon the Agency's request, Contractor shall provide a copy of the Source Code for any Pre-Existing Materials as well as any Developer Tools, and ongoing support and maintenance services with respect thereto.

- 14.6 The Agency Systems. Commencing on the Commencement Date and for the duration of the Scope of Work, the Agency will provide to Contractor, the right to use and access the software and hardware currently used by the Agency, or necessary for Contractor to perform the functions to be performed by Contractor 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 Contractor's continued use and access thereof. Contractor shall be responsible, at Contractor'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 Contractor to use the Agency Systems in accordance with this Section. Contractor shall be solely responsible for any fees and other amounts payable to any third party for the performance of Contractor's obligations under this Agreement, unless the parties specifically agree to the contrary in the Scope of Work. Contractor 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 Contractor from time to time. Contractor 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. Contractor 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. Contractor 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 Contractor and its approved subcontractors who have a need to access or use such Systems for performance of this Agreement. Contractor 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. Contractor shall comply with the terms of any third-party agreements with respect to the Agency Systems and shall be responsible for breaches thereof by the Agency employees or subcontractors. Contractor acknowledges that the Agency Systems are the Agency Confidential

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

- 14.7 Use of Third-Party Content or Technology. Contractor shall not use any Third Party Content or Third Party Technology in the Deliverables without the Agency's prior written approval, and in no event shall Contractor use any Third Party Content or Third Party Technology in the Deliverables or the provision of Services unless: (a) Contractor 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) Contractor has acquired for Contractor and the Agency, without present or future cost to the Agency, all rights, permissions, clearances, releases or other authorizations necessary to use such Third Party Technology or Third Party Content, as contemplated by this Agreement and a perpetual, irrevocable, worldwide, enterprise-wide, royalty free license therefor for the Agency to: (i) use, execute, display, copy, perform, modify and prepare derivative works thereof, and (ii) authorize others, including without limitation Agency Affiliates to do any, some, or all of the foregoing, as well as an obligation of the owner or licensor thereof to provide ongoing support and maintenance therefor to the Agency. Contractor shall be responsible for all payments in connection with such licenses of Third-Party Technology or Third-Party Content, and the Agency shall have the right to review all Contractor agreements with third parties to ensure their acceptability, and Contractor shall deliver such agreements to the Agency within five (5) days of the Agency's request therefor. For purposes of this Agreement, "**Third Party Content**" shall mean all content, if any, for which rights, licenses, permissions, or other clearances need to be obtained from any persons other than the parties hereto for the use of such content in the Deliverables as contemplated herein. "**Third Party Technology**" shall mean all systems, tools and/or software, if any (including, without limitation, documentation, source code, compilers, diagnostics and data base products) (i) which are required to be licensed from persons other than the parties hereto if the Deliverables require the use of such Third Party Technology, (ii) with which the Deliverables are designed or are based on, or (iii) which are required for or used in the provision of the Services. Third Party Content and Third-Party Technology shall not include any content or technology that the Agency expressly undertakes to obtain from the Agency's licensors, as set forth in Section 14.6 above. 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 Contractor and disclosed to the Agency shall be govern by the applicable third-party software providers' licensing agreement.
- 14.8 Residuals. Nothing in this Agreement shall prevent the Agency from using the Residuals (defined below) resulting from the receipt or use of the Services hereunder. As used herein, "**Residuals**" shall mean information in non-tangible form, which may be developed or retained by persons who have provided or received the Services, including ideas, concepts, know-how or techniques. The term "Residuals" shall not include any Contractor Confidential Information.

ARTICLE 15 PRIVACY AND DATA SECURITY

- 15.1 Certain Definitions.

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- (a) **“Client Information”** shall mean all information and data pertaining to a prospective, current or past customer, applicant, agent, eligible, or other intermediary of the Agency or any Agency Affiliate, including but not limited to such person's address, telephone number, 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 or any Agency Affiliate.
- (b) **“Data”** shall mean any and all data in any form, that is collected, copied, processed, transferred or otherwise used by or on behalf of Contractor in performing the Services, including without limitation, Customer Information, Employee Information, Personal Data, trade secrets or corporate proprietary information of any kind whatsoever, which is made available directly or indirectly to Contractor in connection with the performance of the Services.
- (c) **“Data Privacy and Security Laws and Policies”** 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 and information security policies of either party as well as the Agency's policies and guidelines applicable to any of the foregoing which are provided to Contractor in written form from time to time or posted on the Agency's web site.
- (d) **“Employee Information”** shall mean all information and data pertaining to a prospective, current or past employee or contractor of the Agency or any Agency Affiliate and Dedicated Contractor Personnel, including but not limited to such person's address, telephone number and other contact information, image, gender, age, account or other identifying numbers or attributes, information regarding compensation, benefits and other terms of employment, financial, health and insurance information, and other information about such person, including the fact that the person is or was an employee or contractor of the Agency or any Agency Affiliate.
- (e) **“Personal Data”** shall mean any information that, alone or in combination with other information, relates to a specific, identifiable individual person. Personal Data includes without limitation, individual names, social security numbers, telephone numbers, home address, driver's license number, account number, email address, and vehicle registration number. Any information that can be associated with Personal Data shall also be Personal Data. For example, an individual's age alone is not Personal Data, but if such age were capable of being associated with one or more specific identifiable individuals then such age would be deemed Personal Data.

