

CONTRACT NO. PS 805

MASTER AGREEMENT

Between

THE PUBLIC BUILDING COMMISSION OF CHICAGO

And

INTERNATIONAL BUSINESS MACHINES CORPORATION

FOR

MASTER NETWORK ADMINISTRATOR (PS 805)



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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. BACKGROUND, DEFINITIONS, INTERPRETATION	1
1.1 Background and Objectives.....	1
1.2 Definitions.....	3
1.3 Interpretation.....	3
1.4 Order of Precedence; Modifications.....	4
1.5 Incorporation of Changes Responsive to Changes in Local Law or City Policies.....	5
1.6 Local Law and City Policies.....	5
1.7 Contract Structure.....	5
ARTICLE II. PROJECT.....	6
2.1 Scope of Project - Overview.....	6
2.2 Task Orders.....	7
2.3 Project Standards.....	8
2.4 Project Plan and Quality Assurance Plan.....	8
2.5 Procedures Manual.....	10
2.6 Training Plan.....	10
2.7 Network Maintenance Plan.....	11
ARTICLE III. SERVICES.....	11
3.1 Scope of Services.....	11
3.2 Root Cause Analysis.....	16
3.3 New Services.....	16
3.4 Evolutionary Changes.....	17
3.5 Disaster Recovery Services and Contingency Plans.....	17
3.6 Technology and Business Process Evolution.....	17
3.7 Cooperation.....	18
3.8 Benchmarking - Most Favored Customer.....	19
3.9 Customer Satisfaction.....	20
3.10 New Advances.....	21
3.11 Vendor Best Practices.....	21
ARTICLE IV. CONSTRUCTION AND GOODS	21
4.1 Construction.....	21
4.2 Goods.....	21
ARTICLE V. DELIVERABLES	21
5.1 Deliverables - Overview.....	21
5.2 Acceptance Process.....	22
ARTICLE VI. OTHER VENDOR OBLIGATIONS, COVENANTS	23
6.1 Annual Certification.....	23
6.2 PBC Direct Procurement.....	23
6.3 Electronic Records.....	23
6.4 Vendor as Subcontractor.....	24

6.5	Other Vendor Covenants.	24
6.6	Conflict of Interest Covenants.	26
ARTICLE VII. PAYMENT AND FUNDING		26
7.1	Fees.	26
7.2	Expenses.	27
7.3	Invoice of Payment.	27
7.4	Taxes.	27
7.5	Source of Funds.	28
7.6	Non-Appropriation.	28
7.7	Suspension.	29
7.8	Payments Withheld.	29
ARTICLE VIII. PERSONNEL.....		30
8.1	Project Team; Staffing.	30
8.2	PBC Project Manager.	31
8.3	Vendor Administrator.	31
8.4	Subcontractors.	32
ARTICLE IX. GOVERNANCE		33
9.1	Management Committee.	33
9.2	Meetings.	34
9.3	Reports.	34
9.4	Change Control.	34
9.5	Claims.	35
9.6	Disputes.	36
ARTICLE X. SERVICE FACILITIES.....		38
10.1	Service Facilities.....	38
10.2	Vendor Facilities.....	38
10.3	Access to and Use of City Facilities.	38
10.4	Control of Service Locations.	39
10.5	Parking Restrictions.....	40
ARTICLE XI. RESOURCES AND PROPRIETARY RIGHTS		40
11.1	Vendor Pass-Through Licenses and Warranties.	40
11.2	City Third Party Materials.	40
11.3	City Owned Materials and Hardware.	41
11.4	Vendor Materials.	42
11.5	Critical Licensed Software.....	43
11.6	Rights in Developed Materials.	45
11.7	Consents.....	45
11.8	Material Degradation.	46
ARTICLE XII. CONFIDENTIAL INFORMATION AND PRIVACY AND DATA PROTECTION.....		47
12.1	Confidentiality.	47
12.2	City Data.	48
12.3	Work Product Privilege.	50
12.4	Public Documents.	50
12.5	Injunctive Relief.	51

12.6	Unauthorized Acts.	51
12.7	Privacy and Data Protection.	51
ARTICLE XIII. RECORDS AND AUDITS.....		52
13.1	Records.	52
13.2	Audits.....	52
ARTICLE XIV. COMPLIANCE WITH LAWS		53
14.1	Compliance with Laws.	53
14.2	Employment and Payment.	54
14.3	Veteran's Preference.....	56
14.4	Covenant against Contingent Fees.....	56
14.5	Disclosure Affidavit.....	56
14.6	Disclosure of Retained Parties.....	57
14.7	Non-Collusion, Bribery of a Public Officer or Employee.....	57
14.8	Parking Violations.....	57
14.9	Child Support Ordinance.....	58
14.10	Special Funding Conditions.....	59
14.11	Environmental Laws and Wastes.....	59
14.12	Federal Terrorist (No-Business) List.....	59
14.13	Export Control.....	60
ARTICLE XV. INSURANCE		60
ARTICLE XVI. REPRESENTATIONS AND WARRANTIES.....		60
16.1	General Representations and Warranties of Vendor.....	60
16.2	Performance Warranties.....	62
16.3	Remedies.....	63
16.4	PBC Information and Facilities.....	64
16.5	Warranty Disclaimer.....	65
ARTICLE XVII. INDEMNIFICATION.....		65
17.1	Vendor Indemnification.....	65
17.2	"Blue Pencil."	66
17.3	Defense of Claims.....	66
17.4	Waiver.....	66
17.5	Survival.....	67
17.6	Non-Liability of Public Officials.....	67
ARTICLE XVIII. LIABILITY		67
18.1	Force Majeure.....	67
18.2	Limitation of Liability.....	68
ARTICLE XIX. TERM AND TERMINATION		69
19.1	Term.....	69
19.2	Termination by the PBC.....	70
19.3	Events of Default.....	70
19.4	Remedies Following Default by Vendor.....	71
19.5	Right to Offset.....	72
19.6	Remedies Cumulative.....	73
19.7	Termination Assistance.....	73

ARTICLE XX. MISCELLANEOUS PROVISIONS.....	73
20.1 General.....	73
20.2 No Collateral Agreements.	73
20.3 No Omissions.....	74
20.4 Amendments.	74
20.5 Governing Law and Jurisdiction.....	74
20.6 Severability.	74
20.7 Survival.....	75
20.8 Cooperation.....	75
20.9 Waiver.....	75
20.10 Independent Vendor.....	75
20.11 Assignment.	76
20.12 Assignment of Funds.	76
20.13 Notice.....	76
20.14 Safety and Security.	77
20.15 Savings Clause.....	78
20.16 Third Party Beneficiaries.....	78

TABLE OF SCHEDULES

Schedule 1.2	Defined Terms
Schedule 1.7	User Projects Terms and Conditions
Schedule 2.3(b)	Performance Standards for Specified System Elements
Schedule 2.3(c)	Operational Standards
Schedule 2.4(a)	Project Plan
Schedule 2.4(b)	Quality Control Standards
Schedule 2.5	Procedures Manual
Schedule 2.6	Training Plan
Schedule 3.1(b)	Task Order 1
Schedule 3.1(f)	Service Level Agreement
Schedule 3.2	Severity Level Response Times
Schedule 4.1	Terms and Conditions for Construction
Schedule 4.2	Terms and Conditions Related to Goods
Schedule 5.2	Common Elements of Acceptance Criteria and Acceptance Testing
Schedule 7.1	Fee Schedule
Schedule 7.5	Funding Source Terms and Conditions
Schedule 8.1(a)	Key Employees
Schedule 8.1(c)	Background Checks and Drug Screening
Schedule 8.4	Subcontractors
Schedule 9.3	Reports
Schedule 10.1	Service Facilities
Schedule 10.4(b)	City Property at Vendor Facilities
Schedule 11.1(a)	Vendor Pass-Through Licenses and Warranties
Schedule 11.2(a)	City Licensed Materials
Schedule 11.3	City Owned Materials and Hardware - Ownership
Schedule 11.4	Vendor Materials
Schedule 11.5(a)	Critical Licensed Software
Schedule 11.5A	Software License Terms
Schedule 14.5	Form of Disclosure Affidavit
Schedule 14.10(a)	MBE/WBE Special Conditions
Schedule 15.1	Insurance Schedule
Schedule 19.7	Termination Assistance Services

MASTER AGREEMENT

THIS MASTER AGREEMENT ("**Master Agreement**") and the Schedules and Attachments attached hereto together with all additions, amendments and modifications thereto and hereto made in accordance with the terms thereof and hereof ("**Agreement**"), has been executed by the Parties on February 3, 2006 ("**Commencement Date**", also referred to as "**Effective Date**"), and is by and between the Public Building Commission of Chicago, a municipal corporation and unit of local government existing under the Constitution of the State of Illinois ("**PBC**" or "**Commission**") on behalf of itself and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois (the "**City**") and the other agencies, branches and divisions of state or local government in Illinois (the "**Sister Agencies**"), and International Business Machines Corporation, a New York corporation ("**Vendor**" or "**IBM**"). (PBC and Vendor are sometimes referred to individually as a "**Party**" or together as the "**Parties**.")

RECITALS

A. On behalf of the City of Chicago Office of Emergency Management and Communications ("**OEMC**," and with other City departments and the Sister Agencies, each, a "**User Agency**" and collectively, the "**User Agencies**"), the PBC issued a Request for Qualifications and Proposals ("**RFQ/P**") for a project to develop, implement, maintain and provide services and goods for a citywide Network, including a citywide fiber network, which uses fiber optic cable comprised of individual fiber optic strands (the "**Fiber Network**"), and a scalable video surveillance system to be used together for, inter alia, the provision of homeland security, public safety and traffic management coverage in the City for the City (for the benefit of its citizens), the Sister Agencies and the Users as such will be described with greater particularity in Task Orders (such project, "**Operation Virtual Shield**" or the "**Project**," and such Network and system, the "**System**").

B. In response to the RFQ/P, Vendor submitted to the PBC a proposal, as amended and supplemented (collectively, the "**Proposal**").

C. Based on the RFQ/P and the Proposal, the PBC and Vendor have engaged in extensive negotiations and discussions, which have culminated in the formation of the relationship described in this Agreement.

D. Vendor desires to provide to the PBC, and the PBC desires to obtain from Vendor, the Goods, Materials and Services in connection with the Project as set forth in this Agreement and in accordance with the terms and conditions herein. Vendor desires to make available to the PBC the Goods, Materials and Services in connection with User Projects as set forth in this Agreement and in accordance with the terms and conditions herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, the Parties agree as follows:

ARTICLE I. BACKGROUND, DEFINITIONS, INTERPRETATION

1.1 Background and Objectives.

(a) Vendor Performance. The PBC desires that Vendor provide certain Services, Materials and Goods in connection with the development, implementation and maintenance of the System, which will be utilized by the City, certain of the Sister Agencies and certain private institutions (such private

institutions, the "Users"). Vendor has carefully reviewed the PBC's requirements, has performed all necessary due diligence and desires to implement the Project as provided herein.

(b) Objectives. The Parties acknowledge and agree that the specific goals and objectives of the PBC and the City in connection with the Project under this Agreement include those set forth below.

(i) The objectives for the Fiber Network include:

- To establish a standard approach to linking cameras, traffic sensors, sensors and other surveillance technology, using the existing fiber optic resources designated by the PBC so that the System will be available to the City, Sister Agencies and the Users in the designated timeframe.
- To plan a fiber optic backbone that will provide high bandwidth and redundancy for a variety of video and data services throughout the City, with initial focus on the City's central business district ("CBD" or "Central Business District"), and subsequent focus on the City areas outside of the CBD, including the greater Chicago area and the Lake Michigan lakefront and harbor areas and User Projects.
- To design and implement links to video surveillance systems existing as of the Effective Date at certain City, Sister Agency and User locations, including those at the airports, the Chicago Transit Authority and other Sister Agencies and those at private property locations that are considered potential terrorist and/or crime targets.
- To develop a plan and arrange for the ongoing support of the Fiber Network.

(ii) The objectives for the Camera System, Video System and Management System include:

- To establish a standard for cameras and related Goods that will, at a minimum, meet the applicable Specifications, including the Standards, so that the System is available to the City, Sister Agencies and Users, as the case may be.
- To build a display and control capability that will allow the control of cameras, sensors and any forthcoming technology that the PBC may choose to implement, and that can be reasonably integrated, and the display of video images with respect to Phase 1, Phase 2 and Phase 3 at two locations, the OEMC and a back-up site, and with respect to a User Project, at locations designated by the applicable Sister Agency or User and at the OEMC.
- To design and build the display and control capability to permit cost-effective integration over time with new cameras to support the surveillance activities within the City, including at Sister Agency and User locations.
- To design and implement a redundant storage and retrieval system to support the surveillance activities within the City, including at Sister Agency and User locations.
- To develop a plan and arrange for certain ongoing support and maintenance services.
- To provide the utility for the PBC to purchase on behalf of the City and its Sister Agencies, and Users additional cameras at a market competitive price that will be fixed for a certain time.

(iii) The other objectives of the Project include:

- To complete implementation of the Phases in the designated timeframes.
- To provide a System that is scalable.

- To create efficiencies and sustainable cost savings by utilizing the existing infrastructure of the City, the Sister Agencies and Users to the extent reasonably practicable.
- To create and implement, using the PBC's portal, an Intranet Site to provide a vehicle for timely communications between the Vendor, the PBC, OEMC and the City, and in connection with a User Project, the applicable Sister Agency or User.
- To obtain high quality Services at market competitive prices.
- To allow the City to monitor and direct City services in response to homeland security, police, fire and traffic management incidents.
- To provide live and recorded video surveillance to emergency management officials on a continuous basis.
- To develop a protocol to identify and create additional capacity in an efficient and cost-effective manner.
- To develop the plan and network for Sister Agency and User private camera feeds to the OEMC and a back-up location.
- To enhance the OEMC's ability to become the strategic hub for citywide emergency and non-emergency decision-making.
- To develop a plan which provides the City with the flexibility to reasonably adapt the System to the City's surveillance and technology needs, including needs relating to surveillance, traffic sensors, and chemical, biological and radiological sensors.
- To obtain access to best practices in information technology products and services related to the Project.
- To provide the ability for the City and its Sister Agencies and the Users to take advantage of new technology, as it becomes available.
- To provide the City with information on emerging technology and make recommendations on its usefulness and capacity.
- To provide the guaranteed levels of Service quality as described in the Agreement.
- To gain world class capabilities by contracting with a first tier service provider that attracts and retains the "best and brightest" professionals.

(c) **Interpretation.** The provisions of this Section 1.1 (Background and Objectives) are intended to be a general introduction to this Agreement and are not intended to expand the scope of the Parties' respective obligations hereunder or alter the plain meaning of this Agreement's terms and conditions as set forth herein.

1.2 Definitions.

Defined terms used in this Agreement are listed in Schedule 1.2 (Defined Terms) with the citation to the Agreement provision in which each such term is defined.

1.3 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless stated otherwise.

(b) All references in this Agreement to Articles, Sections, Schedules or Attachments or to Task Orders or Notices to Proceed are to the Articles, Sections, Schedules or Attachments of, or Task Orders or Notices to Proceed issued under this Master Agreement unless stated otherwise.

(c) Words referring to persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings set forth herein and any table of contents are solely for convenience of reference and do not affect the meaning, construction or effect of the Agreement.

(e) Words importing the singular include the plural and vice versa. Words of the masculine or feminine gender include the correlative words of the other (and neuter) genders.

(f) All references to a number of days mean calendar days, unless stated otherwise.

(g) Notwithstanding anything in the Agreement to the contrary, all references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations, rules pertaining to or promulgated pursuant to the statute or law, and all orders related thereto having force of law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

(h) The recitals and the Task Orders, Notices to Proceed, Schedules and Attachments to, and issued under, this Master Agreement shall be deemed to be a part of this Master Agreement and are incorporated by reference herein.

1.4 Order of Precedence; Modifications.

(a) Order of Precedence. In the event of an inconsistency, ambiguity, contradiction or conflict between the terms of this Master Agreement, its Schedules and Attachments, Task Orders, Notices to Proceed and other documents, schedules, exhibits, certifications, forms, materials and things incorporated into the Agreement by reference pursuant to this Agreement and executed by the Parties, and any Change Orders, such documents shall be interpreted in the following order of precedence:

- (i) the terms of a Change Order shall take precedence;
- (ii) followed by the terms of this Master Agreement; provided however, that when the Master Agreement expressly provides that the terms and conditions of Schedule 4.1 shall control with respect to Construction Work, then, with respect to such terms and conditions expressly referenced only, Schedule 4.1 shall take precedence;
- (iii) followed by, with respect to the Construction Work, the terms of Schedule 4.1;
- (iv) followed by the terms of a Notice to Proceed;
- (v) followed by the terms of a Task Order; and
- (vi) followed by the terms of a Schedule and then an Attachment.

Notwithstanding the foregoing, a Change Order may only amend a Task Order, Notice to Proceed, Schedule, an Attachment or this Master Agreement by express reference to the term or condition of the Task Order, Notice to Proceed, Schedule, Attachment or this Master Agreement that is to be amended.

(b) Signing Authority. Any amendment or modification of this Agreement must be signed by the Chairman of the PBC. Customary project administrative directives and approvals may be signed by the Executive Director of the PBC or his designee.

(c) Other Terms. Any contractual terms included in documents exchanged between the Parties, such as invoices, receipts, bills of lading, documents of title or other commercial documents are void and of no effect. Any course of dealing at variance with the terms of this Agreement will not be deemed to amend or waive the PBC's right to insist on strict performance in accordance with the terms of the Agreement.

(d) Interpretation. Any rules of contract construction that would lead to a construction other than as set forth in this Section (for example, the principle that handwritten modifications may prevail over pre-printed forms) will be disregarded in interpreting the Agreement. Reliance on any statements, representations or expectations to the contrary is acknowledged to be unreasonable.

1.5 Incorporation of Changes Responsive to Changes in Local Law or City Policies.

Vendor specifically agrees that it will accept notice under the Agreement, including any notice of updates to the Agreement as required under Local Law or the City Policies pursuant to Section 1.6 (Local Law and City Policies), by e-mail sent to Vendor's e-mail address as recorded with the PBC for purposes of notice or via the Intranet Site. It is the obligation of Vendor to verify such e-mail address, maintain internet and e-mail access, maintain document viewing and other technical capabilities to generally prevailing standards, to disable or reconfigure any e-mail function (e.g., "spam filter") that may block the PBC electronic communications, and to notify the PBC of any changes in its e-mail information.

1.6 Local Law and City Policies.

(a) Local Law. From time to time, the City may, in the exercise of its governmental authority, adopt, modify, substitute, add or repeal City of Chicago Municipal Ordinances and City executive orders that affect City contracts, the PBC Board of Commissions may from time to time, approve resolutions and policies affecting PBC contracts, as in effect from time to time ("Local Law"), which may constitute modifications or additions to the Agreement. Upon notification to Vendor in accordance with Section 1.5 (Incorporation of Changes Responsive to Changes in Local Law or City Policies) of the adoption of such Local Law, the legally required contract terms will apply to and be deemed incorporated into this Agreement.

(b) City Policies. Vendor must comply with all those policies, procedures, standards, certifications, forms and/or filings as required by the City, or by the PBC from time to time and applicable to Vendor or to the Goods, Materials and/or Services to be provided hereunder ("City Policies"). The City may modify City Policies from time to time, and such modified City Policies will be applicable to the Agreement, which upon notice to Vendor in accordance with Section 1.5 (Incorporation of Changes Responsive to Changes in Local Law or City Policies) will be binding on Vendor hereunder.

1.7 Contract Structure.

This Agreement establishes a contractual framework for Vendor to provide Services to the PBC for the benefit of the City and the Sister Agencies and, potentially, certain Users. Vendor understands that the PBC encourages joint purchasing by Sister Agencies in an effort to make the procurement process more efficient. The City is authorized to enter into cooperative governmental purchasing under the joint purchasing agreement approved by the City Council (Journal of Proceedings, PBC Council, Chicago April 29, 1964, pages 2589-2590, by Cook County Board of Commissioners on April 9, 1965). A Sister Agency may enter into an inter-governmental agreement with the PBC pursuant to which the PBC shall negotiate with Vendor, and may execute and deliver, on behalf of such Sister Agency, a Task Order under this Agreement. All Task Orders must be executed by the PBC. The PBC agrees to, and shall cause the City and Sister Agencies, in connection with their receipt or use of the Services and/or the System to

comply with the terms of the Agreement, including the PBC's obligations of confidentiality set forth in Section 12.1 (Confidentiality), and Vendor agrees to, in connection with the delivery of Services to the PBC on behalf of a Sister Agency, comply with the terms of the Agreement, including Vendor's obligations set forth in Article XII. Vendor also agrees, upon execution of a Task Order for Services for a Sister Agency, to abide by the terms and conditions set forth on Schedule 1.7, User Terms and Conditions, with respect to a User Project.

The PBC may decide to enter into an agreement with a User pursuant to which the PBC shall negotiate with Vendor, and may execute and deliver, on behalf of such User, a Task Order under this Agreement. All Task Orders must be executed by the PBC. The PBC agrees to, and shall cause any such User, in connection with its receipt or use of the Services and/or the System to comply with the terms of the Agreement, including the PBC's obligations of confidentiality set forth in Section 12.1 (Confidentiality), and Vendor agrees to, in connection with the delivery of Services to the PBC on behalf of such a User, comply with the terms of the Agreement, including Vendor's obligations set forth in Article XII.

ARTICLE II. PROJECT

2.1 Scope of Project - Overview.

As of the Effective Date, the Project is divided into the following phases (each as "Phase" and, collectively, the "Phases"). Services delivered on portions of one Phase of the Project may run concurrently with Services on portions of another Phase of the Project.

- Phase 1: Develop and Implement CBD Camera System ("Phase 1")
- Phase 2: Develop and Implement Unified Citywide Fiber Network ("Phase 2")
- Phase 3: Develop and Implement Lakefront Camera System ("Phase 3")
- Phase 4: Warranty and Maintenance Services ("Phase 4")

As of the Effective Date, the PBC and Vendor have entered into a Task Order pursuant to which Vendor will perform Services for Phase 1, Phase 2, and Phase 4 (with respect to Phase 1 and Phase 2) ("Task Order 1"). The PBC may, in its sole discretion, decide to enter into a Task Order with Vendor for Services on Phase 3 and/or Phase 4 (with respect to Phase 3), or for Services pursuant to Section 1.7 (Contract Structure), or may instead subject such Phases or Services to a bid process, or perform them internally.

In the future, the City, the PBC and/or its Sister Agencies intend to study and potentially deploy technologies and emerging technologies with respect to surveillance, traffic sensors, and chemical, biological and radiological sensors. Accordingly, Vendor agrees to use commercially reasonable efforts to implement the System in a manner that supports current and emerging surveillance and monitoring technology. The PBC may decide to pursue future additional phases pursuant to a Task Order, or pursuant to a bid process.

The overarching goal of the Project is to create a business relationship with the Vendor as "Master Network Administrator," who will work in conjunction with the PBC and the City to create and integrate a network and surveillance system that is scalable and self-healing in accordance with the standards agreed upon by the Parties in the Agreement and capable of supporting the City's surveillance and technology needs.

2.2 Task Orders.

(a) Task Order Requests. Any Services must be authorized in writing in a form mutually agreed by the Vendor and the Director of Procurement and describing with particularity the Services to be provided by Vendor, together with any applicable specifications, a timetable for delivery, and other specific commercial terms regarding such work to be performed by Vendor, including the applicable fees ("**Task Order**"). A Task Order may incorporate by reference other documents, including any documentation which pre-qualifies the Vendor to perform the applicable services ("**Statement of Requirements**") (or portions thereof) and/or Vendor's prequalification questionnaire. During the Term of the Agreement, the PBC may issue one or more requests or solicitations for specific Services to be performed under the Agreement on a subsequent phase of the Project or relating to Services to be performed in connection with a User Project (each a "**Task Order Request**"). Each such Task Order Request must specifically reference the Agreement, identify the Phase of the Project, the User Project or a new phase of the Project, describe the specific Services to be performed under such Task Order, together with the desired completion date and any other particulars of Services to be performed. Upon receipt of a Task Order Request, Vendor must respond by the response time indicated in the Task Order Request (or the time mutually agreed upon by the Parties in writing), by proposing a time schedule, budget, Deliverables, a list of Key Employees who will deliver Services under such Task Order and any other requirements listed in the Task Order Request, all of which must conform to the terms of the Task Order Request and the terms and conditions of this Agreement (each a "**Task Order Proposal**"). Vendor must not respond to any Task Order Request not approved in writing by the Director of Procurement. Any costs associated with the preparation of such Task Order Proposals are not compensable under the Agreement and the PBC is not liable for any such costs.

(b) Review. Following Vendor's submission of the Task Order Proposal, the PBC will review the Task Order Proposal and may elect to approve it, reject it, or use it as a basis for further negotiations with Vendor regarding the Task Order regarding the specific Services to be performed. If the PBC and Vendor negotiate changes to the Task Order regarding the specific Services to be performed, Vendor must submit a revised Task Order Proposal (based upon such negotiations) to the PBC for approval.

(c) Notice to Proceed. After approval of Vendor's engagement to perform Services under a Task Order (as evidenced by the PBC's execution and delivery of such Task Order), Vendor shall not commence the applicable Services unless and until the PBC issues to Vendor a notice authorizing Services that are within the scope of such Task Order and describing on such notice the specific scope of the Services to be performed, and attaching or incorporating the applicable Task Order ("**Notice to Proceed**"). Upon receipt of an executed Notice to Proceed issued by the Director and the Director of Procurement, Vendor will promptly commence and perform, in accordance with the Task Order, only the Services set forth in the Notice to Proceed, upon the effective date as provided in such Notice to Proceed.

(d) Approval of Task Orders. All Task Orders are subject to the approval of the PBC Project Manager and no Task Order will become binding upon the PBC until it is approved in writing by the PBC Project Manager. Absent approval of a Task Order and issuance of a Notice to Proceed by the PBC Project Manager, the PBC will not be obligated to pay or have any liability, under any theory of recovery (whether under the Agreement, at law or in equity), to Vendor for any Services provided by Vendor pursuant to a Task Order, or otherwise. All Services under a Task Order and all Task Orders are subject to the terms of this Agreement.

(e) No Obligation. Vendor acknowledges and agrees that the PBC is under no obligation to issue any Task Orders for Services, and that it is within the PBC's discretion whether to include Vendor in any solicitation for Services in connection with the Project.

2.3 Project Standards.

(a) Software Platforms. Vendor shall comply with the City's information management technical architecture and product standards (including the City's choice of database hosting platforms and any upgrades to City Third Party Materials and City Proprietary Materials) provided to Vendor in writing ("**Software Platforms**") as may be in effect during the Term. The City shall have the right to elect at any time any change to the Software Platforms (each a "**Software Platform Project**"). Vendor shall reasonably cooperate with the City during the Term in connection with development and implementation of any City initiatives related to any Software Platform Project. In the event the City contracts with a third party to perform any services in connection with a Software Platform Project, Vendor shall co-operate with such third party as reasonably required including by providing: (i) to the extent available, written requirements, standards and policies for those operations of the Goods and operating system used in the System (the "**System Platform**") and other components of the System to which the Software Platform Project and such Services relate as support to such third party in connection with such third party's development of deliverables that may be operated with the System, including the System Platform, (ii) reasonable assistance and support Services to such third party, and (iii) access to the System in connection with such Services. The PBC shall require any such third party to comply with Vendor's, and Vendor shall comply with such third party's, reasonable requirements regarding operations, confidentiality, and security.

(b) Project Performance Standards. Vendor shall comply with the minimum standards and processes that are set forth on Schedule 2.3(b) (Performance Standards for Specified System Elements) (the "**Performance Standards**") with respect to the System to be provided pursuant to this Agreement, and the other Network components. (The term "**Network**" may refer in this Agreement, individually or collectively, to the Back Bone Network, Edge Network, Fiber Network and LAN and may include, if approved by the PBC, the Wireless Network.)

(c) Operational Standards. Vendor shall comply with the operational standards relating to the Project as set forth on Schedule 2.3(c) (Operational Standards) ("**Operational Standards**" and, with the Performance Standards and the Software Platforms, the "**Standards**"). The Specifications for each Deliverable include the Standards to the extent applicable to such Deliverable.

2.4 Project Plan and Quality Assurance Plan.

(a) Project Plan. Within thirty (30) days of the effective date of the applicable Notice to Proceed under a Task Order, Vendor shall provide a detailed project plan for such Notice to Proceed, which plans for, and tracks, the progress of that portion of the Project that is the subject of such Notice to Proceed (each, a "**Project Plan**"). Schedule 2.4(a) (Project Plan) sets forth the preliminary Project Plan for Phase 1, Phase 2 and Phase 4. Within thirty (30) days of the effective date of the applicable Notice to Proceed, Vendor shall provide a detailed Project Plan for the Notice to Proceed. During the term of the applicable Notice to Proceed in response to developments, but in no event less than monthly, Vendor shall conduct a thorough review and continue to further refine the Project Plan. Vendor shall update the Project Plan in connection with the issuance of a Notice to Proceed. Vendor shall promptly give the PBC written notice of changes and/or updates to the Project Plan, which notice shall include reference to the specific change to the Project Plan and the reason for such change. The PBC may withhold its approval in its sole discretion. Vendor shall deliver and maintain the Project Plan, and any updates thereto, on the Intranet Site for PBC's review, comment and approval.