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- 15.2 Restrictions on use of Data. Contractor 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 and Policies, (ii) Data will not be utilized by Contractor or any Contractor Personnel for any purpose other than for the purpose of rendering the Services to the Agency under this Agreement, and shall be accessible by Contractor 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) Contractor shall treat all Data as the Agency Confidential Information subject to Contractor's other obligations pursuant to this Agreement. The Agency reserve the right to review the Contractor policies, procedures and practices used to maintain the privacy, security and confidentiality of Data.
- 15.3 Restrictions on storage and transfer of Data. All Data must be segregated from other data in the possession of Contractor. All Data must stored on servers and storage equipment located within CONUS. Data shall not be transferred or travel outside CONUS and must not be made available or accessible outside the borders of CONUS, either physically, electronically, verbally, or in any other form or manner.
- 15.4 Security Measures. Without limiting Contractor's other obligations under this Article 15, Contractor shall, and shall contractually require and cause Contractor 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 and Policies. Without limitation of the above, Contractor shall (and shall cause Contractor 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 15.8(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 Contractor 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 Agency is secured in compliance with Data Privacy and Security Laws and Policies. The provider is responsible for tracking any changes to requirements, and for taking proactive

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and timely steps to upgrade its security measures and safeguard client data in compliance with any new or revised regulations.

15.5 Requests for Data and Information. If Contractor should receive any legal request or process in any form seeking disclosure of Data, Contractor 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. Contractor 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. Contractor 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 Contractor 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 15.6 below.

15.6 Notification of Security Breach and Incident Response. Without limitation of the foregoing, Contractor 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 Contractor 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. Contractor 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 Contractor 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 Contractor, or Contractor Personnel, including without limitation, any breach of the security procedures described in this Article 15, Contractor shall be responsible for the prompt regeneration or replacement of such Data. If Contractor 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 Contractor shall cooperate with such third party as requested by the Agency. In addition to any other damages incurred by the Agency, Contractor 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 Contractor or Contractor 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 Contractor, the Agency shall have the discretion of

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determining whether such notice shall come from the Agency or Contractor. 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. Contractor 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 Contractor's or Contractor Personnel's possession, or that is stored or transmitted by Contractor or Contractor 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 Contractor's indemnification obligations set forth in Section 15.8(e) and Article 17 below.

15.7 Disposal.

As soon as possible after any Data (or a portion thereof) is no longer needed by Contractor 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 Contractor, 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 Contractor's or Contractor Personnel's possession or control shall be deleted in a manner that makes the Data non-readable and non-retrievable, and (c) Contractor will certify to the Agency, in writing, that Contractor 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.

15.8 Other Contractor Obligations.

Contractor shall:

- (a) and shall ascertain that all Contractor Personnel and subcontractors shall comply with any written request by the Agency to:
 - (i) provide information about Contractor's or Contractor 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 and Policies 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 Contractor shall not make any

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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, Contractor 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 Contractor Personnel that have access to Data, by performing background checks as appropriate;
- (i) ensure that all Contractor Personnel who have access to Data execute the Agency's applicable confidentiality agreement; and ensure that each contract that Contractor executes with Contractor Personnel shall reflect the terms of this Agreement to the extent that they apply to the Services to be supplied by Contractor Personnel or to the extent that Contractor 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 Contractor Personnel who have access to Data have undergone (and continue to undergo) reasonably adequate training in the care and handling of Data.

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**ARTICLE 16
WARRANTIES**

- 16.1 **Contractor Warranties.** Contractor represents and warrants that: (a) Contractor 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) Contractor has, or will have at the relevant time, the resources, capacity, expertise and ability in terms of equipment, software, know-how and personnel to provide the Services; (c) in rendering the Services, it and its personnel have all necessary rights, authorizations, licenses and Permits (as defined herein) to provide the Services hereunder and to provide all related materials and services required under this Agreement; (d) each individual assigned to perform the Services shall have the proper skill, training, education, experience and background so as to be able to perform Services in a competent, professional and ethical manner; (e) the Agency shall receive free, good and clear title to all Deliverables delivered under this Agreement; (f) due care and its best efforts will be utilized by Contractor in the performance of this Agreement; (g) the Deliverables shall be new, of original manufacture, delivered in a manner consistent with good commercial practice, free from defects in material and workmanship, and shall conform to the Specifications for same and shall meet the functional, performance and reliability requirements of the Agency as set forth in the Scope of Work or Specifications; and (h) Contractor will perform the Services in line with the ethics codes and best practices rules applicable to the Agency and its Contractors and that shall be in force from time to time.
- 16.2 **Continuous Improvement and Cost-Effectiveness.** Contractor represents, covenants and warrants that it shall meet the continuous process improvement requirements set forth in Section 3.5 and that it will use commercially reasonable efforts to use efficiently the resources or services necessary to provide the Services in the most cost-effective manner consistent with the required level of quality and performance.
- 16.3 **Warranty Period.** Unless the Scope of Work, RFP, or Proposal provides a longer warranty period, until one (1) year after Acceptance of a Service (the “**Warranty Period**”), Contractor will, at no charge to the Agency, furnish such materials and services as shall be necessary to correct any defects in the Services, promptly correct any deficiencies which prevent such Services 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 Services.
- 16.4 **Service Proven Technology.** Contractor represents and warrants that, to the best of its ability, 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.** Contractor represents, covenants and warrants that it will perform this Agreement and provide the Services and the Deliverables in a manner that does not and shall not infringe, or constitute an infringement or misappropriation of, any Intellectual Property Right or other proprietary rights of the Agency or any third party.

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- 16.6 **Viruses**. Contractor represents and warrants that it will ensure that no Viruses are coded or introduced into the Agency Systems or the Deliverables. Contractor agrees that, in the event a Virus is found to have been introduced into the Agency Systems or the Deliverables, Contractor shall use its best efforts at no additional charge to assist the Agency in eradicating the Virus and reducing the effects of the Virus, and if the Virus causes a loss of operational efficiency or loss of data, assist the Agency to the same extent to mitigate and restore such losses. If a Virus is found to have been introduced into the Agency Systems or the Deliverables by virtue of Contractor's breach of the foregoing representation or warranty, Contractor 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 Contractor 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**. Contractor represents and warrants that, without the prior written consent of the Agency, Contractor 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**"). Contractor further represents and warrants that Contractor 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 Contractor's breach of the foregoing representation or warranty, Contractor 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. Contractor 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 Contractor to provide the Services to the Agency or its designees and will take all lawful steps necessary to maintain such Permits during the Term. Contractor will have financial responsibility for, and will pay, all fees and taxes associated with obtaining such Permits. The Agency will cooperate with Contractor in securing such Permits. If Contractor is not able to secure the Permits in its own name, the Agency will undertake to secure such Permits at the reasonable direction of Contractor and at Contractor's expense. Contractor 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**. The Contractor shall be required to provide all additional or better warranties (as determined by the Agency) in the Proposal as well as any warranties mutually agreed upon in a Scope of Work, which will apply to the Services and Deliverables to be provided, in addition to those set forth in this Article 16 (collectively, the "**Additional Warranties**"). The warranties required by this Article 16 shall apply, whether or not the Proposal or Scope of Work sets forth Additional Warranties.

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- 16.11 Remedies for Breach of Warranties. In the event that the Deliverables or Services do not meet the above warranties or any Additional Warranties, without limiting the Agency's other remedies set out in this Agreement or at law or equity, Contractor shall provide, at no charge, the necessary Deliverables and Services required to attain the levels or standards set forth in said warranties.
- 16.12 Notice of Problem. In the event that during the Term Contractor becomes aware of an event, occurrence, error, defect or malfunction which Contractor reasonably and in good faith anticipates would adversely and materially affect the Agency, then Contractor will promptly provide the Agency with written notice of the event, occurrence, error, defect or malfunction and the adverse effect anticipated by Contractor, as well as a proposed remedy therefor.
- 16.13 Business Disruption. In performing its Services hereunder, Contractor 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. Contractor makes the following representations:
- 16.14.1 Contractor is a corporation registered and in good standing under the laws of the State of New York and the State of its incorporation and is qualified and in good standing as a foreign corporation under the laws of any jurisdiction where the ownership of its assets or the conduct of its business require Contractor to be so qualified;
- 16.14.2 There is no action, suit or proceeding pending or threatened against or affecting Contractor before or by any court, administrative agency or other governmental authority which in any way will impair Contractor'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 Contractor's execution, delivery, and performance of this Agreement has been duly authorized by all appropriate corporate action on the part of Contractor and this Agreement constitutes the valid and binding obligation of Contractor enforceable against Contractor in accordance with the terms thereof and hereof;
- 16.14.4 Neither the execution and delivery by Contractor of this Agreement, nor the consummation by Contractor of the transactions contemplated hereby, nor compliance by Contractor with the provisions hereof, conflicts with or results in a breach of any of the provisions of the certificate of or articles of incorporation or by-laws of Contractor 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 Contractor is a party or by which it is bound, or constitute a default under any provision thereof;
- 16.14.5 Contractor is under no obligation or restriction that would conflict with the Services required to be furnished by Contractor and its other obligations under this Agreement, or that otherwise would in any manner prevent the full performance by