The Project Plan shall plan for, and track, the progress of the work under the applicable Task Order, including (i) all Services to be performed by Vendor under such Task Orders and the significant components and subcomponents of each such Service activity, and an implementation plan with respect to

such Service activities, including the implementation schedule ("**Implementation Plan**"); (ii) all Deliverables to be completed by Vendor, including the Critical Deliverables and the Milestone Deliverables; (iii) the date(s) by which each such Service activity or Deliverable is to be completed, including Deliverables in connection with the Construction Work (the "**Project Timetable**"); (iv) successful completion of the Service activities and Deliverables associated with each Milestone Deliverable, including the Acceptance Criteria; (v) production of the primary design documentation relating to the Project; (vi) production of the logical design for the Project; (vii) the timing for development of the final engineering documentation, with final engineering documentation completed within ninety (90) days of the effective date of the appropriate Notice to Proceed; (viii) the timing for development of the Procedures Manual set forth in Schedule 2.5 (Procedures Manual); (ix) the schedule for implementation of the Training Plan; (x) the timing for development of the Quality Assurance Plan; (xi) the implementation of the Phases as they relate to the Services and Deliverables; (xii) the implementation of Change Orders; (xiii) a baseline critical path Schedule for the Construction Work under the applicable Task Order and a cost-loaded baseline critical path Schedule with respect to the Construction Work subject to a Notice to Proceed; and (ivx) any activities to be performed by the PBC or the City (provided that the PBC and the City shall not be obligated to perform any activities that are not specifically contemplated by this Agreement and expressly set forth in the Project Plan). Vendor shall use commercially reasonable efforts to address and resolve any questions or concerns the PBC may have as to any aspect of the Project Plan and shall incorporate any modifications, additions or deletions to such Project Plan requested by the PBC within seven (7) days of receipt of same.

(b) Quality Assurance Plan. Vendor shall implement quality assurance processes and procedures implementing tools and methodologies to validate that the Services are performed, and that the System is being developed, or the User Project is being implemented, in accordance with (i) this Agreement, including the Project Timetable and the Standards, (ii) the practices of those vendors in the construction and information technology industries applicable to service like the Services, and (iii) Applicable Law (the "**QAP**"). Such procedures and controls shall include verification, checkpoint reviews, testing, acceptance, and other procedures for the PBC to assure the accuracy, quality and timeliness of Vendor's performance. Without limiting the generality of the foregoing, Vendor will:

- (i) Build the following activities into work processes applicable to the Services:
(1) accountability for the Services clearly defined and understood by Vendor Personnel; (2) access to the City and Vendor systems and other PBC and City assets properly controlled by Vendor; (3) adequate supervision of Vendor Personnel; (4) Vendor policies, procedures, and responsibilities documented; and (5) adequate training and education of Vendor Personnel with respect to the Services;
- (ii) Develop and execute a process to perform annual self-assessments with respect to all Services; and
- (iii) Monitor the processes and systems used to provide the Services.

The QAP shall cover Vendor's design and engineering, implementation, installation of surveillance devices, testing and operational quality controls and shall include the controls set forth on Schedule 2.4(b) (Quality Control Standards) (the "**Quality Control Standards**").

Vendor shall submit the QAP to the PBC for its review, comment and approval within ninety (90) days after the effective date of the appropriate Notice to Proceed. Upon the PBC's approval, the QAP shall be set forth on Schedule 2.4(b) (Quality Control Standards) and the processes, procedures and controls that comprise the QAP shall be included in the Procedures Manual. Prior to the approval of such

processes, procedures and controls by the PBC, Vendor shall adhere strictly to the PBC's then current policies, procedures and controls and City Policies and the Quality Control Standards. No failure or inability of such processes, procedures or controls to disclose any errors or problems with the Services, in and of itself, shall excuse the Vendor's failure to comply with the Service Levels and other terms of this Agreement.

2.5 Procedures Manual.

(a) Procedures Manual Content. The table of contents for the preliminary management procedures manual developed by Vendor and approved by the PBC is attached as Schedule 2.5 (Procedures Manual) (such manual when completed, the "**Procedures Manual**"). Vendor shall deliver to the PBC within forty-five (45) days after the effective date of the appropriate Notice to Proceed the detailed Procedures Manual, which will remain confidential. At a minimum, the Procedures Manual shall include the following:

- (i) A detailed description of the Services and the manner in which each will be performed by Vendor, including (1) the Goods, Software, and systems to be procured, operated, supported or used; (2) documentation (including operations manuals, user guides, specifications, policies, procedures and Disaster Recovery Plans) providing further details regarding such Services; and (3) the specific activities to be undertaken by Vendor in connection with each Service, including, where appropriate, the direction, supervision, monitoring, staffing, reporting, planning and oversight activities to be performed by Vendor under this Agreement;
- (ii) The procedures governing the PBC's and Vendor's interaction and communication, including (1) call lists; (2) procedures for and limits on direct communication by Vendor with the PBC and City personnel; (3) problem management and escalation procedures, including with respect to construction and maintenance issues; (4) priority and Project procedures; (5) Acceptance Testing procedures; (6) quality assurance procedures and checkpoint reviews; and (7) the implementation methodology for the Projects; and
- (iii) Practices and procedures addressing such other issues and matters that relate to delivery of the Services as the PBC shall reasonably require.

(b) Revisions and Maintenance. Vendor shall conduct a thorough review of the Procedures Manual at least monthly and shall update, and provide to the PBC for approval, the Procedures Manual with a description of the changes and the reasons therefore, including changes responsive to a User Project. Vendor shall incorporate any reasonable comments or suggestions of the PBC into the Procedures Manual and shall deliver a final revised version to the PBC within seven (7) days of its receipt of such comments and suggestions. The Procedures Manual shall be delivered and maintained by Vendor in an electronic format via the Intranet Site.

(c) Annual Review. The Parties shall meet to perform a formal annual review of the Procedures Manual on each anniversary of the Commencement Date.

2.6 Training Plan.

The preliminary training plan developed by Vendor and approved by the PBC is attached to this Agreement as Schedule 2.6 (Training Plan) (the "**Training Plan**"). Within thirty (30) days of the

effective date of the appropriate Notice to Proceed, Vendor shall submit to PBC for approval the detailed Training Plan. Throughout the Term, Vendor shall continue to refine the Training Plan, including in connection with a User Project, and shall promptly give the PBC written notice of any changes and/or updates to the Training Plan, which notice shall include reference to the specific change to the Training Plan and the reason for such change, and seek the PBC's approval of such change or update. Vendor shall deliver and maintain the Training Plan, and any updates thereto, on the Intranet Site for PBC's review, comment and approval.

2.7 System Maintenance Plan.

Vendor shall, within ninety (90) days of the effective date of the appropriate Notice to Proceed, submit to the PBC a support and Network maintenance plan to maintain the Network and applications at optimum performance ("**System Maintenance Plan**"). The Network Maintenance Plan shall address all issues related to warranty periods and include written guidance for use.

ARTICLE III. SERVICES

3.1 Scope of Services.

(a) **Overview.** Vendor will perform the services, duties and responsibilities as described in this Agreement and Task Orders ("**Services**"). Vendor agrees to perform the Services in a manner that will not (i) cause material adverse disruption or impact on the business or operations of the PBC or the City or in the case of Services performed in connection with a User Project; the applicable Sister Agencies or Users; (ii) materially degrade the Services then being received by the PBC or the City or, in the case of Services performed in connection with a User Project, the applicable Sister Agency or User; or (iii) materially disrupt or interfere with the ability of the PBC or the City or, with respect to User Projects, the applicable Sister Agencies or Users to obtain the full benefit of the Services. Notwithstanding the foregoing, the materiality standard in the foregoing subsections (i) through (iii) shall not be applicable to the operations of the OEMC. During the Term, Vendor must promptly discuss with the PBC any material risks identified by Vendor and may not proceed with related activities until the PBC and Vendor mutually agree on risk mitigation activities.

If any services, duties, or responsibilities not specifically described in the Agreement or in a Task Order are reasonably required to enable Vendor to perform the Services, or are fairly implied in or are commonly understood as being within the description of such Services, such services, duties and responsibilities will be deemed to be implied by and included within the scope of the Services to be provided by Vendor under the term of and for the Fees set forth in the Agreement. Except as otherwise expressly provided in the Agreement or mutually agreed Task Orders, Vendor shall provide all the facilities, personnel and other resources as necessary or appropriate to provide the Services.

In the event Vendor becomes aware of any error, omission or ambiguity in the PBC's description of the Services or otherwise in this Agreement, including in a Task Order, Vendor must promptly bring such matter to the attention of the PBC Project Managers, or the PBC if no Project Manager is named.

Subject to Section 6.2, nothing in the Agreement may be construed to: (i) limit the PBC's or the City's or a Sister Agency's or a User's ability to provide itself, or to request third parties to provide, the Services or services like the Services in whole or in part; (ii) obligate the PBC to enter into any Task Order with Vendor or, except as provided in a Task Order, to purchase from Vendor (1) tangible goods that comprise the Network, the Camera Systems, the Management System and the Video System, and any other commodity goods, custom goods, goods, fiber, supplies, and any other tangible materials and equipment incorporated in or made part of the System or a User Project (but exclusive of Software)

("Goods"), (2) object code versions of any applications programs, operating system software, computer software languages, utilities, other computer programs and related documentation, in whatever form or media, including the tangible media upon which such applications programs, operating system software, computer software languages, utilities, tools, other computer programs and related documentation are recorded or printed ("Software") or source code to any Software ("Custom Software") or corrections, improvements, updates, new versions and releases to Software ("Update") or (3) services like the Services; or (iii) require Vendor to perform or provide any Services to the PBC other than Services pursuant to a Task Order; provided that Vendor must prepare in good faith proposals in response to Task Order Requests within the scope of the Project, including with respect to User Projects as requested by the PBC from time to time during the Term.

(b) Phase One Services. Vendor shall provide Services for Phase 1 in accordance with this Agreement and Task Order 1, including the Notices to Proceed issued under Task Order 1. Task Order 1 is attached as Schedule 3.1(b). Services on portions of Phase 1 may run concurrently with Services on portions of another Phase (or Phases) of the Project (to the extent a Notice to Proceed has been issued with respect to such other Phases). Phase 1 shall include as Services, analysis and/or evaluation, design and/or planning, procurement, installation, testing and warranty Services, and Services as described with greater particularity in a Task Order in connection with the following:

- Based on an evaluation process in conjunction with OEMC and other City agencies, production of a plan and a design which prioritizes the installation of new cameras or upgrades to existing cameras in the geographical areas of the CBD.
- Evaluation of the capacity of the existing Fiber Network in the CBD and analysis, based upon the information provided, and made available, to Vendor, of current and future needs of the City and the Sister Agencies, and production of the appropriate designs to implement the necessary fiber to meet such needs.
- Evaluation of the capacity of the existing municipal and private camera systems in the CBD and development of a plan to provide for full integration of the System with such existing cameras.
- Evaluation of the existing City systems and production of a design or plan to procure and implement the necessary Goods and Software for the Back Bone Network, the Edge Network, the Fault-Tolerant Network, the LAN, the Storage Area Network, the Management System and the Video System.
- Identification and recommendation of the Network Goods and Software reasonably best suited for the application.
- Fortification of, through splices and/or links, the existing Fiber Network in the CBD, as necessary and in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of any new fiber for the CBD, as necessary and in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of Network Goods and Software for the CBD, as necessary and in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of cameras for the CBD in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of Goods and Software for the Back Bone Network, the Edge Network, the Fault-Tolerant Network, the LAN, the Storage Area Network, the Management System and the Video System for the CBD.

(c) Phase Two Services. Vendor shall provide Services for Phase 2 in accordance with this Agreement and Task Order 1, including the Notices to Proceed issued under Task Order 1. Services on portions of Phase 2 may run concurrently with Services on portions of another Phase (or Phases) of the Project (to the extent a Notice to Proceed has been issued with respect to such Phase). Phase 2 shall include as Services, analysis and/or evaluation, design and/or planning, procurement, installation, testing and warranty Services, and Services as described with greater particularity in a Task Order in connection with the following:

- Evaluation of the capacity of the existing Fiber Network in the greater Chicago area other than the CBD and analysis, based upon the information provided, and made available, to Vendor, of current and future needs of the City and the Sister Agencies, and production of the appropriate designs to implement the necessary fiber to meet such needs.
- Evaluation of the capacity of the existing Fiber Network in the greater Chicago area other than the CBD and analysis, based upon the information provided, and made available, to Vendor, of current and future needs of the City and the Sister Agencies, and production of the appropriate designs to implement the necessary fiber to meet such needs.
- Development of a protocol and standards to create a Network design throughout the greater Chicago area, other than the CBD, utilizing the existing Fiber Network and Back Bone Network.
- Creation of the Network design and a plan for implementation which prioritizes the installation of new cameras or upgrades to existing cameras in the geographical areas of such greater Chicago area.
- Evaluation of the capacity of the existing municipal and private camera systems in the greater Chicago area other than the CBD and development of a design and plan to provide for full integration with the System with such existing cameras.
- Identification and recommendation of the Network Goods and Software reasonably best suited for the application.
- Fortification of, through splices and/or links, the existing Fiber Network in the greater Chicago area other than the CBD, as necessary and in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of any new fiber for the greater Chicago area other than the CBD, as necessary and in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of Network Goods and Software for the greater Chicago area other than the CBD, as necessary and in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of cameras for the greater Chicago area other than the CBD in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of Goods and Software for the Back Bone Network, the Edge Network, the Fault-Tolerant Network, the LAN, the Storage Area Network, the Management System and the Video System for the greater Chicago area other than the CBD.

(d) Phase Three Services. The Parties have not, as of the Effective Date, entered into a Task Order for Phase 3. The PBC may, but is under no obligation to, issue to Vendor a Task Order Request with respect to Phase 3. The PBC may instead award the work on Phase 3 pursuant to a bid process. Services on portions of Phase 3 may run concurrently with Services on portions of another Phase (or Phases) of the Project (to the extent a Notice to Proceed has been issued with respect to such other Phases). Phase 3 shall include as Services, analysis and/or evaluation, design and/or planning,

procurement, installation, testing and warranty Services, and Services as described with greater particularity in a Task Order in connection with the following:

- Evaluation of the capacity of the existing Fiber Network in the lakefront area and analysis, based upon the information provided, and made available, to Vendor, of the needs of the City and the Sister Agencies, and production of the appropriate designs to implement the necessary fiber to meet such needs.
- Evaluation of the capacity of the existing Fiber Network in the lakefront area and analysis, based upon the information provided, and made available, to Vendor, of current and future needs of the City and the Sister Agencies, and production of the appropriate designs to implement the necessary fiber to meet such needs.
- Development of a protocol and standards to create a Network design throughout the lakefront area utilizing the existing Fiber Network and Back Bone Network.
- Creation of the Network design and a plan for implementation which prioritizes the installation of new cameras or upgrades to existing cameras in the geographical areas of the lakefront area.
- Evaluation of the capacity of the existing municipal and private camera systems in the lakefront area and development of a design and plan to provide for full integration with the System with such existing cameras.
- Identification and recommendation of the Network Goods and Software reasonably best suited for the application.
- Fortification of, through splices and/or links, the existing Fiber Network in the lakefront area as necessary and in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of any new fiber for the lakefront area as necessary and in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of Network Goods and Software for the lakefront area as necessary and in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of cameras the lakefront area in accordance with the plan developed by the Vendor and approved by the PBC.
- Procurement, installation and testing of Goods and Software for the Back Bone Network, the Edge Network, the Fault-Tolerant Network, the LAN, the Storage Area Network, the Management System and the Video System for the lakefront area.

(e) Maintenance Services. Vendor shall provide maintenance and support Services agreed upon by the Parties in a Task Order, which shall also include an agreed support and network maintenance plan ("**Maintenance Services**" or "**Phase 4**"). With respect to Phase 1, Phase 2 and Phase 3 (if the PBC enters into a Task Order with Vendor with respect to Phase 3), Vendor shall provide Maintenance Services in accordance with this Agreement and the applicable Task Order.

(f) Performance Metrics.

- (i) Service Levels. Vendor shall perform the Maintenance Services so as to meet or exceed the levels of accuracy, quality, completeness, timeliness, responsiveness and productivity that are the accepted industry norms applicable to the performance of services like the Maintenance Services by top tier service providers. Vendor shall also perform the Services so as to meet or exceed the service levels set forth in Schedule 3.1(f) (Service Level Agreement) (the "**Service Levels**"). To the extent the Parties have established a Service Level for

a specific Maintenance Service, the obligations described in the first sentence of this Section shall not be construed to alter, expand or supersede such Maintenance Service Level. If more than one Maintenance Service Level applies to any particular obligation of Vendor, Vendor shall perform in accordance with the most stringent of such Service Levels. Vendor shall be responsible for meeting or exceeding the applicable Service Levels even where (except as provided otherwise in the Agreement) doing so is dependent on the provision of Maintenance Services by Subcontractors.

- (ii) Measurement and Monitoring Tools. Vendor shall implement automated measurement and monitoring tools and metrics as well as standard reporting procedures, all reasonably acceptable to the PBC, to measure and report Vendor's performance of the Maintenance Services on an ongoing basis and at a level of detail sufficient, as determined by the PBC, to verify Vendor's compliance with the Agreement and the applicable Service Levels. Vendor shall provide the PBC and the City with on-line access to an intranet site using the PBC's portal ("**Intranet Site**") and shall provide on such Intranet Site up-to-date problem management data and other data regarding the status of Service problems, including Maintenance Service problems. Vendor also shall provide to the PBC and the City on the Intranet Site access to the data used by Vendor to calculate its performance against the Service Levels and the measurement and monitoring tools and procedures utilized by Vendor to generate such data for purposes of audit and verification. The PBC's and the City's use of such measurement and monitoring tools or the resource utilization associated with their use shall be included in the Fees.

- (iii) Credits.

(1) Vendor recognizes that the PBC will pay Vendor to deliver certain Maintenance Services at specified Service Levels. If Vendor fails to meet Service Levels, then, in addition to other remedies available to the PBC, Vendor shall pay or credit to the PBC service level credits (the "**Service Level Credits**") (as detailed with greater particularity in Schedule 3.1(f) (Service Level Agreement) in recognition of the diminished value of the Maintenance Services resulting from Vendor's failure to meet the agreed upon level of performance, and not as a penalty. Service Level Credits shall be payable in an amount equal to up to fifteen percent (15%) of the Fees for Maintenance Services for any measurement period, excluding any expenses and taxes ("**At Risk Amount**"). The PBC shall have the right to assign to each Service Level a service weight, which represents the portion of the At Risk Amount associated with such Service Level ("**Service Weights**"). The sum of all Service Weights shall not exceed 200%. If the PBC recovers monetary damages from Vendor as a result of Vendor's failure to meet one (1) or more Service Levels, Vendor shall be entitled to set-off against such damages any Service Level Credits paid for the failures giving rise to such recovery.

(2) Deliverable Credits. Vendor recognizes that the PBC will pay Vendor to provide certain Critical Deliverables by the time and in the manner agreed by the Parties. If Vendor fails to meet its obligations with respect to such Critical Deliverables, then, in addition to other remedies available to the PBC, Vendor shall pay or credit to the PBC credits in accordance with the formula set

forth in this Section, on a case by case basis in recognition of the diminished value of the Services resulting from Vendor's failure to meet the agreed upon level of performance, and not as a penalty (the "**Deliverable Credits**"). If the PBC recovers monetary damages from Vendor as a result of Vendor's failure to meet its obligations with respect to one (1) or more Critical Deliverables, Vendor shall be entitled to set-off against such damages any Deliverable Credits paid for the failures giving rise to such recovery. "**Critical Deliverables**" are Deliverables that are critical to the Project as mutually agreed by the Parties and set forth in the applicable Task Order. "**Deliverables**" means those materials (other than Goods) that are designated as "Deliverables" in a Task Order and prepared by Vendor for the PBC and/or the City under the Agreement. With respect to any Critical Deliverable that does not receive Acceptance by the applicable date specified in the Project Timetable, Vendor shall pay a Deliverable Credit equal to five percent (5%) of the Fees applicable to such Critical Deliverable.

- (iv) Adjustments in Service Levels. Service Levels may be adjusted as provided in Schedule 3.1(f) (Service Level Agreement).

3.2 Root Cause Analysis.

If Vendor fails to provide Services in accordance with this Agreement, including the Service Levels and the QAP, Vendor shall (after restoring Service or otherwise resolving any immediate problem) (i) promptly investigate and report on the causes of the problem; (ii) provide a Root Cause Analysis of such failure as soon as practicable after such failure in accordance with the Severity Level of such failure as set forth on Schedule 3.2 (Severity Level Response Times); (iii) correct the problem as soon as practicable (regardless of cause or fault) or coordinate the correction of the problem if Vendor does not have responsibility for the particular Service that is the issue, and begin meeting the Service Level; (iv) advise the PBC of the status of remedial efforts being undertaken with respect to such problem; (v) take all commercially reasonable action to prevent any recurrence of such problem; (vi) if Vendor caused the problem, demonstrate to the PBC's reasonable satisfaction that the causes of such problem have been or will be corrected on a permanent basis; and (vii) participate and contribute to the PBC's or the City's situation management process. "**Root Cause Analysis**" means the formal process to be used by Vendor to diagnose problems at the lowest reasonable level so that corrective action can be taken that will eliminate repeat failures. Vendor shall implement a Root Cause Analysis as specified in this Section or as reasonably requested by the PBC or the City. "**Severity Level**" means the level of severity assigned in accordance with Schedule 3.2 (Severity Level Response Times) to a nonperformance, fault, error, degradation or defect (each a "**Fault**") that causes a Milestone Deliverable, a Phase or the System to not conform with the applicable Specifications. "**Specifications**" means the detailed design and technical specifications and detailed scoping of functional specifications for each Deliverable that Vendor shall develop, which specifications the PBC has the right to approve with respect to each Deliverable. The Specifications for a Deliverable include the Standards to the extent applicable to such Deliverable.

3.3 New Services.

During the Term, the PBC may from time to time wish to obtain new services that are materially different from the Services ("**New Services**"). Upon any written request by the PBC for New Services, if Vendor desires to perform such New Services, Vendor shall provide the PBC with (i) a written description of the work Vendor anticipates performing as the New Service; (ii) a schedule for commencing and completing the New Service or for installation of and training for use of any additional Goods or Software; (iii) Vendor's prospective charges for the New Service (the "**Additional Fees**"); (iv)

any increase or decrease in the Fees as a result of the implementation of the New Service; (v) when appropriate, a description of any Software to be developed or modified by Vendor or Goods to be provided by Vendor in connection with the New Service; (vi) when appropriate, a list of any existing Software or Goods included in or to be used in connection with such New Service; (viii) when appropriate, Acceptance Criteria and designated Acceptance Testing in respect of the New Services; and (ix) any changes to this Agreement required in connection with such New Services ((i) through (ix) collectively, a **"New Services Proposal"**). In the event the PBC elects to have Vendor perform the New Service, the PBC and Vendor shall execute an amendment to this Agreement. Vendor shall not, and shall not be required to, begin performing any New Service until such amendment in respect of such New Service has been executed on behalf of the PBC. Upon execution of such amendment, each Party shall perform its obligations thereunder and in accordance with this Agreement.

3.4 Evolutionary Changes.

The PBC anticipates that the Maintenance Services will, to the extent commercially reasonable, evolve and be supplemented, modified, enhanced or replaced over time to keep pace with advancements and improvements in the methods of delivering such Maintenance Services. These changes will modify the "Maintenance Services" and will not be deemed to result in new Services unless the changed Maintenance Services are materially different from the Maintenance Services then being provided by the Vendor and require materially different levels of effort, resources or expense from the Vendor.

3.5 Disaster Recovery Services and Contingency Plans.

Vendor has an established disaster recovery plan which will be kept in place during the Term with respect to the Services ("**Disaster Recovery Plan**") and described in the Procedures Manual. Upon discovery by Vendor of a Disaster affecting the processing of calls for Maintenance Services, Vendor shall promptly implement the Disaster Recovery Plan. A Disaster is defined as any occurrence, event or circumstance which results or could foreseeably result in a substantial discontinuation or modification of the provision or receipt of the Services, including a Force Majeure Event (a "**Disaster**"). Vendor shall also formulate contingency plans which identify viable alternative resources which may be used to reasonably ensure provision of the Services, except as may be excused by a Force Majeure Event. In the event of a circumstance that is not a Force Majeure Event, which affects any individual component or components of the Services, Vendor shall make commercially reasonable efforts to repair or work around such affected component or components so that they are fully operational within twenty-four (24) hours of the occurrence of such circumstance. If such circumstance cannot be resolved within twenty (24) hours, Vendor will submit to the PBC, within that twenty-four (24) hour period, a written plan to resolve the situation promptly. PBC's review of the Disaster Recovery Plan or contingency plans hereunder shall not relieve Vendor in any way of its responsibility for the Disaster Recovery Plan and contingency plans under this Section. The costs related to implementation of the Disaster Recovery Plan shall be paid by Vendor. The costs related to implementation of contingency plans will be handled equitably.

3.6 Technology and Business Process Evolution.

(a) Obligation to Propose Technology and Business Process Evolutions. As part of the Services, Vendor shall identify and propose the implementation of Technology and Business Process Evolutions that are likely to: (i) improve the efficiency and effectiveness of the System, User Projects and the Maintenance Services; (ii) result in cost savings to the PBC; and (iii) support the objectives of the PBC and the City (as described in Section 1.1 (Background and Objectives)) and with respect to User Projects, the applicable Sister Agencies or Users.

(b) Vendor Briefings and Technology and Business Process Audit. As part of the Services, Vendor shall routinely and regularly monitor and analyze Technology and Business Process Evolutions of possible interest or applicability to the PBC and the City. At least semi-annually, Vendor shall meet with the PBC to formally brief the PBC regarding such Technology and Business Process Evolutions. Such briefing shall include Vendor's assessment of the business impact, performance improvements and cost savings associated with such Technology and Business Process Evolutions. "**Technology and Business Process Evolution**" means any improvement, upgrade, addition, modification, replacement, or enhancement to the Standards, policies, practices, processes, procedures, methods, controls, scripts, product information, technologies, architectures, standards, applications, Goods, Software, systems, products, transport systems, interfaces and personnel skills associated with the performance of information technology used in connection with systems like the System or User Projects or used to provide services like the Services and related functions in line with best practices of leading providers of such services and the standards and practices applicable to municipalities such as the City. Technology and Business Process Evolution includes: (i) higher capacity, further scaling and commercializing of business processes, more efficient and scalable business processes, new versions and types of applications and systems/network software, new business or IT processes, and new types of Hardware and communications goods that will enable Vendor to perform the Maintenance Services more efficiently and effectively as well as enable the City and the PBC to meet and support their business requirements and strategies and (ii) any change to the Goods, Software or methodologies used to provide the Maintenance Services that is necessary to bring that function, Goods or Software or those methodologies into line with current industry standards.

(c) Flexibility. Vendor shall use commercially reasonable efforts to use technologies and business process strategies to provide the Services and Goods that are likely to be flexible enough to allow integration with new and emerging technologies or business processes, and/or significant changes in the PBC's and the City's objectives and strategies and/or with existing cameras and CCTV systems used by the City, the Sister Agencies and the Users. For example, Goods for which Vendor is responsible must have commercially reasonable scalability and modularity to allow integration of new technologies without the need to replace whole, or significant parts of, systems or business processes (e.g., made to be a one-to-many model) to enable the System to become more scalable and flexible.

3.7 Cooperation.

(a) Cooperation with Third Parties. Vendor must cooperate with the PBC and with third parties retained by the PBC, the City or a Sister Agency or a User in connection with the delivery of Goods or performance of the Services, in whole or in part. This cooperation shall include providing reasonable access to Vendor facilities where the Services are performed as necessary for the business of the PBC, the City or any Sister Agency or a User, or for a third party to perform its work for the PBC, the City or a Sister Agency or a User, and providing such information regarding the Goods and/or Services as a person with reasonable commercial skills and expertise would find reasonably necessary to support the System or a User Project or for a third party to perform its work for the PBC or the City or a Sister Agency or a User, including written requirements, standards and policies for those operations of the System to which such third party services relate so that any third party deliverables may be operated with the System or a User Project. Notwithstanding the foregoing, if Vendor's Confidential Information will be disclosed in connection with Vendor's obligations pursuant to this Section 3.7(a) (Cooperation with Third Parties), then the PBC and Vendor shall cooperate in obtaining from the applicable third party vendor a confidentiality agreement reasonably satisfactory to Vendor.