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Contractor of the terms, conditions and requirements of this Agreement, and Contractor will immediately disclose to the Agency any actual or potential conflict of interest that may arise during Contractor'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 Contractor will indemnify, defend and hold the Agency, Agency Affiliates and its and their officers, directors, employees, agents, successors and assigns (each, a "**the Agency Indemnitee**") harmless from and against, and pay all court awards relating to, any and all Losses of the Agency or a third party arising out of or relating to any claim or allegation:

- (a) that any of the Services, Work Product, Deliverables, Developer Tools, Pre-Existing Materials, Third Party Content or Third-Party Technology provided to the Agency or designees by Contractor infringe upon the Intellectual Property Rights of any the Agency Indemnitee or a third party;
- (b) alleging a violation of laws or regulations, including any applicable U.S. or New York State employment and labor laws, or a failure by Contractor to obtain required permits, rights or licenses or otherwise, including as set forth in Section 16.9;
- (c) alleging a breach by Contractor of any obligation, representation or warranty made by Contractor in this Agreement or Contractor's, its subcontractors' or its or their employees' or agents' obligations with respect to any the Agency Confidential Information, and in particular, breach of Contractor's obligations under Section 14.6 or Article 15;
- (d) alleging a breach by Contractor, its subcontractors or its or their employees or agents of the Agency written policies or procedures. Including such policies and procedures set forth on the Agency's web sites, in effect at any Site;
- (e) arising out of or in connection with the injury of or damage to any person or real or tangible personal property to the extent such injury or damage is proximately caused by the negligence or willful misconduct of any person for whose conduct Contractor 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 Contractor or its subcontractors, or arising out of

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removal of any personnel under Section 7.3 or any other claims or demands made, or actions brought, by an employee or agent of Contractor or its subcontractors in connection with his or her employment.

- (g) arising out of or related to occurrences Contractor 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 Contractor 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 Contractor 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 Contractor or any Contractor subcontractor or for taxes, interest and penalties for which Contractor is liable;
- (j) made based on acts or omissions, events, matters or circumstances of Contractor or any Contractor subcontractor or its or their employees or agents thereof or failure of Contractor to comply with Section 17.3;
- (k) for theft or misconduct by an employee or agent of Contractor or its subcontractors;
- (l) of any third party due to acts or omissions of Contractor or its subcontractors or its or their employees or agents, in violation of this Agreement, including any breach of an agreement between the Agency and a third party, due to such acts or omissions; or
- (m) asserted against any Agency Indemnitee but resulting from an act or omission of Contractor 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, Contractor, 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) replace such Deliverable with a suitable non-infringing Deliverable or modify the original Deliverable to become non-infringing without affecting its functionality, all at Contractor's sole expense.

17.2.2 Contractor 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

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shall promptly notify Contractor 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 Contractor 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 Contractor's obligation to indemnify the indemnified party only to the extent Contractor'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. Contractor 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, CONTRACTOR'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY DAMAGES AND COSTS SHALL NOT EXCEED [REDACTED] EXCEPT AS SET FORTH IN SECTION 18.3 BELOW, THE AGENCY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY DAMAGES AND COSTS SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE FEES DUE AND OWING BY THE AGENCY TO CONTRACTOR 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) CONTRACTOR'S OBLIGATIONS UNDER Article 17 (INDEMNIFICATION), (b) CLAIMS OR CAUSES OF ACTION WHICH ARISE FROM CONTRACTOR'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, OR THAT OF ITS SUBCONTRACTORS OR ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, (c) BREACH OF CONTRACTOR'S OBLIGATIONS UNDER Article 13 (CONFIDENTIAL INFORMATION), (d) BREACH OF CONTRACTOR'S OBLIGATIONS UNDER Article 15 (PRIVACY AND DATA SECURITY), (e) CONTRACTOR'S FAILURE TO COMPLY WITH APPLICABLE LAWS OR REGULATIONS, AND (f) WRONGFUL TERMINATION OR ABANDONMENT OF THIS AGREEMENT BY CONTRACTOR OR REFUSAL OF CONTRACTOR TO PROVIDE TERMINATION ASSISTANCE. IN ADDITION, THE LIMITATIONS SET FORTH IN SECTIONS 18.1 AND 18.2 ABOVE SHALL NOT APPLY TO (i) THE AGENCY'S