(b) Liability. Vendor is responsible for Services and/or Goods not completed or accepted due to the presence and operations of other contractors. Vendor must make commercially reasonable efforts to cooperate with other contractors to mitigate any impact and inform the PBC of any anticipated

impact to completion or acceptance due to other contractors, in which case Vendor is not liable for lack of completion or acceptance due to such other contractors. Subject to Section 20.15 (Savings Clause), Vendor must coordinate and tie-in, where appropriate, Vendor's Goods and/or Services with that of others in an acceptable manner, and must perform the Services and deliver Goods in proper sequence to the work of others. Subject to Section 20.15 (Savings Clause), when other suppliers cause any damage to the Goods and/or Services prior to acceptance of the same by the PBC, Vendor must file claims with regard to any loss or damage with the other suppliers, and not against the PBC, and Vendor must obtain compensation (if any) for such loss or damage directly from those other suppliers.

3.8 Benchmarking - Most Favored Customer.

(a) Benchmarking Review. From time to time during the Term, but in no event prior to the second anniversary of the Effective Date and then no more frequently than once in every twelve (12) month period thereafter, with notice to the Vendor specifying the Benchmarking and the Services to be Benchmarked, the PBC may, subject to Section 3.7 (Cooperation), initiate a Benchmarking by engaging the services of such Benchmarking, on a non-contingent-fee basis, to compare the quality of, and the Fees for, all or any portion of the Services against the quality performed by, and the fees charged by, well managed service providers performing similar services to determine whether the PBC is obtaining pricing and levels of service that are competitive with market rates, prices and service levels, given the nature, volume and type of Services provided by Vendor hereunder ("**Benchmarking**" or like term); provided that, the PBC shall only benchmark in whole the Services with respect to Phase 1, Phase 2, Phase 3 and Phase 4. In connection with a price-base Benchmarking, the Benchmarking shall compare the total charges applicable to Services subject to the Benchmarking to the total charges applicable to similar services with respect to the Representative Sample. The Benchmarking shall "normalize" the data used to perform the comparison in order to account for differences between the Services and the comparison services including those with respect to the volume of services, scope of services, service levels, complexity of the services, degree of standardization of the services, terms and conditions with respect to such services, financing provided by Vendor with respect to such services, service delivery and receipt location(s) (limited to North America), and other factors that are directly relevant to such normalization. "**Representative Sample**" for Benchmarked Services shall mean a sample of a minimum of five (5) entities, or if five (5) entities are not available, then the number of entities that are available, but no less than two (2), proposed by the Benchmarking that shall only include customers serviced by top tier service providers with similar scope, service levels and volume and similar complexity as the Benchmarked Services.

(b) General. "**Benchmarking**" means any one of the pool of third parties agreed upon by the Parties, who or which are qualified and experienced to perform benchmarking like the Benchmarking. The Parties may vary the Benchmarking pool from time to time by agreement. Neither Party shall unreasonably disagree with any change proposed by the other (and will provide reasons for any disagreement). The PBC may choose any Benchmarking from the pool to conduct the Benchmarking. Any Benchmarking engaged by the PBC shall agree in writing to be bound by the confidentiality and security provisions contained in the Agreement. Vendor shall cooperate fully with the PBC and the Benchmarking during such effort, and shall provide the Benchmarking (i) reasonable access to any premises, goods, personnel or documents relating to the Services; and (ii) reasonable assistance required by the Benchmarking to conduct the Benchmarking, all at Vendor's cost and expense; provided however, that Vendor shall not be obligated to provide the Benchmarking with Vendor cost data or confidential information of other Vendor customers. The Benchmarking shall be conducted so as not to unreasonably disrupt Vendor's operations under this Agreement. Benchmarking shall not be given access to areas of Vendor Facilities from which Vendor services other customers, or any records or information relating to Vendor's other customers.

(c) Result of Benchmarking. The Benchmarker shall submit a written report setting forth his or her findings and conclusions. If the Benchmarker finds that (i) the Fees paid by the PBC for all Services are greater than the average of the prices charged by the Representative Sample for services of a nature, type or volume similar to the Services and (ii) the Service Levels received by the PBC are worse than those provided by the Representative Sample for services of a nature, type or volume similar to the Services ("**Benchmark Standard**"), then, subject to an alternate resolution that may be agreed upon by the Parties as set out below, the Fees and/or Service Levels (as the case may be) will then be adjusted, at PBC's request, to eliminate any unfavorable variance of more than three (3) percent. At Vendor's request, and in the PBC's discretion, the PBC may grant Vendor up to thirty (30) days (unless otherwise agreed by the PBC) after the date of the Benchmarker's report is finally accepted to prepare and implement an agreed plan to bring the Fees and/or Service Levels (as the case may be) into line with the Benchmark Standard. If Vendor fails to make the adjustments as required by this Section, the PBC may, at its option, terminate the Services in whole or in part. If the Services are terminated in part, the Fees shall be equitably adjusted to reflect the Services no longer performed by Vendor.

(d) Vendor, Review and Dispute. The PBC shall provide Vendor with a copy of the Benchmarker's report and Vendor shall have thirty (30) days to review such report and contest the Benchmarker's findings. If Vendor has reason to believe the Benchmarker's report contains manifest errors of fact, Vendor shall notify the PBC by: (i) specifying the errors; (ii) providing any report, data or other evidence that demonstrates or justifies Vendor's belief; and (iii) proposing amendments to the Benchmarker's report (and/or the Benchmarking results) necessary to correct the errors. The PBC shall review any such notice given by Vendor and take appropriate action. If the Parties do not agree on the appropriate course of action relating to error correction or if the Parties are unable to agree upon the validity of such findings, the matter shall be resolved pursuant to Section 9.6 (Disputes). Reductions in the Fees (if any) shall be implemented effective as of the first day of the month after the month in which the Benchmarker's report was first provided to Vendor; provided that, if either Party disputes the findings under Sections 9.5 (Claims) and 9.6 (Disputes), notwithstanding anything to the contrary in the Agreement, the reduction will be implemented retroactively following the resolution of such dispute.

3.9 Customer Satisfaction.

(a) Initial Satisfaction Survey. The PBC may, no sooner than six (6) months after the earlier of Final Acceptance of Phase 1 or Phase 2, request that Vendor conduct, and if so requested, Vendor shall conduct, a baseline customer satisfaction survey as approved by the PBC. This survey shall be of the content and scope, and administered in accordance with the procedures, agreed upon by the PBC or the City, and Vendor, and shall be the baseline for measurement of performance improvements.

(b) Satisfaction Survey. At least once every twelve (12) months during the Term after the initial customer satisfaction survey is conducted pursuant to Section 3.9(a) (Initial Satisfaction Survey) and as part of the Services, Vendor shall conduct a customer satisfaction survey. The content, scope, and method of the survey shall be consistent with the initial customer survey conducted pursuant to Section 3.9(a) (Initial Satisfaction Survey) and the timing of the annual surveys is subject to the PBC's approval. It is the goal of Vendor to increase customer satisfaction for each class of users. Vendor agrees that increasing measured customer satisfaction shall be a key factor in evaluating the performance of Vendor Personnel who are Key Employees and of the Subcontractors assigned to the Project.

(c) Survey Follow-Up. If the results of any satisfaction survey indicate that the level of satisfaction with Vendor's performance has declined from previous surveys, Vendor shall promptly: (i) conduct a Root Cause Analysis as to such dissatisfaction; (ii) develop an action plan to address and improve the level of satisfaction; (iii) present such plan to the PBC for its review, comment and approval; and (iv) take action in accordance with the approved plan and as necessary to improve the level of

satisfaction. The PBC and Vendor shall establish a schedule for completion of the Root Cause Analysis and the preparation and approval of the action plan which shall be reasonable and consistent with the severity and materiality of the problem; provided, that the time for completion of such tasks shall not exceed thirty (30) days from the date such user survey results are finalized and reported. Vendor's action plan developed hereunder shall specify the specific measures to be taken by Vendor and the dates by which each such action shall be completed. Following implementation of such action plan, Vendor shall conduct follow-up surveys with the affected end users and management to confirm that the cause of any dissatisfaction has been addressed and that the level of satisfaction has improved.

3.10 New Advances.

Vendor must offer the PBC any commercially implemented New Advances related to the Services, Goods or Software hereunder. "New Advances" means (i) Vendor developed advances in or changes to the Goods, or business processes and associated technologies used to provide services (and any other services that are the subject matter of the Agreement) to other Vendor customers that are the same or substantially similar to the Services, that are made commercially available by Vendor, and for which Vendor is not contractually prohibited from making available to the PBC and (ii) new or enhanced Vendor developed business processes, Goods, services, Software, tools, products or methodologies to be offered on a commercially available basis to such Vendor customers, and for which Vendor is not contractually prohibited from making available to the PBC.

3.11 Vendor Best Practices.

Vendor shall propose to the PBC for implementation, and upon the PBC's written approval, shall implement, as part of the Services and to improve the Services, the proven "IBM best practices" it develops or becomes aware of in connection with Vendor's delivery of services to third parties that are substantially similar to the Services.

ARTICLE IV. CONSTRUCTION AND GOODS

4.1 Construction.

Vendor shall perform or cause to be performed Construction Work on the Project in accordance with this Agreement, including the terms and conditions set forth on Schedule 4.1 (Terms and Conditions for Construction). Vendor will require any Subcontractor who or which performs Construction Work, to comply with the terms and conditions set forth in Schedule 4.1, and will include such terms and conditions in the applicable subcontracts.

4.2 Goods.

The terms and conditions of this Agreement, including the terms set forth on Schedule 4.2 (Terms and Conditions Related to Goods) shall be applicable to the procurement, storage, management, installation and other Services relating to the Goods. The Deliverables shall include the Goods.

ARTICLE V. DELIVERABLES

5.1 Deliverables - Overview.

(a) Deliverables. In performing the Services hereunder, Vendor may be required to prepare or provide certain Deliverables. Each Deliverable must meet the applicable Acceptance Criteria. All Deliverables must be prepared in a form and content compliant with the applicable Acceptance Criteria,

and delivered in a timely manner consistent with the requirements of this Agreement. Vendor acknowledges and agrees that Acceptance by the PBC of any Documentation Deliverable does not relieve Vendor of its obligations hereunder.

(b) Documentation. Vendor must supply Documentation to the PBC within the agreed timeframe in both hard and soft copies, and in sufficient detail to reasonably enable the PBC end-users who will use such Documentation to operate the applicable Goods, Software, Developed Material and/or the System, or a User Project, and in support of the operation and maintenance of fiber, Equipment, Software or systems existing as of the effective date where the addition of fiber, Equipment, Software or systems by Vendor may have modified such existing fiber, Equipment, Software or systems. Any omission, inconsistency or ambiguity in detail and/or description in any Documentation when applying the standard in the preceding sentence must be corrected by Vendor without delay, and replacement Documentation will be provided by Vendor at no cost to the PBC. "**Documentation**" means the documentation, written materials, work papers, configurations, manuals, and other work product, which sets forth the technical and functional specifications, and operating information for the applicable Software, Deliverable, Developed Material or Goods prepared or provided by or on behalf of Vendor, its Subcontractors or agents in connection with providing the Software, Deliverable, Developed Material, or Goods, as the case may be.

(c) Deliverable Form. Vendor shall provide the PBC with hard copies, and electronic copies when the form of Deliverable permits, of completed Deliverables. Vendor shall make available to the PBC Project Manager, upon request, a copy of Deliverables while in-process.

5.2 Acceptance Process.

(a) Acceptance Criteria. Prior to being placed into production, each Deliverable will be subject to an acceptance process to verify that it satisfies the Specifications and other specifications established for such Deliverable ("**Acceptance Criteria**" and the process to so verify, the "**Acceptance Process**"). The Parties will establish for each Deliverable objective and measurable Acceptance Criteria. Acceptance Criteria vary by Deliverable; provided, however, that the Parties agree that all Deliverables will utilize the common Acceptance Criteria elements specified in Schedule 5.2 (Common Elements of Acceptance Criteria and Acceptance Testing).

(b) Acceptance Testing. Prior to being placed into production, each Deliverable will be subject to acceptance testing to verify that such Deliverable satisfies the applicable Acceptance Criteria ("**Acceptance Testing**"). Such Acceptance Testing will be conducted in accordance with the testing plan developed by Vendor and approved by the PBC. Acceptance Testing varies by Deliverable; provided, however, that the Parties agree that all Acceptance Testing will include the common elements specified in Schedule 5.2 (Common Elements of Acceptance Criteria and Acceptance Testing).

(c) Sign-Offs of Milestone Deliverables. Vendor shall develop for the PBC's approval objective and measurable sign-off criteria and procedures for those groups of Deliverables which the Parties mutually conclude together comprise a significant component of the System ("**Milestone Deliverables**"). The purpose of these sign-off procedures is to provide that issues relating to the Services are identified and addressed in a timely manner early and to assist in the timely completion of the Milestone Deliverables, the Phases, the System and User Projects. Compliance with such procedures with respect to any Milestone Deliverable will not constitute final acceptance of any Phase or of the System.

(d) Construction Design Sign-Offs. Notwithstanding the foregoing, Deliverables relating to design work pursuant to Construction Work, and other construction Deliverables, shall be subject to the

Acceptance Process set forth in Schedule 4.1 (Terms and Conditions for Construction). Additionally, Vendor acknowledges and agrees that the Acceptance Process with respect to certain of the Deliverables will include a Vendor obligation to obtain the PBC's affirmation, in accordance with Schedule 4.1, of Substantial Completion and Final Completion, respectively, in connection with the Construction Work relating to such Deliverable.

(e) **No Waiver.** Issuance by the PBC of a letter affirming Substantial Completion or Final Completion with respect to Construction Work, payment of Fees relating to Services and/or Deliverables, or Acceptance shall not relieve the Vendor of responsibility for faulty Goods or Services, including with respect to construction workmanship. Vendor shall remedy any defects which shall appear within the warranty period in accordance with Article XVI (Representations and Warranties). "Acceptance" means, with respect to a Deliverable, completion of Acceptance Testing of such Deliverable and, upon such completion such Deliverable conforms to the applicable Acceptance Criteria. Acceptance of a Deliverable shall be evidenced by the issuance by the PBC to Vendor of written notice of such Acceptance.

ARTICLE VI. OTHER VENDOR OBLIGATIONS, COVENANTS

6.1 Annual Certification.

Vendor must prepare, execute and deliver to the PBC at least annually on a form specified by the Director of Procurement disclosure of information and certification as to such matters as the Director of Procurement may require from time to time; provided that it is in accordance with Applicable Law. Each certification must include a statement affirming Vendor's acceptance of incorporation into the Agreement of any updates required by Local Law and acceptance of any modifications to City Policies during the period subsequent to Vendor's most recent prior certification. The PBC may require such certification more frequently than annually, if it deems such to be in the interest of the PBC or the City.

6.2 PBC Direct Procurement.

With the exception of Phase 1, Phase 2, Phase 3 (if Vendor and the PBC execute a Task Order with respect to Phase 3) and Phase 4, whenever the Goods, Software and/or Services to be supplied under the Agreement include the provision of any commercially available Goods, Software and/or services, including supplies, materials, parts or goods (including computers, Hardware or peripherals), the PBC will have the option, with notice to Vendor within a reasonable time of the PBC having become aware of such direct procurement, to license any such Software or procure any such Goods directly from suppliers or vendors for use with Vendor's Goods, Software and/or Services under the Agreement. Vendor is not liable for any costs resulting from such direct procurement or licensing by the PBC with respect to the System. In the event a direct procurement adversely impacts the System, Vendor and the PBC will agree upon reasonable charges in accordance with Schedule 7.1 (Fee Schedule) to diagnose and restore the System to its Standards.

6.3 Electronic Records.

Vendor shall provide the PBC electronic versions of any hard-copy record documents that the Vendor is required to prepare pursuant to the Agreement.

6.4 Vendor as Subcontractor.

Vendor acknowledges that, in its role hereunder, it is performing the Services for the PBC as a subcontractor to the City. As such, Vendor shall comply with the provisions set forth on Schedule 8.4 under the heading, "Subcontractor Terms."

6.5 Other Vendor Covenants.

(a) Licenses and Permits. Vendor and each Subcontractor shall, during the Term, have all licenses, permits, consents, authorizations or approvals that are necessary under Applicable Law to perform Vendor's obligations (including any Services) under the Agreement. Vendor will perform no work (including Services) for which any license is required by law and for which Vendor is not appropriately licensed. Vendor will not permit any Subcontractor to perform any work (including Services) for which any license is required by Applicable Law and for which such Subcontractor is not appropriately licensed.

(b) Documents Provided by Vendor. All information provided by Vendor or any Subcontractor during the Term in any invoices, receipts, bills of lading, documents of title or other like commercial documents under the Agreement will be accurate and complete in all material respects.

(c) Disabling Code. Vendor shall not include in any component of the System any Disabling Code. Vendor must immediately provide to the PBC written notice in reasonable detail upon becoming aware of the existence of any Disabling Code in the System (including its source code). Without limiting the foregoing, Vendor must use commercially reasonable efforts to prevent the introduction of any proliferation of any Disabling Code in the City's or, in connection with a User Project, the applicable Sister Agency's or User's computer systems or networks or in Vendor's systems used to provide Services. In the event Vendor or the PBC discovers the existence of any Disabling Code (whether intentionally or unintentionally introduced), Vendor must use commercially reasonable efforts, in cooperation with the PBC to promptly effect the prompt removal of the Disabling Code from the System Software, the System and Networks and the repair of any files or data corrupted thereby and the expenses associated with the removal of the Disabling Code and restoration of the data will be borne by Vendor if the Disabling Code was introduced by the Vendor or a Subcontractor. In no event will Vendor or any authorized Subcontractor invoke any Disabling Code. If a third party intentionally or unintentionally invokes any Disabling Code in the System Software or the System, Vendor shall assist the PBC in mitigating the effects of such Disabling Code and in restoring such systems and/or the System.

(d) Manufacturer's Warranties. As part of the implementation Services, the Vendor will (i) have all required manufacturers' warranties on the Goods supplied by Vendor's third party suppliers ("Manufacturers' Warranties") hereunder pass through to the PBC and the City (and the Sister Agencies or Users, as the case may be) and (ii) complete in the PBC's and/or the City's or Sister Agency's or User's name, as the case may be, and submit to the applicable manufacturer, a copy of the applicable Manufacturers' Warranty form to complete the registration process with such manufacturer. Repairs and replacements made by the Vendor pursuant to this Section will include a Manufacturer's Warranty, if provided by the applicable manufacturer. As part of the Maintenance Services, Vendor shall manage (including knowledge of scope of such warranties and the acts required to maintain such warranties) such Manufacturers' Warranties.

(e) Malicious Code. Each Party shall cooperate with the other Party and shall take commercially reasonable actions and precautions, including, with respect to Vendor, those consistent with the Data Protection Plan, to prevent the introduction and proliferation of Malicious Code into the PBC's or the City's or, in the case of a User Project, a Sister Agency's or User's environment or in any other

Software or system used by Vendor to provide the Services. Without limiting Vendor's other obligations under this Agreement, in the event Malicious Code is found in Equipment or Software or systems managed or supported by Vendor in connection with the Services, including the System, Vendor shall, at its cost, eliminate and reduce the effects of such Malicious Code, and, if the Malicious Code causes a loss of operational efficiency or loss of data, mitigate such losses and restore data with the generally accepted data restoration techniques set forth in the Data Protection Plan. Notwithstanding the foregoing, as between the PBC and Vendor, the PBC shall be responsible for the cost of eliminating and reducing the effects of Malicious Code to the extent that such Malicious Code was introduced by the PBC, the City, a Sister Agency or a User or their respective contractors, so long as Vendor is in compliance with this Agreement and the Data Protection Plan.

(f) Interoperability. To the extent within Vendor's reasonable control, in connection with any particular Task Order or Notice To Proceed, the Goods and Materials, including the Developed Materials and the System Software, will use commonly available programming language and programming interfaces to support interoperability with the Software, equipment, and systems used by the City and Sister Agencies and to which the System will interface. Vendor shall design and seek the PBC's approval prior to implementation of any proposed modifications to the City's Materials or systems (other than those that comprise the System) that are necessary to provide new features and functions required by the System.

(g) Efficiency and Cost Effectiveness. Vendor covenants that it shall use commercially reasonable efforts to provide the Services in a cost-effective manner. Without limiting the generality of the foregoing, such actions shall include:

- (i) Timing of Actions. Making adjustments in the timing of actions (consistent with the PBC priorities communicated to Vendor and schedules for the Services and Vendor's obligation to meet the Service Levels).
- (ii) Timing of Functions. Delaying or accelerating, as appropriate, the performance of non-critical functions within limits acceptable to the PBC.
- (iii) Systems Optimization. Tuning or enhancing the Developed Materials to enhance performance and reduce costs.
- (iv) Efficiency. Efficiently using resources for which the PBC is charged hereunder, and compiling data concerning such efficient use in segregated and auditable form whenever reasonably possible.

(h) Ethics and City Policies. No officer, agent or employee of the PBC is or shall be employed by Vendor, by any Subcontractor, or by any of the officers or owners of any of them, or has any financial interest directly or indirectly in the Agreement or the compensation to be paid under the Agreement, except as may be permitted in writing by the PBC Board of Ethics established pursuant to the Municipal Code of Chicago (Chapter 2-156). Vendor shall comply with Chapter 2-156 of the Municipal Code of Chicago, Governmental Ethics, including but not limited to Section 2-156-120 of that chapter pursuant to which no payment, gratuity, or offer of employment shall be made in connection with any PBC contract, by or on behalf of a Subcontractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of this Section shall be voidable.

(i) Examination of Agreement. Vendor has carefully examined and analyzed the provisions and requirements of the Agreement; it understands the nature of the Goods and/or Services to be provided; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of the Agreement and Vendor intends to perform its obligations under the Agreement in accordance with all of its provisions and requirements.

6.6 Conflict of Interest Covenants.

(a) Conflict of Interest. No member of the governing body of the City or other unit of government and no other officer, employee or agent of the PBC or the City or other unit of government who exercises any functions or responsibilities in connection with the Agreement is permitted to have any personal interest, direct or indirect, in the Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of the Agreement or to any financial benefit to arise from it.

(b) Interest. Vendor covenants that it, and to the best of its knowledge, its owners, its affiliates and its Subcontractors, if any (collectively, "**Vendor Parties**"), presently have no direct or indirect interest and will not acquire any interest, direct or indirect, in any project or contract that would conflict in any manner or degree with the performance of the Agreement.

(c) Client Lists. Upon the request of the PBC, Vendor must disclose to the PBC its past client list and the names of any clients with whom it has an ongoing relationship. Vendor is not permitted to perform any services for the PBC contracts awarded based on applications or other documents submitted to the PBC by any of Vendor's past or present clients where Vendor has had any involvement in the preparation of any of such applications or other documents. If Vendor becomes aware of a conflict, it must immediately stop work on the assignment causing the conflict and notify the PBC.

(d) Proposals. Without limiting the foregoing, if any Vendor Party assists the PBC in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a Request for Proposal, Request for Qualification, Request for Information, or bid specifications for a project, neither the Vendor nor any Vendor Party may participate, directly or indirectly, as a prime, Subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the Term or afterwards. A Vendor Party may, however, assist the PBC in reviewing the proposals or bids for the project if none of the Vendor Parties has a relationship with the persons or entities that submitted the proposals or bids for that project.

(e) Goods Procurement. Vendor further covenants that, in the performance of the Agreement, no person having any conflicting interest will be assigned to manage any aspect of procuring or producing any Goods or Software, or to perform any Services, or be permitted to have access to any Confidential Information hereunder.

ARTICLE VII. PAYMENT AND FUNDING

7.1 Fees.

In consideration of Vendor's performance under the Agreement, the PBC agrees to pay Vendor the applicable fees and charges set forth in Schedule 7.1 (the "**Fees**" and such schedule, the "**Fee Schedule**"), subject to the Retainage terms set forth on Schedule 7.1 (Fee Schedule). The PBC shall not pay any Fees in addition to those set forth in Schedule 7.1 (Fee Schedule) unless mutually agreed by the Parties in an amendment to the Agreement pursuant to Section 20.4 (Amendments). Schedule 7.1, as of the Commencement Date, sets forth (i) the Fees with respect to Phase 1, Phase 2, Phase 3 and Phase 4,

(ii) unit pricing for Goods, Software and Services that will be available during the Term to the PBC (for PBC and City projects, and User Projects), (iii) hourly rates applicable to Termination Assistance Services and to Services delivered pursuant to Section 9.4(b) (Emergency Changes) or Section 9.4(c) (Changes Related to Strategic Direction) and (iv) other terms related to the Fees. Fees for a User Project or another phase shall be set forth on an addendum to Schedule 7.1 and agreed upon by the Parties when the applicable Task Order is executed by the Parties.

7.2 Expenses.

(a) Expenses. Vendor acknowledges that expenses that Vendor incurs in performing the Services (including management, travel and lodging, document reproduction and shipping, desktop equipment and other office goods required by Vendor personnel, and long-distance telephone) are included in Vendor's Fees. Accordingly, such Vendor expenses are not separately reimbursable by the PBC unless the PBC has agreed in advance in writing to reimburse Vendor for the expense.

(b) Reimbursable Expenses. The PBC shall reimburse Vendor at cost for Reimbursable Expenses as set forth on Schedule 7.1 (Fee Schedule). "**Reimbursable Expenses**" are actual expenditures at cost incurred by the Vendor and required to deliver the Services. Vendor will act as a limited payment agent for the PBC and will pay all third-party charges comprising Reimbursable Expenses. Prior to making any such payment, Vendor will review the invoice charges to determine whether such charges are proper and valid, and will provide the PBC with a reasonable opportunity to review the invoice, upon the PBC's request, to confirm Vendor's determination. Following such review by Vendor and the PBC (if so requested), Vendor will pay the amounts due and will invoice the PBC for such charges as part of Vendor's monthly invoice. With respect to services or materials paid for as Reimbursable Expenses, the PBC reserves the right (i) to obtain such services or materials directly from a third party; (ii) to designate the third party source for such services or materials; (iii) to designate the particular services or materials (such as equipment make and model) Vendor will obtain; (iv) to require Vendor to identify and consider multiple sources for such services or materials and evaluate the responses from such sources; (v) to review and approve a Reimbursable Expense for such services or materials before entering into a contract for such services or materials; and (vi) to reject or require discontinuation of any third party providing such services or materials. Vendor shall adjust the Fees to reflect any reduction in Reimbursable Expenses.

7.3 Invoice of Payment.

Vendor must submit monthly invoices (in triplicate) to the PBC for Services performed that include such detail as the PBC reasonably requests and include documentation requested by the PBC, including a then-current Status Report ("**Invoices**"). Each Invoice shall include the number assigned to the Task Order under which the Services being invoiced were performed. The PBC will pay Fees within sixty (60) days after receipt of correct and complete Invoices. The PBC will provide Vendor with reasonable notice of any change in the type of documentation required as a result of a change in Applicable Law or City Policies.

7.4 Taxes.

Vendor shall pay for all federal, state, and local taxes on all Goods, Materials, labor, or Services furnished, and all taxes arising out of the operations under this Agreement. Such taxes shall include, by way of illustration and not in limitation thereof, Retailers' Occupational, Old Age Benefit, Unemployment, customs, duties, and all deductions for income taxes now in force or hereafter enacted prior to final completion and acceptance of the Services. This requirement excludes taxes and assessments on real property and Illinois, County and Municipal Retailers' Occupation and Service

Occupation Taxes and Illinois Use, Sales and Service Use Taxes on building materials and fixtures to be incorporated into the Construction Work but does include such taxes on building materials and goods consumed or used in performing the Construction Work, but not incorporated in it.

The Public Building Commission of Chicago, a municipal corporation and political subdivision of the State of Illinois, is exempt from federal Excise Taxes. The State of Illinois Tax Exemption Identification Number is E9978-1506-04 and the Federal Tax Exemption Identification Number is #36-6009523.

7.5 Source of Funds.

(a) Source of Funds Appropriated. Certain governmental funding sources require that specific terms and conditions must apply to contracts entered into thereunder in accordance with Section 14.10 (Special Funding Conditions). The terms that are applicable as of the Effective Date are set forth on Schedule 7.5 (Funding Source Terms and Conditions). Vendor agrees to the automatic revision of any such required terms upon notice from the relevant governmental funding authority.

(b) Changes to Funding Source. The PBC has the right to change, supplement or otherwise modify the designated funding source from time to time, which may occur due to availability of funds, terms of use of funds, or changes in the PBC's priorities. In the event the designated funding source changes during the Term or varies among different categories of Goods or Services under the Agreement, Vendor agrees that, upon notice thereof to Vendor, the Agreement will automatically be deemed modified to reflect any additional or different terms required in connection with the then-applicable funding sources. Schedule 7.5 (Funding Source Terms and Conditions) shall be revised to include such terms, and Schedule 7.5 (Funding Source Terms and Conditions) as revised shall be deemed to be a part of this Agreement.