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OBLIGATIONS UNDER Article 17 (INDEMNIFICATION), (ii) THE AGENCY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (iii) BREACH OF THE AGENCY'S OBLIGATIONS UNDER Article 13 (CONFIDENTIAL INFORMATION). THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION PAID OR TO BE PAID UNDER THIS AGREEMENT.

- 18.4 Further Exclusions. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOLLOWING AMOUNTS SHALL NOT BE COUNTED TOWARD CONTRACTOR'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 CONTRACTOR OR NON-CONFORMING SERVICES; (III) AMOUNTS PAID BY THE AGENCY BUT SUBSEQUENTLY RECOVERED FROM CONTRACTOR DUE EITHER TO INCORRECT CHARGES BY CONTRACTOR OR NON-CONFORMING SERVICES; OR (IV) INVOICED CHARGES AND OTHER AMOUNTS THAT ARE DUE AND OWING TO CONTRACTOR FOR SERVICES PROVIDED HEREUNDER.

ARTICLE 19
INSURANCE AND FIDELITY BOND

- 19.1 Insurance. Contractor 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 set out in Schedule 19.1 (Minimum Amounts of Insurance Coverages) or as required by law, whichever is greater, with insurers in good standing, possessing an A.M. Best rating of not less than A VII, and authorized to do business under the laws of the United States and of the State of New York and of the state in which re 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 The Agency, Agency Affiliates, and its and their directors, officers, employees, and agents shall be named as additional insured and/or loss payee under each insurance policy obtained by Contractor.
- 19.1.2 The foregoing insurance requirements set forth the minimum amounts and scopes of coverage to be maintained by Contractor and are not to be construed in any way as a limitation on Contractor's liability under this Agreement. The insurance coverages shall be primary and will not participate with nor will be excess over any valid and collectable insurance or program of self-insurance carried or maintained by the Agency.
- 19.1.3 Upon request, Contractor shall furnish Certificates of Insurance issued by the applicable insurance carriers, not local agents thereof, evidencing all of the foregoing insurance coverages prior to or upon execution of an Agreement. Full copies of the policies required above shall be furnished to the Agency upon request. All of the above-described policies shall provide (through affirmative endorsement to the policies) that no less than thirty (30) days' prior written notice of cancellation, modification, reduction in coverage or non-renewal shall be given to the Agency.

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The failure of Contractor to comply with any of the terms of these policies shall not adversely affect the Agency's coverage thereunder. Certificates of Insurance evidencing any modification, renewal or replacement of any of these insurance coverages shall be furnished to the Agency within ten (10) days after such modification, renewal or replacement; *provided, however*, that no such coverage shall be modified or replaced without the prior written consent of the Agency. In the event that any Services under an Agreement are to be rendered by persons other than the Contractor's own employees, Contractor shall arrange for such persons to forward to the Agency, prior to commencement of Services by them, Certificates of Insurance evidencing such amounts, in such form, and with such insurance companies as are satisfactory to the Agency.

ARTICLE 20
DISPUTE RESOLUTION

- 20.1 General. Any dispute, claim or controversy between the parties arising out of or relating to this Agreement, including with respect to the validity, performance, interpretation or application of any provision of this Agreement or the Scope of Work or the performance by Contractor 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.

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- (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. This Agreement shall be governed exclusively by and construed in accordance with the laws of State of New York. Notwithstanding anything to the contrary in this Agreement, (i) the Agency shall be entitled to seek relief, including preliminary or final injunctive relief solely in a court of competent jurisdiction located in New York County, New York and (ii) Contractor shall be entitled to seek relief solely in a court of competent jurisdiction located in New York County, New York. Each of the Parties waives any objection that it may have based on improper venue or forum *non conveniens* to the conduct of any such action or proceeding in such court.
- 20.5 Continuity of Services. Contractor 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 Contractor, Contractor 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 Contractor, 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,

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including as they are changed, amended, supplemented or newly added from time to time.

21.1.2 Without limitation to the above, Contractor 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 Policies, 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, Contractor represents and warrants that the Services comply with all Applicable Laws applicable to their use and operation and that the Agency's and any Agency Affiliate's use of such Services as contemplated herein will not violate any Applicable Laws and that Contractor shall take all necessary actions to ensure that Contractor and the Agency are, at all times, in compliance with such Applicable Laws. If a charge of noncompliance with any Applicable Law occurs, Contractor will immediately notify the Agency of such charge in writing and, at its own cost, promptly remedy such noncompliance. Contractor will be responsible for any fines and/or penalties incurred by the Agency arising from Contractor'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. Contractor 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 Liens.

21.3.1 Contractor 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. Contractor shall obtain and provide to the Agency similar waivers from all of Contractor's subcontractors and Contractors. Nothing in this Section 21.2 shall apply to, or in any way be deemed to encumber, any of the rights Contractor and its subcontractors have in their own tangible personal and intellectual property, nor act as a release of the underlying debt, if any.

21.3.2 Contractor 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 Contractor's subcontractors or Contractors, or by subcontractors or Contractors of Contractor's subcontractors, which in whole or in part, are based on any work, Services, material, or equipment to be provided hereunder.

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21.3.3 If any lien claims or liens are filed against the Agency or any Agency Affiliates or its or their real or personal property (whether owned or leased) by any of Contractor's subcontractors or Contractors 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, Contractor 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 Contractor fails to take such actions in a timely manner, without waiving the breach the Agency may do so without notice to Contractor and Contractor shall be responsible for all costs (including attorney's fees) incurred by the Agency in connection therewith.

21.3.4 At least ten (10) days prior to the performance of any work at the Agency or its designee's premises, Contractor shall provide the Agency with an accurate and full list of the names and addresses of each potential lien claimant. Contractor 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, Contractor shall promptly post and/or file such notices.

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

- (a) maintain in effect all controls, operations and systems necessary and appropriate to enable the Agency and the relevant Agency Affiliates to comply with its and their obligations under the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated thereunder (collectively, "**SOA**"), including Section 404 of SOA and the rules and regulations promulgated thereunder ("**Section 404**");
- (b) cause an audit to be performed with respect to the Services and the performance of its other obligations under this Agreement, by a certified public accountant registered with the Public Company Oversight Board based on the Statement of Standards for Attestation Engagements (SSAE) No. 16 (or such industry equivalent which was previously a "SAS 70"), and have a Type II Report prepared in connection therewith. With respect to each such audit, Contractor 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 Contractor's fiscal year. Contractor 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

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audit, and in all events within thirty (30) days of completion. Further, Contractor shall provide any updates to any audit reports to the Agency promptly after they are received by Contractor. Contractor shall promptly correct any deficiencies identified in any such audit. At the Agency's request, Contractor 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 Contractor becomes certified in other programs intended to evaluate security, Contractor shall also provide information regarding such certification to the Agency consistent with this Section. If Contractor is unable to timely deliver the required SSAE 16 report, Contractor 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 Contractor's policies, procedures and internal controls.

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

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

- 21.5 International Considerations. Contractor may not provide Services from outside CONUS without express written permission from Agency identifying what Services are going to be performed from outside CONUS. If Contractor is permitted to provide Services from outside CONUS, without limiting any of Contractor's other obligations set forth in this Agreement, Contractor 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.

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

ARTICLE 22
MISCELLANEOUS

- 22.1 Similar Services. During the Term and following the expiration and/or termination of this Agreement, the Agency may enter into, and Contractor 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. Contractor 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 Agency Affiliate, or a successor by merger, acquisition or consolidation, or to an acquirer of all or substantially all of the assets of the Agency. Contractor 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.

22.4.2 In the event an entity or unit of the Agency or any Agency Affiliate or the business or part of an entity or unit of the Agency or any Agency Affiliate is sold or otherwise divested (the "**Divested Entity**"), Contractor 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.

22.5.1 Prior to subcontracting any Services, Contractor shall notify the Agency of the proposed subcontractor, its qualifications, and the scope of Contractor's use thereof,

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and in each instance, shall obtain the Agency's prior approval of such subcontract. Contractor 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 Contractor from its responsibility for its obligations under this Agreement. Contractor 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 Contractor's liability, any time the term "Contractor" is used in this Agreement, it includes all subcontractors performing any part of this Agreement on behalf of Contractor. Contractor shall be responsible for all payments to its subcontractors.