(c) Effect on Performance. In the event Vendor believes that such change in terms required due to a changed funding source will have a material effect on Vendor's performance of its obligations under the Agreement and will cause Vendor substantial economic hardship, the Vendor may notify the PBC, if at all, within thirty (30) days of the date of the PBC's notice of such change, and request the PBC to review the Agreement. Upon such request, if the Director of Procurement in his or her sole discretion agrees that Vendor will suffer substantial economic hardship, the PBC may elect to (i) change the funding source or otherwise modify or exempt Vendor from the application of the requirement at issue (if possible), (ii) provide equitable adjustment in the Agreement for only the effect of the changes due to the changed funding source, or (iii) terminate the Agreement.

7.6 Non-Appropriation.

Renewal or continued availability of funding for the procurement of Goods or Services under the Agreement is not guaranteed by the PBC. If no funds or if insufficient funds are appropriated and budgeted in any fiscal period of the City by the designated funding source, such that complete payment may not be made under the Agreement, then the PBC will notify Vendor in writing of that occurrence, and the Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under the Agreement are exhausted. In the event of a general reduction in funding, the PBC (or other funding agency) has discretion as to priorities among projects competing for such reduced funding, and the PBC has no obligation to prioritize funding to Vendor under the Agreement. Payments for Goods delivered and Services completed to the date of such notification will be made to Vendor, except that no payments will be made or due to Vendor under the Agreement beyond those amounts appropriated and budgeted by the City to fund payments under the Agreement. Termination by the PBC hereunder will not be considered a

breach by the PBC, and Vendor is not entitled to any compensation for anticipated profits or other economic loss in the event of such a termination.

7.7 Suspension.

The PBC may, in writing, direct Vendor to suspend performance of all or any part of the Services at any time and, subsequently, to resume performance of the Services. Such suspension shall be promptly documented and confirmed. A suspension is the cessation of performance of the Services until performance of the Services is requested to be resumed, and does not include normal rescheduling or re-phasing portions of the Services. Remobilization after a suspension shall not be subject to the Change Order Process. Notwithstanding the foregoing, if performance is suspended for a period of longer duration than forty-five (45) days during the performance of a Task Order, then PBC shall pay to Vendor Demobilization Costs and/or Remobilization Costs, as applicable. "**Demobilization Costs**" means actual costs paid by Vendor for early termination of executory contracts and leases during the course of a Task Order. "**Remobilization Costs**" means actual costs paid by Vendor to resume performance of Services. Notwithstanding anything to the contrary herein, a Winter Suspension Period pursuant to Schedule 4.1 (Terms and Conditions for Construction) shall not constitute a suspension under this Section 7.7 (Suspension).

7.8 Payments Withheld.

The Vendor will not be entitled to payments until certificates of insurance, bonds, or other evidence of compliance by the Vendor with all the requirements of the Agreement for insurance and bonds have been provided to the PBC. Further, no payments on the basis of Construction Work performed by a Subcontractor shall be paid until copies of all bonds required and any certificates of insurance required of the Subcontractors by the Agreement have been filed with the PBC.

The PBC may also notify the Vendor that payments to the Vendor will be suspended if the Vendor fails to pay any Subcontractor, supplier, employee, or construction workman for Construction Work performed or Goods or Software received. If Vendor has not cured a failure to pay a Subcontractor, supplier, employee or construction workman within ten (10) days after receipt of such notice, the PBC may apply any money due, or that may become due, to Vendor under the Agreement to the payment of such Subcontractors, supplier, construction workmen, and employees and the effect will be the same, for purposes of payment to Vendor of the amount due, as if the PBC had paid Vendor directly. Further, if such action is otherwise in the PBC's best interest, the PBC may make direct payments to Subcontractors, suppliers, construction workmen or employees for monies earned and the effect will be the same, for purposes of payment to Vendor, as if the PBC had paid Vendor directly. The PBC's election to exercise or not to exercise its rights under this Section 7.8 (Payments Withheld) shall not in any way affect the liability of the Vendor or its sureties to the PBC or to any such Subcontractor, supplier, construction workman, or employee upon any Bond given in connection with the Agreement.

The PBC may also withhold or nullify the whole or a part of any application for payment or any certificate for payment to such extent as may be necessary to protect the PBC from loss because of: (i) defective Construction Work not remedied; (ii) third party claims filed or reasonable evidence indicating probable filing of claims; (iii) a reasonable doubt that the Construction Work can be completed for the balance then unpaid; (iv) damage to the work or property of the PBC, the Sister Agency, User or any other third party; (v) erroneous estimates by the Vendor of the value of the Construction Work performed; or (vi) unauthorized deviations by the Vendor from the Agreement requirements. When the foregoing ground or grounds are removed, payments will be made for amounts so withheld. The PBC's rights under this Section 7.8 (Payments Withheld) are cumulative with any other rights provided under the Agreement.

ARTICLE VIII. PERSONNEL

8.1 Project Team; Staffing.

(a) Key Employees. Vendor shall cause each of the Vendor Personnel serving in a key management position on the Project ("**Key Employees**") to devote substantially all of his or her business time and effort to the provision of Services under this Agreement. With respect to the appointment of the initial and any replacement of Vendor Personnel who are Key Employees, Vendor will fill such positions with individuals who have experience, training and expertise of reasonable commercial and professional standards applicable to personnel with similar responsibilities to those imposed on the Key Employees and who have knowledge of the relevant aspects of the Services and the System. The personnel who are Key Employees shall acquire sufficient knowledge of the City's (and with respect to a Sister Agency or User, such Sister Agency's or User's) practices to enable each of them to perform their respective duties and responsibilities under this Agreement. Before assigning an individual as a Key Employee, whether as an initial assignment or a subsequent assignment, Vendor will use commercially reasonable efforts to provide the PBC with a resume. If the PBC has a good faith objection to any such assignment, Vendor shall work with the PBC to address its concerns. If Vendor is unable to address such concerns, Vendor shall propose to the PBC the assignment of another individual of suitable ability and qualifications, within a mutually agreed upon timeframe. The Vendor Personnel who are Key Employees as of the Effective Date are those individuals listed on Schedule 8.1(a) (Key Employees). This paragraph will not be construed to give the PBC the ability to terminate the employment of Vendor Personnel.

Except for a replacement or reassignment due to the occurrence of a Reassignment Waiver, Vendor shall not reassign or replace Key Employees unless Vendor notifies the PBC in writing at least thirty (30) days prior to such replacement or reassignment and obtains the PBC's approval and such replacement or reassignment may not begin working hereunder until Vendor has complied with Section 8.1(c) (Background Checks). In the event of any replacement of a Key Employee, Vendor shall replace such Vendor Personnel with a Vendor resource who has the appropriate skill set to perform the work in question.

(b) Vendor Personnel. Vendor shall cause all Vendor employees, officers and other personnel under the control or responsibility of Vendor (collectively, "**Personnel**"), and shall cause each of its Subcontractors to ensure that all of the Subcontractor employees, officers and other personnel under the control or responsibility of each such Subcontractor ("**Subcontractor Personnel**" and, with the Personnel, the "**Vendor Personnel**") who are engaged in performance under the Agreement are fully equipped, properly trained, licensed as (and if) required by Applicable Law, available as needed, and qualified to perform the tasks assigned to them. Vendor shall deliver to the PBC, prior to beginning Services that must be performed by licensed Vendor Personnel, copies of all such licenses held by Vendor Personnel who are required to be licensed under Applicable Law. Notwithstanding the foregoing, delivery of copies of such licenses does not relieve Vendor of its obligation hereunder.

(c) Background Checks. Vendor Personnel identified by PBC must successfully complete a background check and drug screen in accordance with Schedule 8.1(c) (Background Checks and Drug Screening), and in accordance with applicable law, before assignment to perform any Services. Vendor shall not allow any such Vendor Personnel who do not successfully complete the background check and/or drug screen to perform Services under the Agreement. In addition, the PBC, in its sole discretion, may require Vendor at any time, with notice, to cause certain Vendor Personnel, or any group of Vendor Personnel performing a certain type of Service, to complete a drug screen test. Vendor shall not allow any Vendor Personnel who do not successfully complete such drug screen test to perform Services hereunder. Upon receipt of the drug test results, Vendor shall promptly advise the PBC as to whether any

of the tested Vendor Personnel did not pass the test. The Vendor will be responsible for claims by Vendor Personnel arising from or related to the Vendor's drug testing of such Vendor Personnel.

(d) Compliance With Law and Policies. Vendor must cause its personnel to comply, and must cause each of its Subcontractors to ensure that Subcontractor Personnel comply, with all Applicable Law and City Policies.

(e) Removal of Vendor Personnel. Notwithstanding anything in this Agreement to the contrary, Vendor shall, upon the PBC's written instruction, remove (or cause to be removed) from the PBC's account any Vendor Personnel who the PBC determines is unacceptable. Nothing herein shall give the PBC the right to affect the employment relationship between Vendor and any employee of Vendor, or between a Subcontractor and any employee of such Subcontractor.

If Vendor decides it must, for any reason, remove a Vendor Personnel from an engagement with the PBC ("**Departing Worker**") then Vendor shall, whenever practicable and as part of the Services, plan for the transition of the Departing Worker's responsibilities to another Vendor Personnel with reasonably similar skills as the Departing Worker. Such transition plan shall include reasonable training (as part of the Services for no additional Fees) of such Vendor Personnel to assume the responsibilities of the Departing Worker.

8.2 PBC Project Manager.

The PBC shall appoint one or more individuals, and in connection with a User Project, such Sister Agency or User (as the case may be) may appoint an individual (each a "**Client Project Manager**"), and OEMC may appoint one individual (the "**OEMC Project Manager**"; the PBC Project Manager(s) and the OEMC Project Manager are sometimes referred to collectively as the "**PBC Project Managers**" and individually as a "**PBC Project Manager**") to coordinate the performance of the PBC's obligations under this Agreement. The PBC Project Managers will have the authority on behalf of the PBC to decide all questions of a day-to-day nature that may arise under this Agreement. The PBC and the OEMC, respectively, may replace the person serving as its PBC Project Manager at any time by giving written notice to Vendor. If the PBC appoints more than one Project Manager, the PBC will give Vendor written notice, which notice shall include a description of the scope of each such PBC Project Manager's authority.

8.3 Vendor Administrator.

Vendor shall appoint one individual who will work with the PBC on a full time basis with availability 24x7 for the Term (the "**Administrator**"). (The PBC Project Managers and the Administrator shall be referred to collectively as the "**Project Managers**" and individually as a "**Project Manager**." The Administrator shall coordinate the performance of Vendor's obligations under, and shall act as Vendor's representative regarding, this Agreement. The Administrator will serve as the single point of accountability for the Services and have the authority on behalf of Vendor to decide all questions of a day-to-day nature that may arise under this Agreement. Vendor shall provide to the PBC the resume of any prospective Administrator prior to the assignment of such individual to the Project. The Administrator shall maintain an office within the City's limits. Vendor shall give the PBC at least fifteen (15) days prior written notice of any move within the City's limits of such office. The Vendor shall, at the request of the PBC, attend any meeting of the management personnel of the PBC related to this Agreement, the System, a User Project or the Services. Vendor shall not reassign or replace the Administrator during the first year of his or her assignment unless (a) the PBC consents to such reassignment or replacement or (b) the individual (i) voluntarily resigns from Vendor, (ii) is dismissed by Vendor, (iii) is removed from the Project pursuant to Section 8.1(e) (Removal of Vendor Personnel), (iv)

is unable to work due to his or her death or disability, or (v) is required to attend to a seriously ill or disabled immediate family member, including spouse, child, parent or sibling ((a) and (b) in respect of the Administrator and any Key Employees, the "Reassignment Waivers"). As soon as Vendor becomes aware of the possibility of a Reassignment Waiver, Vendor shall plan for the transition of the departing Administrator's responsibilities. In the event that the PBC notifies Vendor that the PBC wishes Vendor to replace the Administrator, the PBC and Vendor shall meet to attempt to resolve the PBC's concerns.

8.4 Subcontractors.

(a) Approval of Subcontractors. Vendor may not subcontract any or part of the work to be performed under the Agreement nor use any person or entity for the purpose of providing any part of the Goods and/or Services (including subcontractors of any tier, suppliers and material providers) ("Subcontractors") without the Director of Procurement's consent. Vendor may not subcontract any or part of the work to be performed under the Agreement to any person or entity debarred by the PBC or the City, or the State of Illinois or federal government. A list of persons and entities which are debarred by the City can be found on the City's Procurement Web Site at "www.cityofchicago.org/procurement". Subcontracts and all approvals of Subcontractors are, regardless of their form, considered conditional upon performance by the Subcontractor in accordance with the terms and conditions of the Agreement. All Subcontractors approved as of the Commencement Date are listed on Schedule 8.4 (Subcontractors) under the heading "Approved Subcontractors," along with a description of the work each is to perform. All requests to change Subcontractors must be submitted in advance of the change on a form approved by the Director of Procurement, and upon approval by the Director of Procurement, Schedule 8.4 (Subcontractors) shall be revised accordingly, and Schedule 8.4 (Subcontractors) as revised shall be deemed to be part of this Agreement. If (i) any Subcontractor fails to perform its obligations according to the terms and conditions of the Agreement, or (ii) the Subcontractor has violated Applicable Law, or (iii) the Subcontractor is in breach of an agreement with, or a subcontract in connection with such an agreement with, the PBC, the City or a Sister Agency, then the PBC has the absolute right upon written notification to immediately rescind approval and to require the performance of the Agreement by Vendor Personnel only or through any other the PBC-approved Subcontractor; provided however, that a Subcontractor's breach of the Agreement that is an Event of Default shall be subject to Section 19.4 (Remedies Following Default by Vendor). Any approval for the use of Subcontractors will under no circumstances operate to relieve Vendor of any of its obligations or responsibilities under the Agreement; provided that, if the PBC rescinds approval for a reason other than an Event of Default by such Subcontractor, then Vendor shall have a reasonable time to replace such Subcontractor with another PBC approved Subcontractor.

(b) Vendor Liability. Vendor remains fully liable for all obligations of Vendor hereunder delegated to Subcontractors to the same extent as if such obligations were directly performed, or failed to be performed, by Vendor. Vendor must supervise and direct the Subcontractors, devoting such attention and applying such skills and expertise as may be necessary so that such Subcontractors perform in accordance with the Agreement.

(c) Disabled Subcontractors. The PBC encourages Vendors to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by Section 2-92-586 of the Municipal Code of the City, where not otherwise prohibited by federal or state law.

(d) Subcontracts. Vendor, upon entering into any agreement with a Subcontractor, must furnish upon request of the Director of Procurement a copy of the subcontract agreement and any subsequent modifications thereto. Vendor must cause each of its Subcontractors to adhere to Applicable Law and the City Policies, and to all of the PBC's standards, policies and procedures in effect at the time of such Subcontractor's performance. If the Subcontractor agreements do not prejudice any of the PBC's

rights under the Agreement, such agreements may contain different provisions than are provided in the Agreement with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the obligations of Vendor hereunder. Vendor must include in its subcontracts any and all provisions necessary to enable Vendor to fulfill all of its performance obligations under the Agreement, including provisions equivalent to those in the Agreement with respect to: (i) the PBC or City facilities, (ii) Intellectual Property Rights, (iii) audit rights, (iv) confidentiality, (v) appropriate insurance (to the extent applicable given the nature and scope of the subcontract), (vi) representations and warranties, and (vii) compliance with Applicable Law and City Policies and including those provisions set forth on Schedule 8.4 (Subcontractors) under the heading, "Subcontractor Terms." Vendor shall require each Subcontractor to become familiar with all provisions of the Agreement that may affect such Subcontractor's performance of Services hereunder. Vendor shall use commercially reasonable efforts to require in its subcontracts that the PBC is an intended beneficiary of any such subcontract, and all warranties, guarantees, indemnification rights and other rights under any such subcontract must run directly to the PBC, in addition to any rights of Vendor thereunder; provided, however, that, if a Subcontractor refuses to agree to such PBC rights, Vendor must give notice to the PBC and must not contract with such Subcontractor unless Vendor first obtains the written consent of the PBC. Vendor may not disclose the PBC Confidential Information to a Subcontractor or proposed Subcontractor unless such Subcontractor or proposed Subcontractor has executed an appropriate nondisclosure agreement approved by the PBC that permits the PBC to enforce such nondisclosure agreement directly against such Subcontractor or proposed Subcontractor. If a subcontract provided to the PBC does not comply with these requirements, the PBC's failure to object is not a waiver of any of them, and Vendor will remain liable to the PBC for all damages, costs, fines, losses and claims arising out of the noncompliance.

(e) Privity. Except as otherwise expressly provided in the Agreement, all rights and obligations under this Agreement are by and between the PBC and the Vendor and there is no privity between Subcontractors and the PBC. Subcontractors have no rights as third party beneficiaries under this Agreement, except as may be provided in the MBE/WBE provisions. Nothing in this Section shall create any obligation on the part of the PBC to pay, or to see to the payment of, any sums to any Subcontractor.

(f) Assignment of Subcontracts. Vendor hereby collaterally assigns any or all subcontracts to the PBC, effective upon the PBC's exercise, in its sole discretion, of its right to assume such assignment in the event of early termination or Vendor's default. Vendor must use commercially reasonable efforts to require each of its Subcontractors (including materials suppliers) to consent to a collateral assignment to the PBC of its respective subcontract with the Vendor; provided, however, that, if a Subcontractor refuses to agree to such PBC rights, Vendor must give notice to the PBC and must not contract with such Subcontractor unless Vendor first obtains the written consent of the PBC.

ARTICLE IX. GOVERNANCE

9.1 Management Committee.

Vendor and the PBC shall each appoint key members of its management staff, including the PBC Project Manager and the Vendor Administrator to serve on a management committee (the "**Management Committee**"), which shall meet at a minimum once every thirty (30) days to (i) review and analyze the monthly performance reports for the preceding period and Vendor's overall performance under this Agreement, (ii) review progress on the resolution of issues, (iii) provide a strategic outlook for the City's and, with respect to a User Project, such Sister Agency's or User's requirements (as the case may be), and (iv) attempt to resolve, or designate individuals to attempt to resolve, any disputes or disagreements under this Agreement. The Management Committee shall have no more than ten (10) members, where the

number of members from the PBC or the City must be greater than the number of members from Vendor. At a minimum, Vendor members shall include the Administrator and a Vendor representative with significant Construction Work experience. The PBC Director of Procurement or her designee ("**PBC Representative**") shall be the chairperson of the Management Committee. The agenda for each meeting will be distributed no later than five (5) business days before each meeting, and the PBC Representative will be responsible for assembling and distributing the agenda. The PBC Representative may invite to each meeting of the Management Committee any other appropriate operational personnel to discuss any issue on the agenda.

9.2 Meetings.

The Parties shall determine from time to time, as reasonably designated by the PBC, an appropriate set of periodic meetings or telephone conference calls to be held between the Project Managers and other representatives of the PBC and Vendor. The Parties contemplate that such meetings will include, until Acceptance of Phase 1 and Phase 2, a weekly meeting, and after such completion, a bi-weekly meeting, among the Project Managers and any other appropriate operational personnel to discuss daily performance and planned or anticipated activities and changes that may adversely affect performance of the Services. At either Party's request, the other Party shall publish its proposed agenda for any meeting sufficiently in advance of the meeting to allow meeting participants a reasonable opportunity to prepare. All meetings will be held in such location as mutually agreed by the Parties.

9.3 Reports.

The Parties shall mutually agree upon any periodic reports to be delivered by Vendor to the PBC and the City, and with respect to a User Project, to the applicable Sister Agency or User (as the case may be), in connection with the Services ("**Reports**"). Such Reports will be delivered at the frequency reasonably requested by the PBC. As of the effective date of the appropriate Notice to Proceed, Vendor shall provide, at a minimum, the Reports listed on Schedule 9.3 (Reports) in a form and timeframe mutually established by the Parties. The Reports shall include a report delivered to the PBC at the end of each month and with each invoice, summarizing the work performed in such month and covered by such Invoice ("**Status Report**"). The Parties may agree upon additional Reports during the Term, including in connection with a User Project and Schedule 9.3 (Reports) shall be revised accordingly and as revised shall be deemed to be part of this Agreement.

9.4 Change Control.

(a) Change Control Process. With respect to Services that are not Construction Work (which Construction Work Services shall be governed by Schedule 4.1 (Terms and Conditions for Construction Work)), and with respect to Goods and System Software, in the event that (i) the PBC wishes to make a material change to the Services, (ii) the PBC wishes to increase or decrease the amount or number of the Goods or the type of System Software, (iii) there is a change required in the Services, Goods, System Software or the System caused by material unforeseen conditions that are not caused by Vendor that requires a change in the terms and conditions of the Agreement, (iv) there is a change in the System, Goods or Services that is necessitated by a change in Applicable Law or the City Policies, (v) the Vendor identifies a change to the Services, Goods or to the System that Vendor deems to be potentially beneficial to the PBC or the City or (vi) a deviation in an Assumption contained in a Task Order has a direct impact on the Services or as otherwise expressly provided in a Task Order (each of the foregoing, a "**Change**"), the applicable Project Manager shall submit a written proposal to the other Project Manager describing such Change ("**Change Request**"). The Project Manager receiving the Change Request shall review the Change Request and reject or accept the Change Request in writing within a reasonable period of time, but in no event more than thirty (30) days after receipt of such Change Request (the "**Response**"). In the

event that the Change Request is rejected by Vendor, the Response shall include the reason for rejection and a viable, good faith alternative to the requested Change. The PBC and Vendor shall negotiate in good faith to agree on a Change, and its accompanying terms, within thirty (30) days after receipt of the Response. In the event that the Change Request is accepted, the Parties shall mutually agree on the changes to be made to this Agreement in writing in a change order ("**Change Order**"). Except as provided in Section 9.4(b) (Emergency Changes), the changes or additional terms and conditions (if any) to this Agreement shall be made only in a written Change Order signed by the authorized representatives of each Party and shall be subject to Section 20.4 (Amendment). (The process described in this Section 9.4 (Change Control) is referred to as the "**Change Control Process**.") The Fees due hereunder may increase or decrease as a result of a Change pursuant to the procedure set forth in this Section 9.4 (Change Control) and such increase or decrease shall be negotiated by the Parties in good faith to equitably adjust the Fees based on factors such as (1) the identifiable increase or decrease in actual costs; (2) the fixed asset investment and operating costs required, including Vendor's ability to leverage such investment and costs internally and across its customer base; (3) the cost savings reasonably achievable by Vendor, including Vendor's ability to eliminate or reallocate stranded assets investment and operating costs; and (4) reasonable profit, in the case of an increase in Fees. Notwithstanding anything to the contrary in this Agreement, a De-minimis Change is deemed not to be a Change under this Agreement and therefore shall be performed by Vendor without any increase in the Fees. "**De-minimis Change**" means a single change (in part or in whole) or group of changes that may be requested by the PBC under each Notice to Proceed, the value of which is equal, in the aggregate, to \$15,000.00. "**Assumption**" means those assumptions expressly stated as such in a Task Order. If the Assumptions are not accurate in all material respects, the Parties will negotiate in good faith adjustments to such Task Order (i) pursuant to the Change Control Process to the extent deviations in the Assumptions have a direct impact on the Services or (ii) as otherwise provided in the Assumption and/or the Task Order.

(b) Emergency Changes. No Change shall be implemented without the PBC's prior approval, except reasonable, temporary Changes made on an emergency basis that are necessary to maintain the continuity of the Services and the System. If the need for an emergency Change arises, either Party's Project Manager or his or her designee shall, as soon as reasonably possible, submit to the other Party's Project Manager a Change Request for such Change and each Party shall, subject to the other terms and conditions of this Agreement, use commercially reasonable efforts to implement such Change promptly. The Parties shall thereafter agree, as soon as reasonably practicable, upon a Change Order regarding such emergency Change. If the Parties cannot agree on the Fees related to any such emergency Change, Vendor's hourly rates or the unit pricing, as the case may be, set forth on the Fee Schedule shall be used to calculate the applicable Fees.

(c) Changes Related to the PBC's Strategic Direction. The PBC shall submit to the Change Control Process any request for a Change related to the PBC's or the City's strategy and direction. If the Parties do not agree, in the timeframe submitted by the PBC in the applicable Change Request, on the terms and conditions of the Change Order related to such Change, then, at the PBC's direction, Vendor shall implement such Change as an emergency Change. If the Parties cannot agree on the Fees related to any such emergency Change, Vendor's hourly rates or the unit pricing, as the case may be, set forth in Schedule 7.1 (Fee Schedule) shall be used to calculate the Fees.

9.5 Claims.

This provision of this Agreement applies to claims for time and/or money based on Changes and all other claims made under this Agreement. Any claim made by Vendor regarding this Agreement must be made in accordance with the requirements stated below:

- (i) Vendor must provide written notice to the Commission Representative of the contractual and factual basis for the claim, designating the document "**Notice of Claim.**" Vendor must provide such Notice of Claim no later than fifteen (15) days after completing the Services under the Notice To Proceed out of which the claim arises, or to which the claim directly relates or, if the claim is for an extension of time, no later than ten (10) business days after the commencement of the delay. Vendor's failure to provide a Notice of Claim within the stated periods constitutes a waiver of the claim. The "**Commission Representative**" is James Gallagher, as of the Effective Date, or as otherwise designated by the PBC.
- (ii) Within sixty (60) days of the Notice of Claim, Vendor must submit documentation to support its claim. The claim must include a general statement of the basis for the claim, the facts underlying the claim, the notice to the Commission Representative of the event that gave rise to the claim, reference to the applicable Agreement provisions, and all documents that describe, relate, and support the claim. Any claim for extension of time must state the cause of the delay, specifically demonstrate the impact of the delay on the Vendor's schedule, and state the number or extension days requested.
- (iii) The Commission Representative may, within thirty (30) days of receipt of the claim, respond by requesting a meeting with Vendor and/or making a written request for additional information from Vendor.
- (iv) Upon receipt of all necessary documentation from Vendor, the Commission Representative has thirty (30) days to render a written recommendation to the PBC and to advise Vendor of its recommendation. Such recommendation shall detail its factual and contractual basis.
- (v) After receiving the Commission Representative's recommendation to the PBC, Vendor must accept the recommendation of the Commission Representative or give written notice to the Commission Representative of its intent to file a dispute with the Executive Director. If Vendor intends to file a dispute, it must do so within thirty (30) days in accordance with Section 9.6 (Disputes).
- (vi) Vendor's failure to file a dispute with the Executive Director within thirty (30) days of the Commission Representative's recommendation will constitute a waiver of the claim.

9.6 Disputes.

The declaration of the default or termination of this Agreement are not matters that may be disputed under this Section 9.6 (Disputes); provided that Vendor shall have the right to challenge in a court of competent jurisdiction pursuant to Section 20.5 (Governing Law and Jurisdiction) the declaration of a default or termination of this Agreement.

(a) Vendor's Request. In the event of any dispute arising out of a claim that the Vendor and the Commission Representative have attempted, but been unable, to resolve (including, without limitation, changes, extensions, claims, allowable costs, or any other issues of fact or Agreement interpretation based upon, relating to, or arising under the Agreement), Vendor must submit a request for

resolution to the Executive Director for final determination. Vendor's failure to submit the dispute within thirty (30) days of the Commission Representative's recommendation is a waiver of the dispute.

(b) Request Requirements. Requests for resolution of disputes must be made by Vendor in writing, specifically referencing this section, and including (i) the issues presented for resolution; (ii) a statement of the respective positions of Vendor and the PBC; (iii) the facts underlying the dispute; (iv) reference to the applicable provision of the Agreement by page and section; (v) the identity of any other parties believed to be necessary to the resolution of the dispute; and (vi) all documentation which describes and relates to the dispute. Vendor must send a copy of the request for resolution of the dispute to the Commission Representative on the same day it is sent to the Executive Director.

(c) Commission Representative's Response. The Commission Representative will have thirty (30) days to respond in writing to Vendor's submission by responding to Vendor's submission or to provide its own submission to the Executive Director and Vendor. Failure by the Commission Representative to respond is not deemed to be an admission of any allegations made in the request for dispute resolution, but may be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any.

(d) Executive Director's Decision. The Executive Director's decision may be reached in accordance with such other information or assistance as the Executive Director deems reasonable, necessary or desirable. The Executive Director also may consider issues of Agreement interpretation in connection with the decision. The Executive Director's final decision will be rendered in writing no more than sixty (60) days after the response of the Commission Representative was filed or was due, unless the Executive Director notifies Vendor and Commission Representative before the end of the sixty (60) day period that additional time, not to exceed thirty (30) days, is necessary. The Executive Director's decision is conclusive, final, and binding on all Parties unless a judicial determination is sought in accordance with the provisions set forth below.

(e) Implementation of Decision. Subject to Vendor's remedies pursuant to Section 9.6(f) (Vendor's Remedy), the Executive Director's final decision will be implemented through a Change Order, if required, which will be made a part of the Agreement with or without the acceptance of Vendor if Vendor refuses to accept the Change Order.

(f) Vendor's Remedy. If Vendor does not agree with the decision of the Executive Director, the sole and exclusive remedy is review by a court of competent jurisdiction located in Cook County, Illinois. No suit or action on this Agreement for the recovery of any claim shall be sustainable in any court of law or equity unless commenced within the twelve (12) months following the date the Executive Director formally denies the claim.

(g) Vendor's Performance of Services. Vendor must not withhold performance of, and must proceed with any Services during the dispute resolution period, including during any phase of judicial consideration. Vendor shall prosecute all of its Services including any disputed Services with the same diligence and effort as if no dispute existed. The Executive Director's written determination will be complied with pending final resolution, including judicial resolution of the dispute. Neither the Executive Director's determination, nor the continued performance by either Party, constitutes an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Agreement.

(h) Administrative Appeal of Dispute. Vendor must follow the procedures set forth in Section 9.5 (Claims) and this Section 9.6 (Disputes) as a condition precedent to filing a complaint in any court of law or equity.

(i) No Waiver. Neither the acceptance by the PBC or any representative of the PBC, nor any payment for or acceptance of the whole or any part of the Services, nor any extension of time, nor any possession taken by the PBC will operate as a waiver by the PBC of any portion of the Agreement, or of any power herein reserved or any right of the PBC to damages herein provided. A waiver of any breach of the Agreement is not held to be a waiver of any other or subsequent breach.

Whenever under this Agreement, the PBC by a proper authority waives the Vendor's performance in any respect or waives a requirement or condition to either the PBC's or the Vendor's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not deemed a waiver forever or for subsequent instances of performance, requirement, or condition. No such waiver is construed as a modification of this Agreement regardless of the number of times the PBC may have waived the performance requirement or condition.

ARTICLE X. SERVICE FACILITIES

10.1 Service Facilities.

The Services shall be provided at the Sites, and at the City locations or with respect to a User Project, the applicable Sister Agency or User locations (referred to individually as a "City Facility" and collectively as "City Facilities") and Vendor service locations ("Vendor Facilities" and, with the City Facilities, the "Service Facilities") identified in Schedule 10.1 (Service Facilities) and any other data center or location designated after the Effective Date by the PBC ("New Service Facility"). Schedule 10.1 (Service Facilities) may be amended by the Parties in connection with a User Project and, as amended, shall be deemed to be part of this Agreement.

10.2 Vendor Facilities.

During the Term, Vendor shall provide the PBC with access to Vendor Facilities and to the Sites. Vendor shall house the Vendor Facility that will host the Project management office at a location that is within the City limits.

10.3 Access to and Use of City Facilities.

(a) Access and Use of City Facilities. During the Term and at no cost to Vendor, upon the Vendor's request, the PBC will provide the Vendor Personnel who are reasonably required under this Agreement to have access to designated areas of the City Facilities, such access as reasonably required to perform the Services. During the Term, at no cost to Vendor, and upon the Vendor's request, the PBC will arrange for space at the City Facilities as agreed upon by the Parties in each Task Order. Vendor may use the City Facilities only in connection with the provision of Services to the PBC and not for the provision of services to other customers of Vendor.

(b) Access to Sites. The Vendor, and any of its officers, employees, agents, and Subcontractors, are permitted to enter upon any part of the Sites in connection with the performance of the Construction Work, subject to the terms and conditions contained in this Agreement and those rules that may be established by the PBC, the City, the Sister Agencies, the Users or by the third party which owns such Site. The Vendor must provide advance notice to the PBC Project Manager of any intended entry. Consent to enter upon all or any part of a Site given by the PBC, the City, a Sister Agency, User or the third party which owns such Site will not create, nor be deemed to imply the creation of, any additional responsibilities on the part of the PBC, the City, a Sister Agency, User or the third party which owns such Site. The Vendor acknowledges that the PBC has the right of access to the Site at all times and the right to inspect all Construction Work.

(c) Compliance with Policies. When working at any City Facilities or other PBC or City facilities and at the Sites, Vendor Personnel will comply with the PBC's and the City's standard workplace security, administrative, safety and other policies and procedures applicable to the PBC's and the City's own employees, including the City Policies. Vendor must use, and must cause each of its officers, employees, agents, and Subcontractors to use, the highest degree of care when entering upon property owned by the PBC, the City, a Sister Agency, a User or any third party in connection with the Services. In the case of any property owned by the PBC, the City, a Sister Agency, User or a third party, or property owned by and leased from the PBC, the City, a Sister Agency or User, Vendor must comply, and must cause each of its officers, employees, agents, and Subcontractors to comply, with any and all instructions and requirements for the use of such property, including any applicable license requirements which are disclosed to Vendor, and which requirements are hereby incorporated herein by reference. In the case of property owned or leased by any other governmental agency or other third party, Vendor must comply with all conditions for entry upon such property imposed by such parties at no additional cost to the PBC.

If the PBC or the City has any confidentiality obligations with respect to a City Facility that differ from the obligations set forth in Article XII (Confidential Information and Privacy and Data Protection), the PBC shall give Vendor prior written notice of such obligations. The PBC shall provide Vendor with a copy of each such policy, procedure, or obligation, and shall notify Vendor of any subsequent modifications or amendments thereto.

10.4 Control of Service Locations.

(a) Control of City Facilities. No interest in, or obligation regarding, the City Facilities or any other PBC, City, Sister Agency or User property is conferred upon Vendor beyond the limited right to use such City Facilities, other City facilities or such other property for purposes of this Agreement. All such facilities and property will remain in the care, custody and control of the PBC, the City, the Sister Agency or User, as the case may be.

If the Vendor causes damage to the property of the PBC or to property owned by any third party at the City Facilities or any Site, the Vendor must, at the sole option of the PBC, either: i) pay the cost of repair of the damage; or ii) repair or replace any property so damaged. After written notice to Vendor of such damage, and a failure by Vendor to cure within thirty (30) days of receipt of such notice, the PBC has the right to a set-off against payments to the Vendor under this Agreement for the cost of any such repairs.

(b) Control of Vendor Facilities. No interest in, or obligation regarding, Vendor Facilities is conferred upon the PBC. All such facilities will remain in the care, custody and control of Vendor. Notwithstanding the foregoing, Vendor acknowledges that the PBC and/or City property and/or Sister Agency property and/or User property may be located at a Vendor Facility. As of the Commencement Date, any such property located at a Vendor Facility is listed on Schedule 10.4(b) (City Property at Vendor Facilities) is located and maintained at those Vendor Facilities designated on Schedule 10.4(b) (City Property at Vendor Facilities). The Parties shall amend Schedule 10.4(b) (City Property at Vendor Facilities) to reflect any changes in such property located at a Vendor Facility. All such property at a Vendor Facility shall be tagged in accordance with the PBC's directions if required or identified in a Task Order and Notice to Proceed. No interest in such PBC or City property is conferred upon Vendor. Schedule 10.4(b) may be amended in connection with a User Project and, as amended, shall be deemed to be part of this Agreement.

10.5 Parking Restrictions.

Except to the extent that the PBC has made parking otherwise available, the Vendor must, at all times, require the Vendor Personnel to park their vehicles in the third party customer parking lots at the Service Facilities, the Sites or at non-Site locations, as the case may be. The Vendor Personnel must not at any time park their automobiles, no matter how short the duration, in any drive, road, or any other location within the boundaries of a Site. The City may authorize parking at the Vendor's designated storage area if existing conditions permit.

ARTICLE XI. RESOURCES AND PROPRIETARY RIGHTS

11.1 Vendor Pass-Through Licenses and Warranties.

(a) Vendor Pass-Through Licenses and Warranties. Vendor may enter into certain license and warranty terms with third parties which are required for Vendor's performance of the Services (the "Vendor Pass-Through Licenses and Warranties").

(b) Compliance with Vendor Pass-Through Licenses and Warranties. Each of the Parties shall abide by the terms of any Vendor Pass-Through Licenses and Warranties; provided, however, that the PBC is not obligated to comply with any obligations to provide an indemnity under such Licenses and Warranties. Each Party will promptly inform the other of any discovered breach of, misuse or fraud in connection with any Vendor Pass-Through Licenses and Warranties and any PBC retained assets to which they pertain and shall cooperate with each other to prevent or stay any such breach, misuse or fraud.

(c) Consents with Respect to Vendor Pass-Through Licenses and Warranties. Vendor will be responsible for obtaining any Consents, required to enable the PBC to utilize the assets that are the subject of Vendor Pass-Through Licenses and Warranties. Vendor shall pay all costs related to such Consents.

11.2 City Third Party Materials.

(a) City Third Party Materials. Schedule 11.2(a) (City Licensed Materials) sets forth certain third party Materials licensed by the PBC or the City, (i) with respect to which the PBC or the City will retain financial, administrative and maintenance responsibility and (ii) access to which will be required for Vendor for purposes of this Agreement. Such items together with any other subsequently identified third party Materials licensed by the PBC or the City to which access will be provided to Vendor (or applicable Subcontractors) under this Agreement (along with any related Documentation in the City's possession on or after the Effective Date) are collectively referred to herein as "**City Third Party Materials.**" The section on Schedule 11.2(a) (City Licensed Materials) entitled, "City System Third Party Software" lists (and the City Third Party Materials include) the City Third Party Materials that will be used as a component of the System ("**City System Third Party Software**"). Schedule 11.2(a) (City Licensed Materials) may be modified from time to time by written agreement of the Parties to reflect any changes to City Licensed Materials and, unless such modification constitutes a Change, Schedule 11.2(a) (City Licensed Materials) as modified shall be deemed to be a part of this Agreement.

(b) License. Subject to Article XII and Section 11.2(c) (Consents with Respect to City Third Party Materials), the PBC has caused the City to grant to Vendor for its internal use for the express and sole purpose of providing the Services, a non-exclusive, non-transferable right to have access to, operate, copy, and use to the extent permitted by third party licensors, the City Third Party Materials. To the extent permitted by third party licensors and subject to Article XII, Vendor may sublicense to Vendor's Subcontractors the right to have access to, operate, and use the City Third Party Materials to the extent

necessary to perform the Services. Vendor and such Subcontractors shall comply with any applicable use restrictions that are identified to Vendor. Vendor shall establish an access control procedure to audit Vendor's and its Subcontractors' compliance with this Section 11.2(b) (License). Upon expiration or termination of this Agreement for any reason, and following any subsequent period during which Transition Assistance Services are rendered, and then only to the extent necessary to render such Transition Assistance Services, (1) the rights granted to Vendor and the Subcontractors in this Section 11.2(b) (License) shall immediately revert to the City and (2) Vendor shall (A) deliver to the PBC, at no cost to the PBC, the most current copy of all of the City Third Party Materials in Vendor's possession as of the date of such expiration or termination and all related Documentation, (B) destroy or erase all other copies of the City Third Party Materials in Vendor's or its agents' or Subcontractors' possession and all related Documentation and (C) cease all use of the City Third Party Materials and all related Documentation.

(c) Consents with Respect to City Third Party Materials. The PBC will be responsible for obtaining any Consents required for Vendor (and applicable Subcontractors) to access, use, copy, modify and enhance such City Third Party Materials, all to the extent necessary for Vendor's performance under this Agreement.

11.3 City Owned Materials and Hardware.

(a) City Owned Materials and Hardware - Ownership. Any Materials owned by the PBC or the City (together with related Documentation) to which Vendor needs access for purposes of this Agreement are identified in Schedule 11.3 (City Owned Materials and Hardware) under the heading titled, "City Owned Materials" ("**City Owned Materials**"). Computer hardware and related equipment (the "**Hardware**") owned by the PBC or the City to which Vendor needs access for purposes of this Agreement are identified in Schedule 11.3 (City Owned Materials and Hardware) under the heading, "City Owned Hardware". As between the Parties, the PBC is the sole and exclusive owner of the City Owned Materials and the Hardware. The section on Schedule 11.3 (City Owned Materials and Hardware) entitled, "City Owned System Software" lists (and the City Owned Materials include) the City Owned Materials that will be used as a component of the System ("**City Owned System Software**"). Schedule 11.3 (City Owned Materials and Hardware) may be modified from time to time by written agreement of the Parties to reflect any changes to the City Owned Materials or the Hardware and, unless such modification constitutes a Change, Schedule 11.3 (City Owned Materials and Hardware) as modified shall be deemed to be a part of this Agreement.

(b) City Owned Materials and Hardware - License. Subject to Article XII, the PBC has caused the City to grant to Vendor for its internal use for the express and sole purpose of providing the Services, a non-exclusive, non-transferable right to have access to, operate, copy, and use (i) the City Owned Materials, including any enhancements or modifications thereto, and (ii) to the extent agreed upon by the Parties, any City proprietary Materials acquired by the City or on behalf of the City in the City's name after the Effective Date for use in connection with the System or the Services ((i) and (ii) collectively, the "**City Proprietary Materials**" and with the City Third Party Materials the "**City Materials**"). Vendor may sublicense to Vendor's Subcontractors the right to have access to, operate, and use the City Proprietary Materials and Hardware to the extent necessary to perform the Services. Vendor and such Subcontractors shall comply with any applicable use restrictions that are identified to Vendor. Vendor shall establish an access control procedure to ensure that Vendor and its Subcontractors comply with this Section 11.3(b) (City Proprietary Materials and Hardware-License). Upon expiration or termination of this Agreement for any reason, and following any subsequent period during which Transition Assistance Services are rendered, and then only to the extent necessary to render such Transition Assistance Services, (1) the rights granted to Vendor and the Subcontractors in this Section 11.3 (City Owned Materials and Hardware-License) shall immediately revert to the City and (2) Vendor

shall (A) deliver to the PBC, at no cost to the PBC, the most current copy of all of the City Proprietary Materials in Vendor's possession as of the date of such expiration or termination and all related Documentation, (B) destroy or erase all other copies of the City Proprietary Materials in Vendor's or its agents' or Subcontractors' possession and all related Documentation and (C) cease all use of the City Proprietary Materials and all related Documentation.

(c) City Materials. Vendor shall periodically, or as otherwise reasonably requested by the PBC, provide to the PBC a list of the City Materials used by Vendor, including a description of the purpose for which such City Materials are used. Notwithstanding anything else in this Agreement, Vendor shall have no right to the source code to such City Materials unless and to the extent approved in advance by the PBC. As between the Parties, City Materials shall remain the property of the PBC. Vendor and its Subcontractors shall not (i) use any City Materials for the benefit of any person or entity other than the PBC, the City, the Sister Agencies or with respect to User Projects, the applicable Users, (ii) separate or uncouple any portions of the City Materials, in whole or in part, from any other portions thereof, or (iii) reverse assemble, reverse engineer, translate, disassemble, decompile or otherwise attempt to create or discover any source or human readable code, underlying algorithms, ideas, file formats or programming interfaces of the City Materials by any means whatsoever, without the prior approval of the PBC, which may be withheld at the PBC's sole discretion. THE CITY MATERIALS ARE PROVIDED BY THE PBC TO VENDOR ON AN AS-IS, WHERE-IS BASIS. THE PBC EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO SUCH CITY MATERIALS, OR THEIR CONDITION OR SUITABILITY FOR USE BY VENDOR TO PROVIDE THE SERVICES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE AND NON-INFRINGEMENT.

11.4 Vendor Materials.

(a) Vendor Owned Materials-Ownership. Any Materials that are owned by Vendor before the Effective Date or acquired or developed by Vendor on or after the Effective Date (but excluding any Developed Materials) and used to provide the Services and/or included as a component of the System, including those listed on Schedule 11.4 under the heading, "Vendor Owned Materials - Services," are referred to as "**Vendor Owned Materials**." The section on Schedule 11.4 (Vendor Materials) entitled, "Vendor Owned System Software" lists (and the Vendor Owned Materials include) the Vendor Owned Materials that will be used as components of the System ("**Vendor Owned System Software**"). As between the Parties, Vendor will be the sole and exclusive owner of Vendor Owned Materials. Schedule 11.4 (Vendor Materials) may be modified from time to time by written agreement of the Parties to reflect changes to the Vendor Owned Materials and, unless such modification constitutes a Change, Schedule 11.4 (Vendor Materials) as modified shall be deemed to be a part of this Agreement.

(b) Vendor Owned Materials - License. In consideration of the payments made pursuant to this Agreement, unless otherwise subject to a commercially available licensing agreement, Vendor hereby grants to the PBC and the City, the Sister Agencies, and the Users for any use in connection with the Services or the System, or a User Project, a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, transferable and assignable right to access, load, execute, operate, use, copy, store, transmit, display, enhance, modify, make derivative works from and disclose, and to permit the PBC's, the City's and, in connection with a User Project, such Sister Agency's or User's (as the case may be) third party vendors to access, load, execute, operate, use, copy, store, transmit, display, enhance, modify, make derivative works from and disclose for the benefit of the PBC, the City, the Sister Agencies or the Users, the Vendor Owned Materials. Except as expressly provided in this Section 11.4 (Vendor Materials), Vendor shall retain all rights and interests in the Vendor Owned Materials. Upon termination or expiration of this Agreement, Vendor shall deliver to the PBC, at no cost to the PBC, a then-current copy

of all such Vendor Owned Materials, and the related Documentation in the form in use by Vendor in connection with the System and/or the Services as of the date of such expiration or termination.

(c) Vendor Third Party Materials-Ownership. Any Materials that are licensed by Vendor from a third party for use by Vendor to provide the Services and/or included as a component of the System, including those listed on Schedule 11.4 (Vendor Materials) under the heading titled, "Vendor Third Party Materials" are referred to as "**Vendor Third Party Materials**" (and with the Vendor Owned Materials, are collectively referred to herein as the "**Vendor Materials**"). The section on Schedule 11.4 (Vendor Materials) entitled, "Vendor System Third Party Software" lists (and the Vendor Third Party Materials include) the Vendor System Third Party Materials that will be used as a component of the System ("**Vendor System Third Party Software**" and with the Vendor Owned System Software, the City Owned System Software and the City System Third Party Software, the "**System Software**"). Schedule 11.4 (Vendor Materials) may be modified from time to time by written agreement of the Parties to reflect changes to the Vendor Third Party Materials and, unless such modification constitutes a Change, Schedule 11.4 (Vendor Materials) as modified shall be deemed to be a part of this Agreement.

(d) Vendor Third Party Materials- License. In consideration of the payments made pursuant to this Agreement and (i) subject to Article XII to the extent any Vendor Third Party Material (1) existing as of the Effective Date, is subject to confidentiality obligations or (2) acquired or developed after the Effective Date, is confidential; and (ii) subject to the licenses between Vendor and third parties with respect to the Vendor Third Party Materials that are Software (and the terms of which are disclosed to the PBC in writing) ("**Third Party Software Licenses**"), Vendor hereby grants to the PBC, the City, the Sister Agencies and the Users for any use in connection with the Services and/or the System, a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, transferable and assignable right to access, load, execute, operate, use, copy, store, transmit, display, enhance, modify, make derivative works from and disclose, and to permit the PBC and the City's third party vendors to access, load, execute, operate, use, copy, store, transmit, display, enhance, modify, make derivative works from and disclose for the benefit of the PBC, the City, the Sister Agencies and the Users the Vendor Third Party Materials. Except as expressly provided in this Section 11.4 (Vendor Materials), Vendor, and its agents and Subcontractors, as the case may be, shall retain all rights and interests in the Vendor Third Party Materials. Upon termination or expiration of this Agreement, Vendor shall deliver to the PBC, at no cost to the PBC, a then current copy of all such Vendor Third Party Materials, and the related Documentation in the form in use by Vendor in connection with the System and/or Services as of the date of such expiration or termination. If, because of limitations imposed by any Third Party Software License, Vendor is unable to sublicense or transfer and assign to the PBC any Critical Licensed Software, then Vendor shall act in accordance with Section 11.5 (Critical Licensed Software).

(e) Consents with Respect to Vendor Materials. Vendor will be responsible for obtaining any Consents required to provide the Services using Vendor Materials and to allow the PBC and the City and, in connection with a User Project, the applicable Sister Agencies and Users to use such Vendor Materials in connection with the Services and the System.

11.5 Critical Licensed Software.

(a) Critical Licensed Software. Any Vendor Material that is Software (i) that will be used to provide the Services, (ii) that would be required by the PBC or its designee for the continuity of the System and/or services like the Services after the expiration or termination of this Agreement and (iii) that is material to the performance of the Services and/or the operation of the System is referred to herein as the "**Critical Licensed Software**". The Critical Licensed Software as of the Commencement Date includes the Vendor Owned System Software and the Vendor System Third Party Software as listed on Schedule 11.5(a) (Critical Licensed Software). Schedule 11.5(a) (Critical Licensed Software) may be

modified from time to time by written agreement of the Parties to reflect changes in the Critical Licensed Software and, unless such modification constitutes a Change, Schedule 11.5(a) (Critical Licensed Software) as modified shall be deemed to be a part of this Agreement. With respect to Critical Licensed Software proposed after the Commencement Date, Vendor shall (1) inform the PBC in writing of the existence, ownership and critical nature of, and the extent of Vendor's rights to, all such Critical Licensed Software and (2) use commercially reasonable efforts to obtain for the PBC a perpetual (or to the extent customarily available, automatically renewing), nonexclusive license to use such Critical Licensed Software effective upon the expiration or termination of this Agreement and upon the terms and conditions set forth on Schedule 11.5A ("Software License Terms") ("**Software License Terms**").

(b) Notice and Consent. With respect to Critical Licensed Software proposed after the Commencement Date, if Vendor is unable to obtain the Software License Terms described in Section 11.5(a) (Critical Licensed Software-License), Vendor shall not introduce such Critical Licensed Software to provide the Services except as follows:

- (i) Prior to introducing such Critical Licensed Software, Vendor shall notify the PBC in writing of its inability to obtain for the PBC the Software License Terms and the cost and viability of any other Software that can perform the requisite functions and with respect to which Vendor has the ability to grant or transfer such a license or agreement in accordance with the Software License Terms. Such notice will contain the proposed Critical Licensed Software vendor's then-current terms and conditions, if any, for making the software available to the PBC upon expiration or termination of this Agreement.
- (ii) With the PBC's prior written approval, Vendor may then introduce such Critical Licensed Software for use in providing the Services.

(c) Inability to License After Approval. With respect to Critical Licensed Software proposed after the Commencement Date, if Vendor is unable to obtain the Software License Terms, and, after notification to the PBC pursuant to Section 11.5(b) (Notice and Consent), and with the PBC's prior written approval, Vendor introduces such Critical Licensed Software for use pursuant to Section 11.5(b) (Notice and Consent) and if, because of limitations imposed by any third party Software licensors relating to such Critical Licensed Software, Vendor is unable upon the expiration or termination of this Agreement to sublicense, or transfer and assign to the PBC any Critical Licensed Software, then Vendor, using commercially reasonable efforts, shall work with the PBC during the Termination Assistance Period to develop a work-around solution or provide (at the PBC's expense) either by transfer, assignment or license, and subject to functional validation, functionally equivalent Software.

(d) Inability to License Without Approval. If (i) Vendor introduces Critical Licensed Software proposed after the Commencement Date for which Vendor cannot obtain the Software License Terms and Vendor does not obtain the PBC's prior written consent in accordance with Section 11.5(b) (Notice and Consent) and (ii) if Vendor is unable to obtain such Software License Terms with respect to such Critical Licensed Software upon any expiration or termination of this Agreement, then Vendor shall work with the PBC during the Termination Assistance Period to develop (at Vendor's expense) a work-around solution or provide (at Vendor's expense) either by transfer, assignment or license, and subject to functional validation, functionally equivalent Software. Vendor's obligation pursuant to this Section 11.5(d) (Inability to License Without Approval) shall be deemed to be cover.

11.6 Rights in Developed Materials.

All Software (and documentation), literary works, other works of authorship, specifications, design, analyses, programs, program listings, programming tools, documentation, reports, and drawings, whether tangible or intangible materials and Custom Software which are newly created by the Vendor in the performance of the Services (but excluding Vendor's commercial off-the-shelf software) ("Materials"), or any modification, enhancements or derivative works of any Materials, created in performance of the Services, including the Deliverables and any data, findings, information in any form Vendor created in connection with the provision of Services under the Agreement (as embodied in such Materials) ("**Developed Materials**") are property of the PBC and the PBC will own all copyright rights to the Developed Materials and of all aspects, elements and components of them in which copyright can subsist, and Vendor hereby assigns all such rights in the Developed Materials to the PBC. Vendor and the PBC intend that, to the extent permitted by law, the Developed Materials produced by Vendor under the Definitive Agreement are conclusively deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101 et seq. (the "**Copyright Act**"), and that the PBC will be the sole copyright owner of the Developed Materials and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement. To the extent that any Deliverable does not qualify as a "work made for hire," Vendor hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the PBC, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Developed Materials prepared for the PBC under the Definitive Agreement, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Vendor will, and will cause all of its subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the PBC may reasonably request in order to assist the PBC in perfecting its rights in and to the copyrights relating to the Developed Materials, at the sole expense of the PBC. Vendor will (subject to any required licenses hereunder) retain ownership of Materials which it can demonstrate existed prior to use in connection with the Services or is developed without any connection or reference to the Services (such Materials, the "**Pre-existing Materials**"). To the extent required by federal grant conditions, Vendor shall maintain (and make available to the PBC upon request) records of any Pre-existing Materials embedded in Developed Materials, and Vendor shall give notice to the PBC of the same within a reasonable period after the applicable Services are performed, not to exceed the end of the quarter following acceptance of the applicable Developed Material. Notwithstanding anything to the contrary herein, the PBC hereby grants and agrees to grant to Vendor an irrevocable, nonexclusive, worldwide, transferable and assignable, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on, Developed Materials and the right to authorize others to do any of the former. To the extent, Pre-existing Materials are embedded in the Developed Materials, Vendor grants to the PBC, the City, the Sister Agencies and Users and their respective contractors an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute, license and transfer copies of, and prepare derivative works of such Pre-existing Materials only in connection with the Services and the System and any User Project.

Regarding any inventions that are newly created in the performance of the Services, they shall be jointly owned by the Parties without an obligation to account to each other.

11.7 Consents.

(a) Responsibility for Consents. The Parties shall cooperate to obtain any consent, permit, assignment, approval, license or other permission or authorization of any third parties necessary to enable Vendor to supply the Goods and/or perform the Services, and for the PBC and the City, and in connection

with a User Project, the applicable Sister Agencies and the Users to receive the benefit thereof ("Consent"), with respect to Services that are not Construction Work. Consents necessary in connection with the Construction Work shall be governed by Schedule 4.1 (Terms and Conditions for Construction). The PBC shall be responsible for obtaining, and, as between the PBC and Vendor, the PBC shall pay any costs for, Consents from third parties with which the PBC, the City or any of the Sister Agencies or Users have contracted. Vendor shall be responsible for obtaining, and shall pay any costs for, Consents from third parties with which the Vendor has contracted in connection with the Services. Where a third party license is required to be procured for the PBC's use, the PBC has the right but not the obligation to procure any such license directly from licensor.

(b) Process. The following provisions apply when this Agreement imposes upon a Party the responsibility to obtain any Consent:

- (i) The responsible Party shall be financially and administratively responsible for obtaining the Consent and shall use commercially reasonable efforts to obtain such Consent. The other Party shall provide reasonable assistance to the responsible Party in obtaining such Consent. The Parties shall cooperate to obtain such Consent in a cost-effective and efficient manner.
- (ii) When this Agreement provides that a Party will be financially responsible for obtaining any Consents, such responsibility will include (subject to paragraph (c) below) the payment of any required transfer, upgrade, access, license or similar fees or charges related thereto.
- (iii) If any Consent cannot be obtained on a commercially reasonable basis, the Parties shall (1) make any appropriate adjustments to their respective obligations under this Agreement, including, where necessary, relieving Vendor of any Service obligations to the extent necessary due to a failure to obtain such Consents and (2) seek to establish mutually acceptable alternative arrangements so that Vendor can perform its obligations under this Agreement by alternative means.
- (iv) The Parties shall identify for each other any applicable subcontractors that should be included within the scope of any Consent to be obtained.

11.8 Material Degradation.

Vendor shall not make any changes or modifications to the City Materials, the Developed Materials, Vendor Materials (including the system Software) that in each case use Software, or the operating environment of such Software that would materially and adversely alter the functionality of any of the Software, materially degrade the performance of any of the Software or materially and adversely affect the day-to-day operations of the PBC's or the City's business or, in connection with a User Project, the applicable Sister Agency's or User's business (except as may be necessary on a temporary basis to maintain the continuity of the System or the Services or a User Project) (a "**Software Degradation**") unless Vendor has received the prior written approval of the PBC after disclosure of the risks of such Software Degradation. Vendor shall be responsible, at no charge to the PBC, for modifying, enhancing, substituting or fixing the Software and any other Goods or Software used in connection with the System or the Services or a User Project necessitated by any Software Degradation that was not approved in writing by the PBC. Vendor may, with notice to the PBC, remedy any Software Degradation caused by Vendor's introduction of changes or modifications to the Software on a temporary basis by removing such changes and/or modifications that cause a Software Degradation such that the Software will revert to

that version of the Software used prior to the introduction of the change or modification that has caused a Software Degradation; provided, however, that Vendor shall work diligently to correct such Software Degradation so that the change or modification to the Software that was intended and that caused the Software Degradation can be implemented without such Software Degradation.