22.5.2 Upon the Agency's request, Contractor 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.

22.5.3 Any subcontractors shall agree in writing to be bound by the terms of this Agreement. Copies of all subcontracts shall be provided to Agency upon signing and at the time of any permitted amendment. In the event of any breach or default by Contractor, the Agency reserves the right to enter into a direct contract with the subcontractor on the same terms and conditions as the subcontractor has with the Contractor. All subcontracts shall include a provision permitting the Agency at its sole election to replace the Contractor under such subcontract in the event of Contractor's breach or default without modification of the terms thereof other than such *pro tanto* modifications necessary to replace the Agency with the Contractor as the contracting party under such subcontract.

22.5.4 The following is the list of pre-approved subcontractors that Contractor 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. Contractor will ensure that all agreements between Contractor 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. Contractor 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. Contractor will be responsible for all consents and fees, if any, required to permit the Dedicated Contractor Personnel to access the Agency's third party Intellectual Property and software.

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- 22.7 Independent Contractor. Contractor 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 Contractor hereunder are not the Agency's employees or agents and Contractor 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. Contractor shall be solely responsible for the payment of compensation of Contractor'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 Contractor employee, but such responsibility shall be solely that of Contractor. In the event that any Contractor employee performing Services hereunder is found to be not an employee of Contractor for any purpose, including tax purposes, Contractor 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 Service of Process. Contractor hereby designates its office at the address set forth in the first paragraph of this Agreement 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):

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If to the Agency:

[New York State Housing Finance Agency
641 Lexington Avenue, 5th Floor
New York, NY 10022
Attn: Senior Vice President and Counsel]

If to Contractor 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 Contractor'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 Contractor is delayed in its performance by reason of such cause, no such extension shall be made unless notice thereof is presented by Contractor 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 Contractor by reason of such delay, and Contractor shall use best efforts to perform its obligations during such period of delay.
- 22.15 Publicity. Contractor agrees that it will not, without prior written consent of the Agency in each instance (i) use in advertising, publicity or otherwise the name of the Agency, or any Agency Affiliate or any director, officer, employee or agent of the Agency or any Agency Affiliate nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction, or simulation thereof owned by the Agency or any Agency Affiliate, (ii) represent directly or indirectly that any product or service provided by Contractor 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. Contractor 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

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interest in the Agency Marks to Contractor. Contractor must not, in any manner, represent that it has any ownership in the Agency Marks. Contractor must not do or cause to be done anything that impairs the Agency's exclusive license or ownership in the Agency Marks. Contractor must not use, print or duplicate the Agency Marks unless Contractor has obtained prior written approval from the Agency. Any permitted use by Contractor of the Agency Marks is limited to the Term. Upon termination, Contractor must immediately cease all use of the Agency Marks. Contractor 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, Contractor shall not solicit, interview, hire, or discuss employment prospects with any officer, contractor or employee of the Agency or any Agency Affiliate without the prior written approval of the Agency; nor will Contractor solicit, interview, hire or discuss employment prospects with any former officer, contractor or employee of the Agency or any Agency Affiliate who voluntarily terminated their employment for a period of six (6) months after such termination without the prior written approval of the Agency.

22.18 Covenant of Further Assurances. The Agency and Contractor covenant and agree that, subsequent to the execution and delivery of this Agreement and, without any additional consideration, each of the Agency and Contractor 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 Contractor or its subcontractors who, on behalf of Contractor, 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 Contractor 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 Contractor 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 Contractor 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 Contractor (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 Contractor represents and warrants that (i) it has not violated and will not violate any the Agency policies of which Contractor has been or may be given notice regarding the offering of inducements, gift or gratuities in connection with this Agreement; (ii) it

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

22.20 Surviving Articles and Sections. In addition to any provisions intended by their nature to survive termination or expiration of this Agreement, all provisions of Sections 3.1, 3.2, 4.4, 4.5, 4.6, 4.7, 4.8, 4.10, 7.1, 7.10, 7.11 and 11.3, and Article 12, Article 13, Article 14, Article 15, Article 16, Article 17, Article 18, Article 19, Article 20, Article 21, and Article 22 shall survive the termination or expiration of this Agreement for any reason or the completion of Services.