ARTICLE XII. CONFIDENTIAL INFORMATION AND PRIVACY AND DATA PROTECTION

12.1 Confidentiality.

(a) General Obligations. Except as otherwise provided herein, each Party acknowledges and agrees that the terms of this Agreement and all non-public information, data, materials or technology communicated to such Party (the "**Receiving Party**") by the other Party (the "**Disclosing Party**") that is marked as "Confidential" or "Proprietary," or is identified as confidential at the time of such disclosure, or that, under the circumstances taken as a whole, would be deemed by a reasonable person to be confidential ("**Confidential Information**") was and shall be received in confidence, shall be used only for furthering the purposes of this Agreement and the Services, and that no such Confidential Information shall be disclosed by a Receiving Party, its agents or employees without the prior written consent of the Disclosing Party, except as may be necessary to the Receiving Party's agents, who are subject to obligations of confidentiality substantially similar to those set forth herein, in connection with the performance of the Services or with legal, accounting or regulatory requirements. "**non-public information**" includes information that is not subject to disclosure pursuant to FOIA. Confidential Information of the PBC shall include City Data. Notwithstanding anything to the contrary herein, Vendor shall disclose the PBC Confidential Information only to Vendor Personnel who need to know such PBC Confidential Information in connection with this Agreement. Vendor will advise its employees, to whom disclosure of the PBC Confidential Information is made, of the obligations hereunder to protect the PBC Confidential Information and such employees shall have agreed to obligations of confidentiality substantially similar to those herein. Except to the extent otherwise required by Applicable Law, the Parties' obligations under this section do not apply to information that: (i) is or becomes available to the public other than as a result of disclosure by the Receiving Party; (ii) was known to the Receiving Party or had been possessed by the Receiving Party without breach of any obligations of confidentiality prior to receipt from the Disclosing Party; (iii) is disclosed to the Receiving Party by a third party not under obligation of confidentiality; or (iv) is independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party. The Disclosing Party's Confidential Information is and shall remain the sole and exclusive property of the Disclosing Party, notwithstanding any disclosure made to the Receiving Party during the Term.

(b) Certain Permitted Disclosures. Notwithstanding the foregoing, Vendor shall have the right to disclose the PBC's Confidential Information to, and/or allow access to such Confidential Information by, any permitted Subcontractors supplying Goods or Services for the Project and/or the System in support of Vendor's obligations under this Agreement; provided that Vendor shall require such Subcontractors to execute an appropriate nondisclosure agreement (in favor of the PBC) with terms and conditions substantially similar to those set forth in this Agreement. Vendor shall be fully responsible for causing the Subcontractors (including Subcontractor's employees) to adhere to and abide by the confidentiality terms and conditions set forth in this Agreement and shall be responsible for a breach of any such terms and conditions by a Subcontractor.

(c) Limited Use and Access. Each Party shall keep in confidence and use at least commercially reasonable efforts to prevent the unauthorized duplication, use and disclosure of Confidential Information. Each Party shall, upon expiration or termination of this Agreement or

otherwise upon demand, at the Disclosing Party's option, either return to the Disclosing Party or destroy and certify in writing to the Disclosing Party the destruction of any and all documents (the term "document," as used in this Section, shall include any writing, instrument, agreement, letter, memorandum, chart, graph, blueprint, photograph, financial statement or data, telex, facsimile, cable, tape, disk or other electronic, digital, magnetic, laser or other recording or image in whatever form or medium), papers and materials and notes thereon, analysis and compilations thereof in the Receiving Party's (including the Vendor Personnel's) possession, including copies or reproductions thereof, to the extent they contain Confidential Information. Security-sensitive information, including system architecture, system design, operational systems, blueprints, drawings, site locations will be kept in confidence in perpetuity. Otherwise, information must be kept as confidential for five years from the date of disclosure unless a longer period is agreed to in writing.

(d) Requests for Documents. If Vendor is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any records, data or documents which may be in Vendor's possession by reason of the Agreement, Vendor must immediately give notice to the Executive Director, the Director of Procurement and to the General Counsel of the PBC so that the PBC will have the opportunity to contest such process by any means available to it before the records, data or documents are submitted to a court or other third party. Vendor, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

(e) Publicity. Vendor must not issue any news releases or grant press interviews and, except as may be required by Applicable Law during or after the performance of the Agreement, disseminate any information regarding the Agreement or the Goods or Services to be provided without the prior written consent of the Executive Director.

(f) Residuals. In no event shall the receiving Party be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the Deliverables. In addition, each Party shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing or receiving the Services, subject to such Party's obligations of confidentiality herein and to the other Party's proprietary rights.

12.2 City Data.

(a) Data. As between Vendor and the PBC, data provided to Vendor by the City or the PBC or by a Sister Agency or by a User, or to which Vendor has access in connection with this Agreement ("City Data") is and will remain, as between the PBC and Vendor, the property of the PBC. Vendor and its employees, agents, Subcontractors and their employees may not (i) use any City Data for any purpose other than in connection with performing its obligations under the Agreement, (ii) disclose, sell, assign, encumber, lease, commercially exploit or otherwise provide any City Data to third parties, or (iii) commercially exploit any City Data. Vendor acknowledges that it is entrusted with or has access to valuable and Confidential Information and records of the PBC and the City and the Sister Agencies, and in connection with a User Project, the applicable User, with respect to such information, Vendor shall protect the confidentiality of such information. The City Data and the Reports are PBC Confidential Information.

(b) Procedures and Safeguards. The Services include the procedures and safeguards that will be developed by Vendor, with the PBC's approval, within thirty (30) days from the Effective Date to prevent and mitigate the risk of any losses, damages, expenses and costs arising from the destruction, loss or alteration of City Data in connection with the Services (the "Data Protection Plan").

(c) Reconstruction Procedures. The Data Protection Plan shall include procedures for the reconstruction of lost City Data that are (i) no less rigorous than those maintained by the City as of the Effective Date (or implemented by the City in the future) and (ii) no less rigorous than those maintained by Vendor for its own information of a similar nature.

(d) Operator and Organizational Security. The Data Protection Plan shall provide that, in connection with Vendor's access to and use of City Data and systems, operator access and login by Vendor Personnel to systems containing City Data must, at a minimum, provide the four core principles of data security, described below.

- (i) Authentication. Each user must have a unique identifier that will provide a reasonable level of confidence that the individual that is logging into a system containing City Data is valid. No group logins or console action will be allowed on systems or applications containing Confidential Information.
- (ii) Authorization. Each user authenticated for access to a system containing City Data will have a security policy applied that controls what actions (read, write, modify, delete, etc.) that user will be allowed to perform on the system or application. Authorization classes for groups of users, operators or functions must have the capability to be defined in order to streamline the administration of policies. Individual policies for a user group member must be able to be modified to allow additional functions or privileges to meet organizational needs.
- (iii) Administration. The capability must be provided to allow management of groups (authorization) based on policies or privileges required to perform system and surveillance tasks.
- (iv) Audit. All transactions requested by all levels of system operators or administration must be logged for possible audit or diagnostic actions whether that action is completed or terminated due to policy violation or invalid request. Log files must not be accessible for view, modification or deletion by any operator level access. Access to and deletion of log files will be designated systems administrator functions only.

(e) Other Data Security. The Data Protection Plan must provide the capability to protect City Data from loss through measures designed to provide duplicate images of data and/or mirroring of data images or files. Data management and utility functions must be performed in such a manner that redundant or backup system images are not corrupted by the failure of primary storage or processor systems. In the event that a primary storage system, server, or processor fails or database or data image is corrupted, the system is required to provide failover to the backup image without operator intervention. Once the primary system is restored and full system functionality is attained, database and data image redundancy must be restored to include any file, image or database destroyed, corrupted or lost due to failure of disk drive, disk array, processor or network component.

(f) Advice on Better Procedures. Vendor shall advise the PBC of data security practices, procedures and safeguards in effect for other Vendor customers, where such practices, procedures and safeguards are of a higher standard than those contemplated under this Agreement and to the extent IBM is not restricted from disclosing such information by such Vendor customers.

12.3 Work Product Privilege.

Vendor acknowledges that, in the course of providing the Services pursuant to this Agreement, Vendor may have access to privileged work product prepared by or on behalf of the PBC or the City or a Sister Agency in anticipation of litigation with third parties (the "**Privileged Work Product**") and that Vendor understands that all Privileged Work Product is protected from disclosure by Rule 26 of the Federal Rules of Civil Procedure and the equivalent rules and regulations under Illinois laws. Vendor acknowledges the importance of maintaining the strict confidentiality of the Privileged Work Product to protect the work product privilege and other privileges and rights associated with such Privileged Work Product pursuant to such Rule 26 and the equivalent rules and regulations under Illinois laws. After the Administrator is notified or otherwise becomes aware that documents, data, database, or communications are Privileged Work Product, only Vendor personnel for whom such access is necessary for the purposes of providing Services to the PBC as provided in this Agreement may have access to such Privileged Work Product. Upon receipt of such notification, Vendor shall take all precautions reasonably necessary, with respect to Vendor Personnel acting within the scope of their employment, to cause the conduct of Vendor Personnel and those acting under Vendor's control not to compromise the Privileged Work Product. Vendor shall make all reasonable business efforts to cause the Privileged Work Product to be kept entirely separate from and not commingled with other information more generally available, including (i) marking the Privileged Work Product and all copies thereof with a code that distinguishes it as privileged; (ii) limiting the number of copies of Privileged Work Product and notifying the PBC in writing regarding the identity of Vendor Personnel who possess such copies; and (iii) restricting access to places where the Privileged Work Product is stored to all Vendor Personnel except for those Vendor Personnel who require access to provide the Services. Should Vendor ever be notified of any judicial or other proceeding seeking to obtain access to Privileged Work Product, Vendor shall immediately give written notice to the PBC and at the PBC's expense, resist providing such access to the extent such resistance is permitted under applicable law or court rules. The PBC shall have the right to represent Vendor in such resistance. If Vendor is ultimately required, pursuant to an order of a court of competent jurisdiction, to produce documents, disclose data, or otherwise act in contravention of the confidentiality obligations imposed in this Agreement, or otherwise with respect to maintaining the confidentiality, proprietary nature, and secrecy of Privileged Work Product, Vendor shall not be liable for breach of such obligation to the extent such liability does not result from failure of Vendor to abide by the terms of this Agreement.

12.4 Public Documents.

(a) FOIA. Vendor acknowledges that any information provided to the PBC by Vendor that is not Confidential Information or exempt, including any such portions of the text of the Agreement, become public records under Illinois State law, 5 ILCS 140/1 Freedom of Information Act ("**FOIA**"). Public records must be promptly disclosed upon request unless exempted from disclosure by law. Exemptions from disclosure include trade secrets and valuable formulas (see 5 ILCS 140/7, 1, g-i). However, public-disclosure exemptions are narrow and specific. Vendor must be familiar with any potentially-applicable exemptions, and the limits of those exemptions.

(b) Proprietary Information. Vendor must separately bind and clearly mark as "proprietary information" or "confidential information" (or with a similar legend) any records it believes are exempted from disclosure. Vendor must mark as "proprietary" only that information that legitimately fits within a public-disclosure exemption.

(c) No Obligations. If the PBC is presented, pursuant to FOIA, with a request for disclosure of records related to the Services, the PBC shall give notice to the Vendor so that the Vendor will have the opportunity to contest such disclosure or file for an injunction enjoining disclosure, but the PBC will not be responsible for Vendor's failure to receive such notice, so long as the PBC has sent such notice in

accordance with Section 20.13 (Notice). The PBC is not obligated to withhold the delivery beyond the time ordered pursuant to FOIA, unless the request is quashed or the time to produce is otherwise extended. The PBC will have no obligation or liability to Vendor if the records are disclosed pursuant to the requirements of FOIA or pursuant to the order of a court of competent jurisdiction.

12.5 Injunctive Relief.

Notwithstanding any other provision in this Agreement to the contrary, each Party acknowledges and agrees that, in the event of a breach or threatened breach of any provision of this Article XII (Confidential Information and Privacy and Data Protection), such Party may have no adequate remedy in damages and, accordingly, shall be entitled to seek an injunction to prevent such breach or threatened breach; provided, however, that no specification of a particular legal or equitable remedy shall be construed as a waiver, prohibition, or limitation of any legal or equitable remedies in the event of a breach hereof.

12.6 Unauthorized Acts.

Each Party shall:

- (a) notify the other Party promptly of any material unauthorized possession, use or knowledge, or attempt thereof, of the other Party's Confidential Information by any Person that may become known to such Party;
- (b) promptly furnish to the other Party details of such unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any such unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;
- (c) use reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights; and
- (d) promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information.

The Party whose Confidential Information is the subject of such activity will reimburse any out-of-pocket expenses incurred by the other Party as a result of compliance with this Section 12.6 (Unauthorized Acts), so long as the other Party has met its confidentiality obligations.

12.7 Privacy and Data Protection.

The following privacy and data protection provisions apply to City Data and other City information that constitutes personal data, employment related data, medical data or personal financial data ("City Sensitive Data"):

- (a) Confidential Information. Vendor must hold any City Sensitive Data that it receives or to which it has access in confidence and in compliance with all laws regarding the use and access of City Sensitive Data.
- (b) No Use of City Sensitive Data. Vendor and its affiliates, as well as their respective officers, directors, employees, agents, subcontractors, successors and assigns, including individuals, partnerships and corporations ("**Agents**") will not use any City Sensitive Data for any purpose, except as

needed to perform the Services, without the PBC's prior written consent. Vendor may not disseminate the City Sensitive Data to any third party or transfer City Sensitive Data without the written approval of the PBC unless expressly agreed by the PBC, except as needed to perform the Services.

(c) Destruction of City Sensitive Data. When directed by the PBC, Vendor must destroy specified City Sensitive Data and provide written confirmation to the City of such destruction. When directed by the City, Vendor must return to the City all or any of the City Sensitive Data together with all copies that Vendor may have made or otherwise possesses.

(d) Agent Compliance. Vendor must take appropriate action such that any Agents who have access to City Sensitive Data pursuant to any prior approval of the City are advised of, and comply with, these terms and conditions; and Agents who are individuals and have access to City Sensitive Data are trained regarding their handling of such City Sensitive Data. Vendor is responsible for any failure of its Agents to comply with these provisions regarding City Sensitive Data.

(e) HIPAA. In the event that any City Sensitive Data provided to, or accessed by, Vendor is covered by City's obligation as a business associate, as defined by the Health Insurance Portability and Accountability Act, Vendor must comply with any relevant business associate agreements relating to such City Sensitive Data.

ARTICLE XIII. RECORDS AND AUDITS

13.1 Records.

(a) Records Retention and Availability. Vendor and any Subcontractor must maintain records relating to the Fees and any other charges, and to the invoices, including records, receipts, invoices and other evidence supporting such Fees and other charges under the Agreement (including those showing actual time devoted and costs incurred), for a period that is the longer of seven (7) years after the final payment is made in connection with the Agreement or the period required under Applicable Law; provided that such records shall be retained for a longer period of time in connection with an unresolved audit or investigation. Vendor and Subcontractor must not dispose of such documents prior to the expiration of this period without prior written approval from the PBC. At the PBC's request, Vendor and Subcontractor must furnish the PBC with all such records that may be requested.

(b) Recordkeeping. Vendor must keep and maintain its financial books, records, documents and other such evidence in connection with the Goods or Services provided hereunder (and require its Subcontractors to keep the same) and adopt accounting procedures and practices sufficient to reflect all Fees of whatever nature chargeable to the PBC in connection with the performance of the Agreement in accordance with its terms. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout. Vendor's recordkeeping and accounting system must properly reflect all such charges as they are incurred, and must demonstrate support that all amounts charged to the PBC are properly chargeable in accordance with the terms of the Agreement.

13.2 Audits.

(a) Right to Audit. Vendor must allow the PBC, representatives of the City or a Sister Agency or a User for which Vendor has performed Services, and representatives of the United States General Accounting Office access to audit, inspect, copy, abstract and transcript such records identified above and must make these records available to the PBC, the City, Sister Agency and User and any other interested governmental agency, once a year with respect to each Task Order and at reasonable times

during the performance of the Agreement and for a period that is the longer of seven (7) years after the final payment is made in connection with the Agreement or the period required under Applicable Law.

(b) **Overcharges.** If, as a result of an audit, it is determined that Vendor or any of its Subcontractors have overcharged the PBC during the term of the Agreement, the PBC will notify Vendor. Vendor must then promptly reimburse the PBC for any amounts the PBC has paid Vendor due to the overcharges and also some or all of the cost of the audit, as follows:

- (i) If the audit has revealed overcharges to the PBC representing five percent (5%) or more of the total value, based on the Agreement prices, of the Goods or Services provided in the audited period, then the Vendor must reimburse the PBC for fifty percent (50%) of the cost of the audit and fifty percent (50%) of the cost of each subsequent audit that the PBC conducts; and
- (ii) If, however, the audit has revealed overcharges to the PBC representing ten percent (10%) or more of the total value, based on the Agreement prices, of the Goods or Services provided in the audited period, then Vendor must reimburse the PBC for the full cost of the audit and of each subsequent audit, which, at the PBC's discretion may be conducted more than once per year with respect to each Task Order.

(c) **Failure to Reimburse.** Failure of Vendor to reimburse the PBC in accordance with Section 13.2(b) (Overcharges) is an Event of Default under the Agreement, and Vendor will be liable for all of the PBC's costs of collection, including any court costs and attorneys' fees, in addition to any other remedies at law or in equity.

ARTICLE XIV. COMPLIANCE WITH LAWS

14.1 Compliance with Laws.

Vendor must at all times observe and comply, and must cause its Subcontractors to observe and comply, with Applicable Law, including those provisions set forth in the Agreement. Provision(s) required by Applicable Law are deemed inserted in this Agreement if they do not appear in this Agreement. In no event does the failure to insert such provision(s) prevent the enforcement of such provision(s) of this Agreement. "**Applicable Law**" means (i) all federal, state, local, international and foreign laws, legislative acts, rules, regulations, codes, ordinances, judgments, decrees, injunctions or other requirements of any agency, court, arbitrator or governmental or regulating body, including all Local Law and the terms of all required governmental permits and licenses, all as applicable to Vendor's and its Subcontractors' respective businesses, or to Vendor and its Subcontractors in their roles as provider of the Services and (ii) all federal, state, local, international and foreign laws, legislative acts, rules, regulations, codes, ordinances, judgments, decrees, injunctions or other requirements of any agency, court, arbitrator or governmental or regulating body, including all Local Law, relating to homeland security and public safety all as applicable to Vendor's and its Subcontractors' respective businesses, or to Vendor and its Subcontractors in their roles as provider of the Services. "**Local Law**" means City of Chicago Municipal Ordinances and City Executive Orders that affect City contracts and contracts with the PBC, as in effect from time to time.

In performing the Services, Vendor must follow the most stringent provisions of Applicable Law. Vendor is responsible for ascertaining and complying with Applicable Law. The Parties acknowledge and agree that the inclusion in this Agreement of provisions regarding compliance with specifically

named and/or cited law is not intended to limit, and does not limit, Vendor's obligation to comply with Applicable Law.

14.2 Employment and Payment.

(a) Labor Laws. Where applicable to Vendor or Subcontractors under this Agreement, Vendor will be required to comply with, and require compliance of its Subcontractors with all laws with respect to the employment of labor and payment of local prevailing wage rates, including the Davis Bacon Act (49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276 a(7), and implementing U.S. DOL regulation, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5). In addition to other requirements that may apply, the Vendor agrees to pay wages to laborers and mechanics performing contract work at a rate not less than the minimum wages specified in a wage determination issued by the U.S. Secretary of Labor and not less frequently than once a week. The Vendor agrees to place a copy of the current prevailing wage determination issued by the U.S. DOL in each solicitation for Subcontractor work under the Project, and agrees to refrain from awarding any affected subcontract until the subcontractor agrees to the required wage determination. The Vendor further agrees to report to the federal funding agency every suspected or reported violation of the Davis-Bacon Act or its Federal implementing regulations.

(b) Non-discrimination.

(i) Vendor. In performing its obligations under the Agreement, Vendor must comply with all applicable law prohibiting discrimination against individuals and groups.

(ii) Federal Requirements.

(1) In performing its obligations under the Agreement, Vendor must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Vendor's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

(2) Vendor must comply with, and the procedures Vendor utilizes in performing its obligations under the Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; 41 C.F.R. Part 60 et seq. (1990).

- (iii) State Requirements. Vendor must comply with, and the procedures Vendor utilizes in performing its obligations under the Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A. Furthermore, Vendor must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. (1990), as amended.
- (iv) City Requirements. Vendor must comply with, and the procedures Vendor utilizes in performing its obligations under the Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 et seq. of the Municipal Code of Chicago (1990), as amended. Further, Vendor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.
- (v) Subcontractors. Vendor must ensure that all Subcontractors will comply with the requirements set forth in this Section 14.2 (Employment and Payment), and must incorporate each of the provisions of this Section 14.2 (Employment and Payment) into all agreements entered into with Subcontractors of any tier, or with any suppliers of materials, furnisher of services, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement.

(c) Employment Procedures: Preferences and Compliance

- (i) Salaries of employees of Vendor, performing Services under this Agreement, shall be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations.
- (ii) Vendor certifies that it is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 thereof (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act).
- (iii) Vendor shall also comply with all applicable Anti-Kickback laws and regulations, including the Anti-Kickback Act of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874; 40 U.S.C. § 276c) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 et seq. If, in the performance of this Agreement, there is any direct or indirect kickback as defined in any of the above-mentioned laws and regulations, the PBC may withhold from the Vendor, out of payments due to Vendor, an amount sufficient to pay any underpaid employees the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the PBC for and on account of Vendor to the respective employees to whom they are due, as determined by the PBC in its sole discretion.

(d) Vendor shall assume all liability for the payment of any unemployment benefits payable under any federal or state law to individuals employed by it during the progress of the Services covered by this Agreement.

(e) Vendor agrees that in performing this Agreement it will comply with resolutions passed by the Board of Commissioners of the Public Building Commission of Chicago on October 1, 2004 concerning participation of Minority Business Enterprises, Women Business Enterprises, and residency requirements, respectively, for contracts awarded by the PBC.

(f) A breach of any of the stipulations of this Section may be grounds for termination of the Agreement.

14.3 Veteran's Preference.

Vendor shall incorporate the following provision is inserted in all contracts entered into with any Subcontractors and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any material, labor, or Services in connection with the Construction Work under this Agreement.

Vendor shall comply with the provisions of 330 ILCS 55/0/01 et seq., which requires that a preference be given to veterans in the employment and appointment to fill positions in the construction, addition, or alteration of all public works. In the employment of labor (except executive, administrative, and supervisory positions) preference shall be given to veterans of the Vietnam era and disabled veterans; however, this preference may be given only where the individuals are available and qualified to perform the Construction Work to which the employment relates.

14.4 Covenant against Contingent Fees.

Vendor warrants that it has not employed any person to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the PBC the right to terminate the Agreement, or, in its discretion, to deduct from the Fees or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to any commission payable by Vendor upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business.

14.5 Disclosure Affidavit.

Vendor is required to file a fully executed Disclosure Affidavit with the PBC no less than annually and with reasonable promptness of any material change to the latest Disclosure Affidavit previously filed, subject to Vendor's obligation to comply with Applicable Law. A form of the "Disclosure Affidavit" is attached as Schedule 14.5 (Form of Disclosure Affidavit). Such document must be signed by an authorized officer of the company before a notary and is incorporated by reference into this Agreement.

Such Disclosure Affidavit certifies, among other things, that the Vendor and each joint venture partner, its agents, employees, officers, and any Subcontractors:

(a) have not engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the City of Chicago, the State of Illinois, the PBC, any agency of the federal government or any state or local government in the United States;

(b) have not been engaged in or been convicted of bid-rigging or bid-rotation activities as defined in the Disclosure Affidavit;

- (c) are not presently debarred or suspended by any local, state or federal procurement agency;
- (d) do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1; and
- (e) do not owe any debts to the City of Chicago in violation of Chapter 2-92-380 of the Municipal Code of Chicago.

14.6 Disclosure of Retained Parties.

Vendor is required to submit a fully executed Disclosure of Retained Parties prior to the Effective Date, and with reasonable promptness upon any change, the latest Disclosure of Retained Parties submitted by Vendor, to submit a corrected Disclosure of Retained Parties. Such documents must be signed by an authorized officer of the company before a notary and are incorporated by reference into this Agreement.

14.7 Non-Collusion, Bribery of a Public Officer or Employee.

- (a) Compliance. Vendor, in performing under this Agreement, shall comply with Section 2-92-320 of the Municipal Code of Chicago as follows:

No person or business entity shall be awarded a contract or subcontract if that person or business entity:

- (i) Has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any agency of the federal government or any state or local government in the United States, in that officer's or employee's official capacity; or
- (ii) Has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or
- (iii) Has made an admission of guilt of such conduct described in (1) or (2) above which is a matter of record but has not been prosecuted for such conduct.

(b) Offenses. For purposes of this Section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity shall be chargeable with the conduct. One business entity shall be chargeable with the conduct of an affiliated agency.

(c) Ineligibility. Ineligibility under this section shall continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the PBC under certain specific circumstances. Reference is made to Section 2-92-320 of the Municipal Code of Chicago for a definition of affiliated agency, and a detailed description of the conditions that would permit the PBC to reduce, suspend, or waive the period of ineligibility.

14.8 Parking Violations.

- (a) Outstanding Parking Violations. The PBC shall set off a portion of the Fees or compensation due under the Agreement in an amount equal to the amount of the fines and penalties for

each outstanding parking violation complaint and/or the amount of any debt owed by the contracting party to the City in all contracts undertaken with City funds. For purposes of this provision, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which neither has payment been made nor an appearance filed in the Circuit Court of Cook County within the time specified on the complaint. Debt means a specified sum of money owed to the City for which the period granted for payment has expired.

(b) Exclusions from Set Off. Notwithstanding the provisions of Section 14.8(a) (Parking Violations), no such debt(s) or outstanding violation complaint(s) shall be set off from the Fees or compensation due under the Agreement if one or more of the following conditions are met:

- (i) The contracting party has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking complaints and/or debts owed to the City and the contracting party is in compliance with the agreement; or
- (ii) The contracting party is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or
- (iii) The contracting party has filed a petition in bankruptcy and the debts owed in the City are dischargeable in bankruptcy.

14.9 Child Support Ordinance.

(a) Ordinance. The City through passage of the Child Support Arrearage Ordinance, Municipal Code of Chicago Section 2-92-415, seeks to protect the public interest in contracting with entities which demonstrate financial responsibility, integrity, and lawfulness, and finds that it is especially inequitable for contractors or their owners to obtain the benefits of public funds while failing to pay court-ordered child support, which shifts the support of their dependents onto the public treasury. In accordance with Section 2-92-415 of the Municipal Code of Chicago, if an Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (i) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support owed, or (ii) at least one such Substantial Owner is not in compliance with a court-approved agreement for the payment of all such child support owed or both (i) and (ii), then: For those bidders in competitive bid contracts, the PBC shall assess an eight percent penalty. This penalty shall increase their bid price for the purpose of canvassing the bids in order to determine who is to be the lowest responsible bidder. This penalty shall apply only for purposes of comparing bid amounts and shall not affect the amount of any contract payment.

(b) Substantial Owner. For purposes of this section, "Substantial Owner" means any person who owns or holds a ten percent (10%) or more percentage of interest in Vendor; where Vendor is an individual or sole proprietorship, Substantial Owner means that individual or sole proprietor. Percentage of interest includes direct, indirect and beneficial interests in Vendor. Indirect or beneficial interest means that an interest in Vendor is held by a corporation, joint venture, trust, partnership, association, estate or other legal entity, in which the individual holds an interest, or by agent(s) or nominees(s) on behalf of an individual entity. For example, if Corporation B holds or owns a twenty percent interest in Vendor, and an individual or entity has a fifty percent or more percentage of interest in Corporation B, then such individual or entity indirectly has a ten percent or more percentage of interest in the Vendor. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

(c) Other Laws. The provisions of this Section shall apply only where not otherwise prohibited by federal, state or local law.

14.10 Special Funding Conditions.

In the performance of the Agreement, including the procurement and lease of materials or goods, Vendor must abide by all applicable special funding conditions related to grants or other special funding sources referenced in this Agreement and detailed in the Contract Documents.

In the performance of the Agreement, including the procurement and lease of materials or Goods, Vendor must abide by all applicable conditions referenced in this Agreement and detailed in the Contract Documents. These conditions may include, but are not limited to, Special Conditions Regarding MBE/WBE Commitment, Target Market Special Conditions or Disadvantaged Business Enterprise Special Conditions, as governed by City of Chicago Municipal Ordinance or federal law. Vendor's completed Schedules regarding commitment to and compliance with special funding conditions are a part of the Agreement, and may be modified only with the consent of the Director of Procurement. Throughout the term of the Agreement, Vendor must meet or exceed commitments stated in such Schedules. Vendor's failure to use good faith efforts to meet its commitments will constitute an Event of Default.

(a) MBE/WBE. The terms and conditions regarding Vendor's MBE/WBE commitment are attached as Schedule 14.10(a) (MBE/WBE Special Conditions).

(b) DBE - Special Conditions. The Disadvantaged Business Enterprise Special Conditions will be attached as Schedule 14.10(b) (DBE Special Conditions). As of the Effective Date there are no Disadvantaged Business Enterprise Special Conditions.

(c) State Funding - Special Conditions. As of the Effective Date there are no State funding special conditions.

(d) Federal Funding - Special Conditions. As of the Effective Date there are Federal funding special conditions, which are set forth on Schedule 7.5 (Funding Source Terms and Conditions).

14.11 Environmental Laws and Wastes.

In performing Services hereunder, the Vendor shall comply with all environmental laws with which it is obligated to comply as the provider of Services hereunder.

14.12 Federal Terrorist (No-Business) List.

Vendor warrants and represents that neither Vendor nor any person or entity that controls, is controlled by, or is under common control with Vendor, nor any Subcontractor, appears on the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, or the Debarred List, each as maintained by the officer of Foreign Assets Control of the U.S. Department of the Treasury or by the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the PBC is not permitted to do business under any applicable law, rule, regulation, order or judgment.

14.13 Export Control.

The Parties acknowledge that certain Software and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the laws of the United States. Neither Party shall export or re-export any such items or any direct product thereof or undertake any transaction in violation of any such laws. To the extent within a Party's control, such Party is responsible for, and will coordinate and oversee, compliance with such export laws in respect of such items exported or imported hereunder.

ARTICLE XV. INSURANCE

Vendor must provide and maintain at Vendor's own expense, during the term of the Agreement and throughout any time period following expiration during which Vendor is required to return and perform any of its obligations under the Agreement, the insurance coverages and requirements specified in Schedule 15.1 (Insurance).

ARTICLE XVI. REPRESENTATIONS AND WARRANTIES

16.1 General Representations and Warranties of Vendor.

Vendor represents and warrants to the PBC that the following are true and correct as of the Effective Date and as of the effective date of any Task Order entered into thereafter, and will remain true and correct throughout the Term:

(a) Corporate Existence and Power and Authority. Vendor is a corporation duly incorporated, validly existing and in good standing under the laws of the State of its incorporation. Execution of the Agreement by Vendor is authorized by requisite corporate action on the part of Vendor, and the signature(s) of each person signing on behalf of Vendor have been made with complete and full authority to commit Vendor to all terms and conditions of the Agreement, including each and every representation, certification and warranty contained in it, and including the representations, certifications and warranties collectively incorporated by reference.

(b) Licenses and Permits. Vendor and each Subcontractor have all licenses, permits, consents, authorizations or approvals that are necessary under Applicable Law to perform Vendor's obligations (including any Services) under the Agreement. Vendor will perform no work (including Services) for which any license is required by law and for which Vendor is not appropriately licensed. Vendor will not permit any Subcontractor to perform any work (including Services) for which any license is required by Applicable Law and for which such Subcontractor is not appropriately licensed.

(c) EDS. The information provided in Vendor's EDS is current, accurate and complete in all material respects, and does not omit to disclose any facts the omission of which would make the statements made materially misleading. To the best knowledge of Vendor, the information provided in each Subcontractor's EDS, and in each other EDS required to be submitted in connection with the Agreement, is current, accurate and complete in all material respects, and does not omit to disclose any facts the omission of which would make the statements made materially misleading. Further, all information provided by Vendor or any Subcontractor in any invoices, receipts, bills of lading, documents of title or other commercial documents under the Agreement is accurate and complete in all material respects. "EDS" means the Economic Disclosure Statement required by applicable law.

(d) Ineligible Subcontractors. Vendor warrants that it has not proposed or used the services of any ineligible (pursuant to Applicable Law) consultant or Subcontractor for any purpose in the performance of Services under the Agreement.

(e) Solvent. Vendor is financially solvent; it and each of its employees, agents and Subcontractors of any tier are competent to provide the Goods and/or to perform the Services to be provided under the Agreement; and Vendor is legally authorized to execute and perform or cause to be performed the Agreement under the terms and conditions stated in the Agreement.

(f) Provider of Goods and Services. Vendor is an established provider of Goods and/or Services of the type to be provided to the PBC under the Agreement. Each Subcontractor is an established provider of Goods and/or Services of the type to be provided by it in connection with the Agreement. Vendor has and will maintain, the skills, qualifications and experience necessary to provide the Goods and/or to perform and manage the Services as provided herein in an efficient manner, and has performed and continues to perform similar services for other customers in such manner.

(g) Ownership of Developed Materials and Other Software. In addition to any warranties regarding Developed Materials, on the date of delivery of any Developed Material, Vendor is the lawful owner of good and marketable title in and to all Intellectual Property Rights in and to such Developed Material and has the legal rights to fully assign them. Vendor warrants that the Developed Materials conform to all applicable Specifications therefor. Vendor also represents and warrants that it is either the owner of, or authorized to use (as used in connection with the System and/or the Services, and will remain either the owner of, or authorized to so use, any Software provided and used by Vendor in connection with the System and/or in providing the Services. As to any such Software that Vendor does not own but is authorized to use, Vendor shall advise the PBC as to the ownership and extent of Vendor's rights with regard to such Software to the extent any limitation in such rights would impair Vendor from performing its obligations under the Agreement, or the PBC, the City, the Sister Agencies and/or the Users from receiving the benefit of the Services and/or the System.

(h) Ownership of Goods. In addition to any warranties regarding Goods, on the date of delivery of any Goods, Vendor is the lawful owner of good and marketable title in and to, or a valid licensee of, the Goods and has the legal right to transfer title to the PBC. Vendor warrants that, at time of delivery, the Goods are complete, entire and comprehensive and conform to all applicable Specifications therefore.

(i) City Contracts. Vendor is not, and to the best of its knowledge no Subcontractor is, in default under any other contracts with the City or the PBC or any Sister Agency as of the Effective Date, nor has any of them been deemed by the Director of Procurement to have been found to be in default on any contract awarded by the City, within five (5) years immediately preceding the Effective Date.

(j) Financial Interest. Neither Vendor nor any Subcontractor is in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code of Chicago, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1; and no officer, agent or employee of the PBC is employed by Vendor or has a financial interest directly or indirectly in the Agreement or the compensation to be paid under the Agreement except as may be permitted in writing by the Board of Ethics established under the Municipal Code of Chicago (Chapter 2-156).

(k) Waste. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Vendor warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the Waste Sections.

(l) Compliance with Laws. Vendor represents and warrants that, with respect to the provision of the Services and the performance of any of its other legal and contractual obligations hereunder, it is and shall be, in compliance with all Applicable Laws, including Applicable Law relating to employment practices and the procurement of applicable permits, certificates, approvals and inspections. If a charge of non-compliance by Vendor with any Applicable Laws occurs, Vendor shall promptly notify the PBC of such charge.

(m) Ethics and City Policies. No officer, agent or employee of the PBC is, and shall during the Term be, employed by Vendor, by any Subcontractor, or by any of the officers or owners of any of them, or has any financial interest directly or indirectly in the Agreement or the compensation to be paid under the Agreement, except as may be permitted in writing by the PBC Board of Ethics established pursuant to the Municipal Code of Chicago (Chapter 2-156).

16.2 Performance Warranties.

(a) Performance of the Services. Vendor warrants that it shall provide the Services with promptness, due care and skill and diligence and the Services shall be executed in a good and workmanlike manner, and that the Vendor personnel have suitable training, education, experience, know-how, competence and skill to perform the Services. Vendor warrants that Vendor shall provide the Vendor personnel with training as to new products and Services prior to the implementation of such products and Services in the PBC and City environment and that Vendor shall have the resources, capacity, experience and ability in terms of equipment, Software, know-how and personnel to provide the Services. Vendor warrants that it shall use commercially reasonable efforts to provide the Services in a cost-effective manner consistent with the level of quality and performance set forth in Section 6.5(f) (Efficiency and Cost Effectiveness).

(b) Warranty and Warranty Period. Vendor warrants, for a period of one (1) year after Final Acceptance ("**Warranty Period**") of a Phase or a User Project, that such Phase or User Project will conform and operate in all respects in accordance with the applicable Acceptance Criteria. "**Final Acceptance**" means written acceptance by the PBC of a Phase or of a User Project, as the case may be, after completion of Acceptance Testing confirms that such Phase or the User Project, as the case may be, meets the applicable Acceptance Criteria. "**User Project**" means all of the Milestone Deliverables that are developed by Vendor under a Task Order entered into by the PBC with Vendor pursuant to an inter-governmental agreement between a Sister Agency and the PBC, or pursuant to an agreement between a User and the PBC, as the case may be. Notwithstanding anything to the contrary in this Agreement, the Warranty Period for (i) all Milestone Deliverables that comprise Phase 1 and Phase 2 and (ii) Phase 1 and Phase 2 shall be a period of one (1) year from the later of Final Acceptance of Phase 1 or Phase 2.

Vendor warrants that, during the Warranty Period, all of the Construction Work and each and every part thereof, including, by way of illustration and not in limitation thereof, all construction workmanship, Goods, equipment, supplies, services, and facilities that are furnished, produced, fabricated, installed, constructed, or built pursuant to the Agreement against defects which result from the use of defective or inferior Goods, equipment, supplies, services, facilities or construction workmanship or from Construction Work not in compliance or not performed in accordance with the approved Design Documents and/or Submittals.

Each Deliverable which is documentation produced pursuant to analysis, evaluation, design and planning Services (each a "**Documentation Deliverable**") shall be (i) in form, substance and scope to

allow each Milestone Deliverable, Phase and the System, and User Project, when complete, to conform to the applicable Specifications, and (ii) on its face, correct and complete.

(c) Disabling Code. Vendor warrants that no component of the System includes, and will not include, any means, virus, worm, trap door, back door, timer, counter or other limiting routine, instruction or design that would itself, or may enable Vendor or other person or entity to: (i) erase, destroy, corrupt, or alter data or programming without the consent of the PBC; (ii) discontinue or interrupt the PBC's effective use of any Software in the full manner for which it was designed, licensed or created; (iii) bypass any internal or external software security measure to obtain access to data of the PBC without the consent or knowledge of the PBC; or (iv) provide transactions through any interfaces with the intent to inhibit use of the System or other systems of the PBC ("**Disabling Code**"); provided, however that programming code, or programming instructions or a set of instructions that is used to disable a section of code in a Software program in connection with the application of a "patch" or "fix" shall not be Disabling Code.

(d) Malicious Code. Vendor warrants that it shall take commercially reasonable actions and precautions, including those consistent with the Data Protection Plan, to prevent the introduction and proliferation of Malicious Code into the PBC's or the City's or, in connection with a User Project, a Sister Agency's or User's environment or in any other Software or system used by Vendor to provide the Services. "**Malicious Code**" means (i) any code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or interfere with the operation of the Software, code, program, or sub-program, itself, or (ii) any device, method, or token that permits any person to circumvent the normal security of the Software or the system containing the code.

(e) Open Source. Vendor has not and will not incorporate any Software (whether in source code or object code format) into the Developed Materials unless authorized by the PBC in writing. Unless agreed upon in writing, none of the Developed Materials or any portion thereof is or will be subject to or distributed under any license, other agreement or understanding, that (i) would require the distribution of source code with the Developed Materials or require source code to be made available when such is distributed to any third party; (ii) would restrict or impair in any way the PBC's ability to license the Developed Materials (to the extent owned or licensable by the PBC) pursuant to terms of the PBC's choosing; or (iii) would impact or limit the PBC's ability to enforce the PBC's patent or other Intellectual Property Rights against any third party in any manner.

(f) Software. Vendor warrants that (i) the Vendor Materials shall perform, and continue to perform, in conformance with the applicable Specifications and (ii) the Developed Materials shall comply with their Documentation and Specifications. Vendor shall correct any Defect and shall use commercially reasonable efforts to do so as expeditiously as possible.

16.3 Remedies.

In the event that the Services, the Developed Materials, the Deliverables or the System (including any updates, enhancements or modification to the System) breach any of the warranties set forth in Section 16.2, the PBC shall provide to Vendor notice of such breach (i) within the Warranty Period with respect to a breach of the warranties in Section 16.2(b) (Warranty and Warranty Period), and Section 16.2(f) (Software), (ii) within a reasonable period of time after performance of the Services with respect to a breach of the warranties in Section 16.2(a) (Performance of the Services) and (iii) promptly upon discovery of such breach during the Term or any Termination Assistance Period, with respect to a breach of the warranties in Section 16.2(c) (Disabling Code), Section 16.2(d) (Malicious Code) and Section 16.2(e) (Open Source).

Following a notice of breach of warranty of the Services, Vendor shall promptly re-perform the Services in compliance with this Agreement.

Following a notice of breach of warranties in Section 16.2(c) (Disabling Code), Section 16.2(d) (Malicious Code) or Section 16.2(e) (Open Source), Vendor shall promptly perform its obligation as set forth in this Agreement with respect to such item that is the subject of the breach.

Following notice of breach of warranty in Section 16.2(b) (Warranty and Warranty Period), or Section 16.2(f) (Software), Vendor shall, at the PBC's sole option and at Vendor's sole expense, perform any of the combination of the following:

- (i) Investigate the breach of warranty and repair same so that the Deliverable, Developed Material and/or the System (as the case may be), conforms to the applicable Acceptance Criteria, or so that the Software that is the subject of the breach conforms to the applicable Specifications and deliver to the PBC the repaired item so that the PBC can verify such correction;
- (ii) Investigate the cause for the faults and promptly repair, replace or modify to conform to the approved Design Documents, Submittals and the applicable Standards, without charge to the PBC, the whole or part of the Construction Work, including the related materials, equipment, supplies and facilities which are defective, and all damaged portions of the Project and the contents and equipment thereof resulting from or which are incidental to such defects or failure by reason of use of defective material, design or workmanship;
- (iii) Bear the cost of delivering to the PBC, any parts of the Services, the System or Developed Materials which must be repaired or replaced; Vendor will bear the cost of delivering to the destination specified by the PBC the repaired or replaced parts an efficient manner;
- (iv) Vendor will immediately send a specialist to the PBC at Vendor's expense and maintain him/her there at no cost to the PBC for so long as may be necessary to restore the Services or the System; and/or
- (v) If a new hardware or Software feature is needed to remedy a fault, such new feature will be implemented at no cost to the PBC.

All repairs or removals must be commenced within a reasonable period of time after Vendor's receipt of written notice of the warranty breach from the PBC.

16.4 PBC Information and Facilities.

The PBC has exercised good faith efforts to provide information in connection with the Agreement as it has deemed necessary for Vendor to evaluate the Goods to be supplied and/or Services to be performed under the Agreement. The PBC, however, makes no representation or warranty whatsoever (other than in the immediately prior sentence) regarding information (including any technical information or specifications) provided to Vendor, and disclaims any warranties that may be implied at law. Vendor must exercise its own judgment in evaluating any information provided by the PBC, and is charged with the obligation to request clarification of any information it believes may be ambiguous or incorrect. In the event any of the obligations of Vendor (including any Services) are to be performed on-site at the PBC facilities, including the City Facilities and Sites, all of such facilities are provided only on an "as is"

basis, without representation or warranty whatsoever, and Vendor must rely on its own expertise and judgment in accessing and utilizing any such facilities. It is Vendor's obligation to examine the Sites and prepare accordingly prior to starting Construction Work.

16.5 Warranty Disclaimer.

THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE XVI ARE VENDOR'S ONLY REPRESENTATIONS AND WARRANTIES CONCERNING THE SERVICES AND DELIVERABLES, INCLUDING THE DEVELOPED MATERIALS AND THE SYSTEM, AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

ARTICLE XVII. INDEMNIFICATION

17.1 Vendor Indemnification.

(a) Indemnification. Vendor shall defend, indemnify, and hold harmless the PBC, the City, Sister Agencies and their respective officers, representatives, elected and appointed officials, agents and employees (collectively, the "**Indemnitees**") from and against any and all Losses arising from third party claims (as listed below in this Section) except for matters shown by final judgment to have been caused by or attributable to the negligence of Indemnitees. "**Losses**" means losses, liabilities, damages, fines, penalties, settlements, judgments, and interest (including taxes) arising out of a third party claim against an Indemnatee, in each case that a court finally awards to a third party or which are included in the amount of any settlement paid to a third party and agreed to by the Party financially responsible for such settlement, and all reasonable and related costs and expenses, as described above, paid by Vendor as incurred. This indemnity extends to all reasonable legal costs, including reasonable attorney fees, costs, liens, judgments, settlements, penalties, and other reasonable expenses incurred by the PBC, and the reasonable settlement of such claims. This indemnification obligation is not limited by any amount of insurance required under the Agreement. This indemnification consists of:

- (i) bodily injury, death or damage of or to any person or tangible personal property relating to the Goods and/or Services for which Vendor or its Subcontractor is legally liable to the third party;
- (ii) any infringement or violation of any Intellectual Property Right related to the Goods and/or to the performance of the Services and/or use by the PBC of the Services or of the Deliverables; "**Intellectual Property Rights**" means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (1) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (2) trademark and trade name rights and similar rights; (3) trade secret rights; (4) United States patent and industrial property rights; (5) other proprietary rights in intellectual property of every kind and nature; and (6) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (1) through (6) of this sentence;
- (iii) any claims of any employee or subcontractor of Vendor or any service provider or material vendor to Vendor in any way related to the performance of Vendor's obligations under the Agreement, including any such claims related to damage to

tangible personal property or to bodily injury to or death of any employee of Vendor or any Subcontractor (including any such claim under any workers compensation statute); and

- (iv) claims of or brought by any employee of Vendor (or any subcontractor) which relate to (1) the employment relationship of Vendor (or subcontractor) with such employee, (2) conditions of such employment, (3) the termination of employment by Vendor (or subcontractor) of such employee, or (4) assertions that any such employee is employed by (or is co-employed by) the PBC or the City or is entitled to any medical, pension or other benefits of the PBC or City employees.

(b) Notice of Claims. Vendor will promptly provide, or cause to be provided, to the Executive Director, the Director of Procurement and PBC General Counsel copies of all notices that Vendor may receive of any claims, actions, or suits that may be given or filed in connection with Vendor's performance or the performance of any Subcontractor and for which the Indemnitees are entitled to indemnification under this Agreement, and to give the Indemnitees authority, information and assistance for the defense of any claim or action.

(c) Third Party Software Indemnification. Unless otherwise agreed, with respect to any Vendor Third Party Materials licensed after the Effective Date that is provided by Vendor pursuant to the Agreement, Vendor covenants that it shall use commercially reasonable efforts to obtain an intellectual property indemnification for the PBC and the City and the Sister Agencies and, in connection with a User Project, the applicable User that is at least the most favorable standard indemnification provided by the third party.

17.2 "Blue Pencil."

If, Vendor's obligation to indemnify hereunder would violate applicable law, including (if applicable) the provisions of the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq., the Parties intend and request the judicial authority having jurisdiction over such matter to "blue pencil" this Article XVII (Indemnification) and construe it so as to give Vendor's indemnification obligations hereunder the maximum permissible legal effect.

17.3 Defense of Claims.

The PBC shall give Vendor notice of a claim or suit and provide reasonable cooperation (at the Vendor's expense) in connection with Vendor's defense; provided that the PBC has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Vendor of any of its obligations under the Agreement. Any settlement must be made only with the prior written consent of the PBC, if the settlement requires any action on the part of, or places any restrictions on, the PBC, the City or the Sister Agencies, or in connection with a User Project, the applicable User.

17.4 Waiver.

To the extent permissible by law, Vendor waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due in connection with Losses pursuant to Section 17.1(a), including any claim by any employee of Vendor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The PBC, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, or any other statute or judicial decision.

17.5 Survival.

The indemnification obligations in this Article XVII (Indemnification) survive expiration or termination of the Agreement with regard to matters occurring or arising during the Term or during the Termination Assistance Period. Vendor acknowledges that the requirements set forth in this Article XVII (Indemnification) to indemnify, keep and save harmless and defend the PBC are apart from and not limited by any other obligations of Vendor under the Agreement, including the insurance requirements in the Agreement.

17.6 Non-Liability of Public Officials.

Vendor (for itself and on behalf of all Vendor Personnel, Vendor's affiliates, and each Subcontractor) waives and agrees that it will not assert claims against or charge any official, employee or agent of the PBC or the City or any Sister Agency personally with any liability or expenses of defense or take any action seeking to hold any official, employee or agent of the PBC, the City or any Sister Agency personally liable to them under any term or provision of the Agreement or because of the PBC's execution, attempted execution or any breach of the Agreement.

ARTICLE XVIII. LIABILITY

18.1 Force Majeure.

(a) General. No Party shall be liable for any default or delay in the performance of any of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God; wars, riots, acts of terrorism, imposition of martial law, plague or other like illness, civil disorders, rebellions or revolutions, strikes, lockouts or labor disputes or any other similar cause beyond the reasonable control of such Party; except to the extent, that the non-performing Party is at fault in failing to prevent or causing such default or delay, and provided that such default or delay can not reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means ("**Force Majeure Event**"). "**Force Majeure Event**" shall not include, for example, (i) typical Chicago inclement weather (i.e. weather the severity of which is less than a standard deviation from the 5-year mean, as established by the National Oceanic and Atmospheric Administration, for the Chicago Midway area with respect Services performed south of Madison Avenue, and for the O'Hare area with respect to Services performed north of Madison Avenue) or labor strikes by Vendor or its Subcontractors or (ii) a circumstance where, even if the weather is within such NOAA standards, Vendor may request an appropriate extension of time or scheduling revision in the event the weather circumstances are not appropriate for the work to be performed or the work cannot be performed due to government restrictions. The PBC will not unreasonably withhold its consent to such a request. Such inclement weather or a strike, lockout or labor dispute involving Vendor or a Subcontractor and its own personnel shall not excuse Vendor from its obligations hereunder.

(b) Duration and Notification. In such event the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as the Force Majeure Event prevails and such Party continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so prevented, hindered or delayed in its performance shall, as quickly as reasonably possible under the circumstances, notify the Party to whom performance is due by telephone (to be confirmed in writing within a reasonable period of time, not to exceed five (5) days from the inception of such delay) and describe at a reasonable level of detail the circumstances of the Force Majeure Event, the steps being taken to address such Force Majeure Event, and the expected duration of such Force Majeure Event.

(c) Substitute Services; Termination. If a Force Majeure Event substantially prevents, hinders, or delays the performance by Vendor or one of its Subcontractors of all or a part of the services necessary for the performance of Services for longer than two (2) days (unless otherwise agreed by the PBC), with verbal or written notice to IBM of its intent, the PBC may procure such Services from an alternative source, and Vendor shall be liable for payment of the amount to which the payment made by the PBC for such services from the alternate source exceed the Fees that the PBC would have paid Vendor under this Agreement but for such Force Majeure for the corresponding affected Services for so long as the delay in performance shall continue. The PBC, however, shall not be obligated to pay Vendor for Services Vendor does not deliver. In addition, if a Force Majeure Event substantially prevents, hinders or delays the performance by Vendor or one of its Subcontractors of Services necessary for the performance of critical PBC or City functions (i) for more than thirty (30) days or longer following the Force Majeure Event, the PBC, at its option, may terminate or suspend (without any obligation to make payments as provided in Section 7.7) any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect such termination; or (ii) for more than thirty (30) days or longer following the Force Majeure Event, the PBC, at its option, may terminate or suspend (without any obligation to make payments as provided in Section 7.7) this Agreement in its entirety.

(d) Disaster Recovery/Business Continuity. Upon the occurrence of a Force Majeure Event, Vendor shall implement promptly, as appropriate, the Disaster Recovery Plan and provide the Disaster Recovery Services. The occurrence of a Force Majeure Event shall not relieve Vendor of its obligation to implement the Disaster Recovery Plan and provide Disaster Recovery Services, except to the extent that the execution of the Disaster Recovery Plan or provision of Disaster Recovery Services is itself prevented by the Force Majeure Event.

(e) Payment Obligation. If Vendor fails to provide Services in accordance with this Agreement due to the occurrence of a Force Majeure Event, all amounts payable to Vendor hereunder shall be equitably adjusted in a manner such that the PBC is not required to pay any amounts for Services that it is not receiving whether from Vendor or from an alternate source at Vendor's expense pursuant to Section 18.1(c) (Substitute Services; Termination).

(f) Allocation of Resources. Without limiting Supplier's obligations under this Agreement, whenever a Force Majeure Event causes Vendor to allocate limited resources between or among Vendor's customers, the PBC and the City shall receive priority.

18.2 Limitation of Liability.

(a) Waiver of Consequential Damages. EXCEPT AS PROVIDED IN THIS SECTION 18.2 (LIMITATION OF LIABILITY), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, COLLATERAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) Liability Cap - Vendor. Except as provided in Section 18(e) below, the total aggregate liability of Vendor for all claims asserted by the PBC under or in connection with the Agreement, regardless of the form of the action or the theory of recovery, including liability under Section 18.2(d) below, shall be limited to \$50,000,000. For purposes of clarification, this limitation of liability is an aggregate limitation of liability for the Agreement.

(c) Liability Cap - The PBC. Except as provided below, the total aggregate liability of the PBC and the City for all claims asserted by the Vendor under or in connection with the Agreement,

regardless of the form of the action or the theory of recovery, shall be limited to Five Million Dollars (\$5,000,000). For purposes of clarification, this limitation of liability is an aggregate limitation of liability for the Agreement, and liability is cumulative hereunder. For the avoidance of doubt, fulfillment of payment obligations of the PBC under this Agreement are not subject to any limitation set forth in this Section 18.2 (Limitation of Liability) and shall not be counted against the utilization of the agreed maximum liability of the PBC.

(d) Vendor Exceptions to Limitations of Liability. With respect to Vendor, the limitations of liability set forth in Section 18(a) shall not apply with respect to:

- (i) Losses occasioned by tortious willful misconduct of Vendor;
- (ii) Amounts paid with respect to third party claims that are the subject of the indemnification under Article XVII (Indemnification);
- (iii) Losses occasioned by a breach of Vendor's confidentiality obligations with regard to security-sensitive information, including system architecture, system design, operational systems, blueprints, drawings, site locations;

(e) With respect to Vendor, the limitations of liability set forth in Section 18(a) and 18(b) shall not apply with respect to any Losses under Section 17.1(a)(i).

(f) Refusal to Perform. If Vendor Refuses to perform its obligations under this Agreement, the limit of liability set forth in Section 18.2(b) (Liability Cap-Vendor) shall apply. For purposes of this provision, "Refusal" or "Refuses" means the intentional cessation by Vendor, in breach of this Agreement, of the performance of all or a substantial portion of the Services then required to be provided by Vendor under this Agreement.

(g) PBC Exceptions to Limitations of Liability. With respect to the PBC and the City, the limitations of liability set forth in Section 18.2(a) and 18.2(c) shall not apply with respect to any damages associated with infringement or violation of Vendor's or a third party's intellectual property rights by the PBC or the City; and provided, however, that the PBC and the City's total aggregate liability under this Section 18.2(g) is capped at \$20,000,000.

ARTICLE XIX. TERM AND TERMINATION

19.1 Term.

With respect to Phase 1, Phase 2 and Phase 3, the term of the Agreement begins on the effective date set forth in the applicable Task Order and will expire upon the later of the third (3rd) anniversary of the Effective Date or the Final Acceptance of the System (the "Phase Base Term") unless earlier terminated pursuant to either Section 7.6 (Non-Appropriation) or this Article XIX (Term and Termination) of the Agreement. With respect to the Maintenance Services, (if any), the term of the Agreement shall be set forth in the Task Order for Maintenance Services ("Maintenance Base Term"; the Phase Base Term and the Maintenance Base Term are referred to the "Base Term"); provided that such term shall not be greater than one (1) year with a unilateral right by PBC to extend such Maintenance Base Term for up to two (2) additional one (1) year extension periods each (each a "Renewal Term") upon written notice to and agreement from Vendor not less than thirty (30) days before the expiration of the then current term, unless earlier terminated pursuant to either Section 7.6 (Non-Appropriation) or this Article XIX (Term and Termination). The Base Term, together with any Renewal Term, constitutes the "Term" of the Agreement.

If this Master Agreement terminates or expires, its terms remain in effect for any executory Task Orders that are not also terminated.