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- 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 Articles 15-A and New York State Veterans' Law Section 3. Pursuant to New York State ("NYS") Executive Law Articles 15-A and New York State Veterans' Law Section 3, the Agency recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified minority business enterprises ("MBEs") and/or women-owned business enterprises ("WBEs" and together with MBEs, "MWBEs") and NYS certified service disabled veteran owned business enterprises ("SDVOBs") in the performance of the Agency's contracts. For purposes of this Agreement, the Agency hereby establishes (i) an overall goal of 30% for MWBE participation in total expenditures under this Agreement, 15% for MBEs and 15% for WBEs and (ii) a goal of 6% for SDVOB participation in total expenditures under this Agreement. The Contractor's completed [Utilization Plan, PROC-2](#), attached hereto as Exhibit B. Thereafter, the Contractor is required to submit a [Cumulative Payment Statement, PROC-6 form](#), on a quarterly basis during the term of this Agreement documenting the progress made towards achievement of the MWBE and SDVOB goals 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 procurementdiversityreports@hcr.ny.gov by April 10th, July 10th, October 10th, and January 10th. The Contractor 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. Contractor's fees and expenditures incurred for web hosting services, travel and software licenses and associated maintenance and support services in connection with provision of the Services shall not be included in the calculation of the MWBE and SDVOB participation for purposes of determining Contractor's achievement of the MWBE and SDVOB participation goals established by the Agency pursuant to this Section 22.22. In accordance with 5 NYCRR §142.13, the Contractor 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 Contractor 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 Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under this Agreement.
- 22.23 Equal Opportunity Requirements and Procedures.. The Contractor's completed [EEO Staffing Plan, PROC-1 form](#) is attached hereto as Exhibit D. The Staffing Plan reports the actual workforce utilized in the performance of this Agreement by the specified categories listed including ethnic background, gender, and Federal occupational categories. Pursuant to Executive Order #162, the Contractor and its subcontractors, if any, are also required to report the gross wages paid to each of their employees for the work performed by such employees under this Agreement on a quarterly basis. Thereafter, this information is to be submitted on a quarterly basis during the term of this Agreement. 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.

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Quarterly Workforce Reports shall be submitted, in PDF format, to procurementdiversityreports@hcr.ny.gov by April 10th, July 10th, October 10th, and January 10th.

The Contractor 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 Contractor 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:

STATE OF NEW YORK MORTGAGE AGENCY

By: _____ Date: _____
Name:
Title:

NEW YORK STATE HOUSING TRUST FUND CORPORATION

By: _____ Date: _____
Name:
Title:

AGREED AND ACCEPTED TO:

[Name of Contractor]

By: _____ Date: _____
Name:
Title:

Approved as to Form by Legal:

By: _____
Name:
Title:

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**Schedule 2.2
Scope of Work**

[To be inserted at the time of contract execution]

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**Schedule 3.4
Service Level Matrix
(Including Service Levels and Service Level Credits)**

To be provided by Contractor

DRAFT

DRAFT

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**Schedule 8.1
Governance**

Agency Project Manager:

Contractor Project Manager:

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**Schedule 9.1
The Agency's Code of Conduct**

(Schedule 9.2, Agency's Code of Conduct, to follow this page)

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**Schedule 10.1
DRP and BCP**

The Agency's disaster recovery ("DR") site is Amazon Web Services ("AWS"). The Contractor is expected to provide Digitech Systems Support at the disaster recovery site, if needed, with 24 hours' notice. HCR users should be able to access the DR site smoothly in case of disaster to ensure business continuity. Below are the applicable roles and responsibilities:

Unit or Role Name	Organization	Role Description
Help Desk	Agency	Record incidents and service requests using the Agencies' help desk tools.
Chief Technology Officer or Chief Information Officer	Agency	Provide leadership for application management strategy

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**Schedule 13.1
Contractor Business Activities**

[To be complete by Proposers]

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Schedule 19.1
Minimum Amounts of Insurance Coverages

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APPENDIX I

(Appendix I, Agency's Standard Clauses for Contracts, to follow this page)

APPENDIX II

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

(Appendix II to follow this page)

APPENDIX III

Agency's Prompt Payment Policy

(Appendix III to follow this page)

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 in 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

(Contractor's Exhibit B follows this page)

EXHIBIT C

Cumulative Payment Statement, PROC-6 Form

(Exhibit C follows this page and can be downloaded at
<http://www.nyshcr.org/AboutUs/Procurement/Proc6-CumulativePaymentStatement.xlsx>)

EXHIBIT D

Contractor EEO Staffing Plan

(Contractor's Exhibit D to follow this page)

EXHIBIT E

EEO Workforce Utilization Report, PROC-5 Form and Instructions

Exhibit E to follow this page and also be downloaded and

<http://www.nyshcr.org/AboutUs/Procurement/Proc5-WorkforceUtilization.xlsx>

and

<http://www.nyshcr.org/AboutUs/Procurement/Proc5-WorkforceUtilization-instructions.pdf>

EXHIBIT F

W-9 Form

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