19.2 Termination by the PBC.

(a) Termination for Convenience. The PBC may terminate the Agreement in full, or with respect to all or any portion of the Goods to be provided or Services to be performed under the Agreement, at any time by a notice in writing from the PBC to Vendor. The effective date of termination will be the date the notice is received by Vendor or the date stated in the notice, whichever is later. If the PBC elects to terminate the Agreement in full, all work under it must cease, and all Materials and Goods that may have been accumulated in performing the Agreement, whether completed or in the process, must be delivered to the PBC within a reasonable period of time (but in no event in more than thirty (30) days or as otherwise mutually agreed) after the date the notice is received (if no date is given) or the effective date stated in the notice.

(b) Post Termination. After the notice is received, Vendor must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed, except upon agreement of the Director of Procurement. Payment for any Goods delivered and Services actually performed in accordance with the requirements of the Agreement before the effective date of the termination shall be on the same basis as set forth in the Agreement, but if any compensation is described or provided for on the basis of a period longer than ten (10) days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on Goods not yet delivered or unperformed Services. The PBC and Vendor must attempt to agree in good faith on the amount of compensation to be paid to Vendor, but if not agreed on, the dispute must be settled in accordance with Section 9.6 (Disputes). The payment so made to Vendor is in full settlement for all Services performed in accordance with the Agreement.

19.3 Events of Default.

Each of the following may be considered by the PBC, in its sole and exclusive discretion, an "Event of Default" of Vendor:

(a) Any material misrepresentation, whether innocent, negligent or willful and whether in the inducement or in the performance, made by Vendor to the PBC (including any disclosure misrepresentation by Vendor, or any breach of the representations set forth in the Agreement with respect to any Subcontractor, Vendor Personnel or other party).

(b) Vendor's breach of its material obligation under the Agreement.

(c) Failure to provide Goods or Deliverables or perform the Services consistent with the Agreement.

(d) Failure to promptly correct a breach of warranty in accordance with Section 16.2 (Performance Warranties).

(e) Failure to comply with any other material term of the Agreement, including the provisions concerning insurance and nondiscrimination and any special funding provisions and reporting requirements, including compliance with Applicable Laws.

(f) Vendor's default under any other agreement it may have as of the Effective Date, or may enter into with, the PBC or the City during the Term. Vendor acknowledges and agrees that in the event of a default under the Agreement the PBC may also declare a default under any such other agreements.

(g) Vendor's or a Subcontractor's violation or violations of Applicable Law unrelated to performance under the Agreement that in the reasonable opinion of the Director of Procurement indicate a willful or reckless disregard for Applicable Law.

(h) Vendor's failure to comply with any provision of the Agreement which specifies default as a remedy or possible remedy.

(i) Vendor's failure to keep current its EDS information by filing any required renewals of its EDS, or Vendor's failure to cause each other person or party required to file an EDS in connection with the Agreement keeps current its EDS information by filing any required renewals of its EDS.

(j) Violation of any Local Law, even if unrelated to the Agreement.

(k) Any change in control (including by ownership of controlling interests, by contract or otherwise, and including ordinary trading in shares of a publicly held company) such that the successor entity or individual is an entity or individual with whom the PBC is prohibited from doing business with under Applicable Law.

19.4 Remedies Following Default by Vendor.

(a) The occurrence of any Event of Default, in the sole and exclusive discretion of the PBC, permits the PBC, at the PBC's sole option, to declare Vendor in default. With respect to those breaches that can be cured in the discretion of the Executive Director, Vendor shall have an opportunity to cure such curable Event of Default within thirty (30) days (or longer period agreed to by the Executive Director if not reasonably curable within such thirty (30) day period and Vendor is diligently working toward cure), or, with respect to Vendor obligations to be delivered in less than thirty (30) days, the cure period designated by the Executive Director. Whether to declare Vendor in default is within the sole discretion of the Executive Director; provided that Vendor shall have the right to challenge the Event of Default in a court of competent jurisdiction pursuant to Section 20.5 (Governing Law and Jurisdiction) after raising any related disputable issues pursuant to Section 9.5 (Claims) and Section 9.6 (Disputes).

(b) The Director of Procurement will give Vendor written notice of the Event of Default, either in the form of a cure notice ("**Cure Notice**"), or, if such Event of Default is not capable of cure in the discretion of the Executive Director and thus, no opportunity to cure will be granted, a default notice ("**Default Notice**"). (Notwithstanding anything to the contrary herein, any cure period with respect to Construction Work shall be governed by Schedule 4.1 (Terms and Conditions for Construction).) If the Director of Procurement gives a Default Notice, he or she will also indicate any present intent he or she may have to terminate the Agreement, and the decision to terminate (but not the decision not to terminate) is final and effective upon giving the notice. The Director of Procurement may give a Default Notice if Vendor fails to effect a cure within the cure period given in a Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section 19.4 (Remedies Following Default by Vendor), Vendor must discontinue performance under the Agreement (including any Services), unless otherwise directed in the notice, and deliver all Materials and Goods accumulated in the performance of the Agreement and for which payment has been made, whether completed or in the process, to the PBC. At any time after giving a Default Notice, the PBC may invoke any or all of the following remedies:

- (i) The right to procure alternate Goods, to take over and complete the production of the Goods or to take over and complete performance of the Services, or any part of them, at Vendor's expense and as agent for Vendor, either directly or through others, and bill Vendor for the cost thereof, and Vendor must pay the difference between the total amount of this bill and the amount the PBC would have paid Vendor under the terms and conditions of the Agreement for the Goods or Services that were assumed by the PBC as agent for Vendor under this Section 19.5 (Remedies Following Default by Vendor);
- (ii) The right to terminate the Agreement as to any or all of the Goods and/or Services yet to be performed effective at a time specified by the PBC;
- (iii) The right to seek specific performance or partial specific performance, an injunction or any other appropriate equitable remedy;
- (iv) The right to money damages;
- (v) As to any portion of the Services being terminated due to the Default, the right to have Vendor repair or replace the Goods, or to re-perform the Services or Deliverables, at its own expense until the Goods, Services or Deliverables are reasonably accepted by the PBC, provided that upon Acceptance, Vendor will be paid the balance of any unpaid Fees;
- (vi) The right to withhold all or any part of Vendor's compensation under the Agreement; and
- (vii) The right to pursue any other remedy available to it at law, in equity or under statute.

(c) If the Director of Procurement considers it to be in the PBC's best interests, he or she may elect not to declare default or to terminate the Agreement. The Parties acknowledge that this provision is solely for the benefit of the PBC and that if the PBC permits Vendor to continue to perform under the Agreement, despite one or more events of default, Vendor is in no way relieved of any of its liabilities for default or any of its responsibilities, duties or obligations under the Agreement, nor does the PBC waive or relinquish any of its rights.

(d) If a court of competent jurisdiction determines that the PBC's declaration of Default was wrongful, then the termination by the PBC will be considered a Termination for Convenience under Section 19.2(a) (Termination by the PBC).

19.5 Right to Offset.

In connection with performance under the Agreement, the PBC may offset any excess costs incurred:

- (a) if the PBC terminates the Agreement for default;
- (b) if the PBC exercises any of its remedies under Section 19.4 (Remedies Following Default by Vendor) of the Agreement;
- (c) if the PBC has any credits due or has made any overpayments under the Agreement; or

(d) pursuant to Section 14.8(a) (Outstanding Parking Violations).

The PBC may offset these excess costs by use of any payment due under the Agreement with respect to the period before the PBC terminated the Agreement or before the PBC exercised any remedies. If the amount offset is insufficient to cover those excess costs, Vendor is liable for and must promptly remit to the PBC the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the PBC.

19.6 Remedies Cumulative.

The remedies under the terms of the Agreement are not intended to be exclusive of any other remedies, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the PBC considers expedient.

19.7 Termination Assistance.

If the Agreement is terminated for any reason, or if it is to expire on its own terms, Vendor must make every effort to assure an orderly transition to another provider of the Goods or Services, if any, orderly demobilization of its own operations in connection with the Agreement, uninterrupted provision of the Goods or Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Director of Procurement and of the Department in connection with the termination or expiration. Vendor shall provide the Services described on Schedule 19.7 (Termination Assistance Services) after termination, if requested by the PBC, and any other Services requested by the PBC ("Termination Assistance Services" and the period during which such Services are delivered, the "Termination Assistance Period").

ARTICLE XX. MISCELLANEOUS PROVISIONS

20.1 General.

This Agreement constitutes the entire agreement between the Parties and no other terms, conditions, warranties, inducements, considerations, promises or interpretations are implied or impressed upon the Agreement that are not addressed in the Agreement.

20.2 No Collateral Agreements.

Vendor acknowledges that, except only for those representations, statements or promises contained in the Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the PBC, its officials, agents or employees, has induced Vendor to enter into the Agreement or has been relied upon by Vendor, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of the Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, goods, labor and other facilities needed for the performance of the Agreement; (iv) the general conditions which may in any way affect the Agreement or its performance; (v) the compensation provisions of the Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with the Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

20.3 No Omissions.

Vendor acknowledges that Vendor was given ample opportunity and time and was requested by the PBC to review thoroughly the Agreement before signing the Agreement in order that it might request inclusion in the Agreement of any statement, representation, promise or provision that it desired or on which it wished to place reliance. Vendor did so review the Agreement, and either every such statement, representation, promise or provision has been included in the Agreement or else, if omitted, Vendor relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform the Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

20.4 Amendments.

Except as provided elsewhere in the Agreement, no change, amendment, modification or release with respect to the Agreement, or any part of the Agreement, is valid unless in writing and signed by the authorized agent of Vendor and by the Chairman of the PBC.

20.5 Governing Law and Jurisdiction.

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois (and Local Law thereunder), without regard to any choice of law rules that may direct the application of the law of another jurisdiction.

Vendor irrevocably submits to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of the Agreement. Service of process on Vendor may be made, at the option of the PBC, either by registered or certified mail addressed to the applicable office as provided for in the Agreement, by registered or certified mail addressed to the office actually maintained by Vendor, or by personal delivery on any officer, director, or managing or general agent of Vendor. Subject to Section 9.6 (Disputes), if any action is brought by Vendor against the PBC concerning the Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

Vendor must ensure that the foregoing terms set forth in this Section 20.5 (Governing Law and Jurisdiction) are included in every subcontract with specific reference that these terms are binding on Subcontractor with respect to any claims involving the PBC.

20.6 Severability.

If any provision of the Agreement is held or deemed to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of the Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in the Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in the Agreement does not affect the remaining portions of the Agreement or any part of it.

20.7 Survival.

The obligations of the Parties under any provisions hereof which by their terms are intended to remain in effect, and shall survive the expiration or termination of this Agreement. The expiration or termination of the Agreement shall not release, terminate or otherwise affect any obligations accrued or incurred hereunder prior to the date of such expiration or termination.

20.8 Cooperation.

Vendor must, and must cause each Subcontractor to, at all times cooperate reasonably with the PBC.

20.9 Waiver.

Nothing in the Agreement authorizes the waiver of a requirement or condition contrary to Applicable Law or that would result in or promote the violation of any Applicable Law.

Neither the acceptance (as distinct from Acceptance, as defined herein) by the PBC, nor its payment for the whole or any part of the Goods or Services, nor its extension of time, nor any possession taken by the PBC, will operate as a waiver by the PBC of any portion of the Agreement, or of any power reserved in the Agreement or any right of the PBC to damages provided in the Agreement.

Whenever under the Agreement, the PBC waives Vendor's performance in any respect or waives a requirement or condition to the Vendor's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. Any such waiver must be in writing, and will not be effective unless and until signed on behalf of the PBC by the Director of Procurement or by the Commissioner. No such waiver is a modification of the Agreement, and will not establish a modification by course of dealing, regardless of the number of times the PBC may have waived the performance, requirement or condition.

20.10 Independent Vendor.

This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Vendor and the PBC. The rights and the obligations of the parties are only those set forth in the Agreement. Vendor must perform under the Agreement as an independent Vendor and not as a representative, employee, agent, or partner of the PBC. Further, no Subcontractor will be a representative, employee, agent, or partner of the PBC.

Vendor is responsible for the manner and method of performance of the Services and for the supervision of any Vendor Personnel, and of any Subcontractors engaged in the Services. Vendor is the sole employer of any Vendor employees, (and if Vendor is an individual, Vendor acknowledges that he or she is an independent Vendor), and nothing provided for under the Agreement constitutes or implies an employer-employee relationship with Vendor or any Vendor Personnel or Subcontractor or any Subcontractor Personnel such that:

Neither Vendor nor any Vendor Personnel nor any Subcontractor nor any Subcontractor Personnel is entitled to membership in the City of Chicago Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income

Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City of Chicago.

The PBC is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Vendor or any Subcontractor.

20.11 Assignment.

Vendor must not assign, delegate or otherwise transfer all or any part of its rights or obligations under the Agreement or any part of it, unless otherwise provided for in the Agreement, except upon the express written consent of the Director of Procurement. Vendor must request the express written consent of the Director of Procurement in writing and in the form required by the Director of Procurement. Inquiries and request must be directed to the Director of Procurement, at 50 West Washington Street, Room 200, Chicago, IL 60602. No approvals given by the Director of Procurement operate to relieve Vendor of any of its obligations or liabilities under the Agreement. The PBC reserves the right to assign or otherwise transfer all or any part of its interests under the Agreement to any successor. Any attempt by Vendor to assign or transfer an interest in the Agreement shall be void and of no effect.

20.12 Assignment of Funds.

Vendor must not transfer or assign any funds or claims due or to become due under the Agreement without the prior written approval of the Director of Procurement. Vendor must request the express written consent of the Director of Procurement in writing and in the form required by the Director of Procurement. Inquiries and request must be directed to the Director of Procurement at 50 West Washington Street, Room 200, Chicago, IL 60602. The attempted transfer or assignment of any funds, either in whole or in part, or any interest in them, which are due or to become due to Vendor under the Agreement, without such prior written approval, has no effect upon the PBC.

20.13 Notice.

Notices provided for in this Agreement, unless expressly provided for otherwise in this Agreement, must be given in writing and may be delivered personally or by placing with a nationally recognized overnight carrier or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the PBC:

Executive Director
Public Building Commission of Chicago
50 West Washington Street
Room 200
Chicago, IL 60602

and

With copies to:

Neal & Leroy, LLC
203 North LaSalle
Suite 2300

Chicago, IL 60601
Attn: Langdon Neal

If to Vendor:

Jim Lautenbach
Client Director, IBM
71 South Wacker Drive, 7th Floor
Chicago, Illinois 60606

With copies to:

International Business Machines Corporation
71 South Wacker Drive, 20th Floor
Chicago, IL 60606
Attn: Regional Counsel, Central Region

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Section. Notices delivered by mail are deemed received three days after mailing in accordance with this Section. Notices delivered personally are deemed effective upon receipt. Notices delivered by overnight carrier are deemed received on the day after deposit with such carrier. Refusal to accept delivery has the same effect as receipt.

20.14 Safety and Security.

(a) Digital video surveillance systems, including in-vehicle systems, offer new functionality and added convenience, but they may also introduce some unique security and privacy exposures to the PBC, the City and/or Sister Agencies, and in connection with User Projects, the applicable Users. These exposures include policies and operating procedures related to a) the capture, transfer, and management of digital images; b) the use of these digital images in legal proceedings; and c) the use of these digital images for other purposes. Numerous techniques are or may be available that may mitigate some of these unique security and privacy risks, including using not only the System for security, and that the System and resulting images are used only in compliance with comprehensive department policies and standard operating procedures. As between the Parties, the City, and the PBC are solely responsible for developing, implementing and maintaining appropriate security and privacy policies and operating procedures for the System, and for on-going compliance with them.

(b) IBM shall bear no liability whatsoever for, and the PBC hereby fully, irrevocably and unconditionally releases IBM and its successors and assigns from, any claims, expenses, losses, or costs relating to the City's or the PBC's use of the data transmitted through or collected by the System, including any claims based on the content of any information captured on any video recorder provided hereunder.

(c) The Parties acknowledge and agree that:

- (i) criminals, terrorists, or others may commit or attempt to commit unlawful, disruptive, violent, terrorist and/or warlike acts at times and places, and in manners, that cannot be predicted or prevented;

- (ii) information technology developments, configuration or implementation changes, software modifications (including routine maintenance, patches, enhancements and upgrades), human factors and other circumstances can create new, unknown and unpredictable security exposures; and
 - (iii) information technology "hackers" and other third parties continue to develop and employ increasingly sophisticated and powerful techniques and tools, which result in ever-growing security risks and potential for causing damage to persons and property;
- (d) IBM has no obligation to provide as Services under the Agreement:
- (i) determination of the identity of perpetrator(s) of an incident;
 - (ii) incidents of violence, injury to persons, or damage to tangible personal property;
 - (iii) testifying in judicial or administrative proceedings;
 - (iv) communication with any entity on the PBC's or the City's behalf, including communication with law enforcement personnel, the news media, internet service providers, or the customers or vendors of the City, the PBC or Sister Agencies, or in connection with User Projects, the applicable Users;
 - (v) evidentiary chain of custody control or management;
 - (vi) legal counsel of any kind;
 - (vii) investigatory interviewing of the personnel, subcontractors, or other individuals of the City, the PBC, the Sister Agencies or Users; or
 - (viii) rendering opinions as to the credibility of any person.

20.15 Savings Clause.

Subject to Vendor's compliance with Section 9.5 (Claims), Vendor shall not be liable for any failure to perform the Services or deliver the System in accordance with this Agreement or for Service Level Credits and Deliverable Credits or failure to meet any Service Levels to the extent they relate to or arise from (i) a Force Majeure Event (if Vendor has satisfied its obligations with respect to such Force Majeure Event, including implementation of its disaster recovery procedures); (ii) the PBC's delay or failure to perform the PBC's expressly specified obligations under the Agreement, but only if (1) Vendor, with reasonable promptness, notifies the PBC in writing of such delay or failure to perform and of Vendor's inability to perform under the circumstances, (2) Vendor provides the PBC every reasonable opportunity to correct such delay or failure and thereby avoid such Vendor nonperformance and (3) Vendor identifies and pursues all commercially reasonable means to avoid or mitigate the impact of such delay or failure; or (iii) scheduled outages mutually agreed by the Parties.

20.16 Third Party Beneficiaries.

Notwithstanding anything to the contrary herein, the Parties agree that this Agreement will not create any right or cause of action for any third party.

SIGNED on :

PUBLIC BUILDING COMMISSION OF CHICAGO

Chairman

ATTEST:

Secretary

MASTER NETWORK ADMINISTRATOR: International Business Machines Corp.

BY: _____

James Lautenbach,
Client Director

**AFFIX CORPORATE
SEAL, IF ANY, HERE**

County of: Cook
State of: Illinois

Acknowledged before me on February 3, 2006 by James Lautenbach as Client Director of International Business Machines Corporation as the act of that company.

Notary Public
My Commission expires:

(SEAL OF NOTARY)

SIGNED on :

PUBLIC BUILDING COMMISSION OF CHICAGO

Richard M. Daley ^{by 7-14}
Chairman

ATTEST:

Edmund Johnson
Secretary

MASTER NETWORK ADMINISTRATOR: International Business Machines Corp.

BY: James T. Lautenbach
James Lautenbach,
Client Director

AFFIX CORPORATE
SEAL, IF ANY, HERE

County of: Cook
State of: Illinois

Acknowledged before me on February 3, 2006 by James Lautenbach as Client Director of International Business Machines Corporation as the act of that company.

Jennifer Long
Notary Public
My Commission expires:

(SEAL OF NOTARY)



SCHEDULE 1.2

Defined Terms

Defined Term:

Acceptance
Acceptance Criteria
Acceptance Testing
Acceptance Process
Act
activities
Acts
Additional Fees
Administrator
Affected Products
Agents
Agreement
Applicable Law
Apprentices
As-Built Drawings
Assumption
At Risk Amount

Back Bone Network
Base Term
Base Time
Benchmark
Benchmarking or Benchmarked
Benchmark Standard
Bond
Camera Systems
CBD
Central Business District
Change
Change Claim

Defined In:

Section 5.2(e)
Section 5.2(a)
Section 5.2(b)
Section 5.2(a)
Schedule 4.1
Schedule 4.1
Schedule 4.1
Section 3.3
Section 8.3
Section 16.2(e)
Section 12.7(b)
Prologue
Section 14.1
Schedule 4.1
Schedule 4.1
Section 9.4(a)
Section 3.1(f)(iii)(1) and
Schedule 3.1(f)
Schedule 2.3(b)
Section 19.1
Schedule 3.1(f)
Section 3.8(b)
Section 3.8(a)
Section 3.8(c)
Schedule 4.1
Schedule 2.3(b)
Section 1.1(b)(i)
Section 1.1(b)(i)
Section 9.4(a)
Schedule 4.1

Defined Term:

Change Control Process
Change Order
Change Request
City
City Data
City Facilities
City Facility(ies)
City Materials
City Owned Materials and Hardware Ownership
City Owned Materials and Hardware Ownership
City Owned Materials
City Owned System Software
City Policies
City Project Manager(s)
City Proprietary Materials
City Representative
City Sensitive Data
City System Software
City System Third Party Software
City Third Party Materials
Claim
Client Project Manager
Commencement Date
Commission
Commission Representative
Confidential Information
Consent
Construction Diagrams
Construction Materials
Construction Price

Defined In:

Section 9.4(a)
Section 9.4(a)
Section 9.4(a)
Prologue
Section 12.2(a)
Section 10.1
Section 10.1
Section 11.3(b)
Section 11.3
Section 11.3
Section 11.3(a)
Section 11.3(a)
Section 1.6(b)
Section 8.2
Section 11.3(b)
Section 9.1
Section 12.7
Section 11.3(a)
Section 11.2(a)
Section 11.2(a)
Schedule 4.1
Section 8.2
Prologue
Prologue
Section 9.5(i)
Section 12.1(a)
Section 11.7(a)
Schedule 4.1
Schedule 4.1
Schedule 4.1

Defined Term:

Construction Work
Construction Work Design Documents
Construction Work Design Services
Construction Work Record Drawings
Contractors
Copyright Act
Critical Deliverables
Critical Licensed Software
Critical Services
Cure Notice
Custom Software
CWS
Data Cleansing
Data Protection Plan
Default Notice
Defect
Deliverables
Deliverable Credits
Deliverable Default
De-minimus Change
Demobilization Costs
Departing Worker
Design Documents
Developed Materials
Directive
Director of Procurement
Disabling Code
Disaster
Disaster Recovery Plan
Disclosing Party

Defined In:

Schedule 4
Schedule 4.1
Schedule 4.1
Schedule 4.1
Schedule 4.1
Section 11.6
Section 3.1(f)(iii)(2)
Section 11.5(a)
Schedule 3.1(f)
Section 19.4(b)
Section 3.1(a)
Schedule 4.1
Section 12.2(b)
Section 12.2(b)
Section 19.4(b)
Section 18.2(e)(i)
Section 3.1(f)(iii)(2)
Section 3.1(f)(iii)(2)
Schedule 3.1(f)
Section 9.4(a)
Section 7.7
Section 8.1(e)
Schedule 4.2
Section 11.6
Schedule 4.2
Section 1.4(b)
Section 16.2(c)
Section 3.5
Section 3.5
Section 12.1(a)

Defined Term:

Disclosure Affidavit
Documentation
Documentation Deliverables
DR Standards
Edge Network
EDS
Effective Date
Engineer
Environmental Laws
Event of Default
Exceptions as Noted
Executive Director
Fault
Fees
Fee Schedule
Fiber Network
Field Order
Final Acceptance
Final Completion
FOIA
Force Majeure Event
Foreman
General Foreman
general prevailing hourly rate
Goods
Hardware
Hazardous Materials
hazardous waste
Helpers
IBM

Defined In:

Section 14.5
Section 5.1(b)
Section 16.2(b)
Section 3.5
Schedule 2.3(b)
Section 16.1(c)
Prologue
Schedule 4.1
Section 14.11(b)
Section 19.4
Schedule 4.1
Section 1.4(b)
Section 3.2
Section 7.1
Section 7.1
Recital A and Schedule 2.3(b)
Schedule 4.1
Section 16.2(b)
Schedule 4.1
Section 12.4(a)
Section 18.1(a)
Schedule 4.1
Schedule 4.1
Schedule 4.1
Section 3.1(a)
Section 11.3(a)
Section 14.11(b)
Section 14.11(b)
Schedule 4.1
Prologue

Defined Term:

Implementation Plan
include
Indemnitees
Index and Schedules
Intellectual Property Rights
Intranet Site
Invoices
IT Design Documents
Journeyworkers
Key Employees
Key Service
Local Area Network (LAN)
Local Law
Losses
Maintenance Base Term
Maintenance Services
Malicious Code
Management Committee
Management System
Manufacturers Warranties
Master Agreement
Materials
Measurement Period
Milestone Deliverables
Network
Network Edge Kit (NEK)
Network Maintenance Plan
Network Management Center
New Advances
New Service Facility

Defined In:

Section 2.4(a)
Section 1.3(a)
Section 17.1(a)
Schedule 4.1
Section 17.1(a)(ii)
Section 3.1(f)(ii)
Section 7.3
Schedule 4.2
Schedule 4.1
Section 8.1(a)
Schedule 3.1(f)
Schedule 2.3(b)
Section 1.6(a) and Section 14.1
Section 17.1(a)
Section 19.1
Section 3.1(e)
Section 16.2(d)
Section 9.1
Schedule 2.3(b)
Section 6.5(d)
Prologue
Section 11.6
Schedule 3.1(f)
Section 5.2(c)
Section 2.3(b)
Schedule 2.3(b)
Section 2.7
Schedule 2.3(b)
Section 3.10
Section 10.1

Defined Term:

New Services
New Services Proposal
No Exceptions
non-public information
Notice of Claim
Notice of Construction Claim
Notice to Proceed
OEMC
OEMC Project Manager
Operational Standards
Operation Virtual Shield
PBC
Party or Parties
PBC Project Managers
PBC Representative
Performance Standards
Permits
Personnel
Phase and Phases
Phase Base Term
Phase 1
Phase 2
Phase 3
Phase 4
Pre-existing Materials
Privileged Work Product
Procedures Manual
Product Data
Project
Project Manager

Defined In:

Section 3.3
Section 3.3
Schedule 4.1
Section 12.1(a)
Section 9.5(i)
Schedule 4.1
Section 2.2(c)
Recital A
Section 8.2
Section 2.3(c)
Recital A
Prologue
Prologue
Section 8.2
Section 9.1
Section 2.3(b)
Section 14.11(c)
Section 8.1(b)
Section 2.1
Section 19.1
Section 2.1
Section 2.1
Section 2.1
Section 2.1
Section 11.6
Section 12.3
Section 2.5(a)
Schedule 4.1
Recital A
Section 8.3

Defined Term:

Project Managers
Project Plan
Project Timetable
Proposal
Punch List
Punch List Construction Work
QAP
Quality Control Standards
Reassignment Waivers
Receiving Party
Recipient
Recovery Schedule
Refusal
Reimbursable Expenses
Remobilization Costs
Renewal Term
Reports
Representative Sample
Response
Retainage
Revise and Resubmit
RFQ/P
Root Cause Analysis
Samples
Schedule
Scheduled Maintenance Time
Severity Level
Service Facilities
Service Levels
Service Level Credit

Defined In:

Section 8.3
Section 2.4(a)
Section 2.4(a)
Recital B
Schedule 4.1
Schedule 4.1
Section 2.4(b)
Section 2.4(b)
Section 8.3
Section 12.1(a)
Section 13.1(a)
Schedule 4.1
Section 18.2(f)
Section 7.2(b)
Section 7.7
Section 19.1
Section 9.3
Section 3.8(a)
Section 9.4(a)
Schedule 7.1
Schedule 4.1
Recital A
Section 3.2
Schedule 4.1
Schedule 4.1
Schedule 3.1(f)
Section 3.2
Section 10.1
Section 3.1(f)(i)
Schedule 3.1(f)

Defined Term:

Service Level Credits
Service Level Default
Service Level Measure
Services
Service Weight
Service Weights
Severity Level
Shop Drawings
Sister Agencies
Site
Software
Software Degradation
Software License Terms
Software Platform Project
Software Platforms
Special Waste
Specifications
Specified System Elements
Standards
Statement of Requirements
Status Report
Steel Act
Steel Products
Steel Products Procurement Act
Storage Area Network
Subcontractors
Subcontractor Personnel
Submittal
Substantial Completion
Substantial Owner

Defined In:

Section 3.1(f)(iii)
Schedule 3.1(f)
Schedule 3.1(f)
Section 3.1(a)
Schedule 3.1(f)
Section 3.1(f)(iii)(1)
Section 3.2
Schedule 4.1
Prologue
Schedule 4.1
Section 3.1(a)
Section 11.8
Section 11.5(a)
Section 2.3(a)
Section 2.3(a)
Section 14.11(b)
Section 3.2
Schedule 2.3(b)
Section 2.3(c)
Section 2.2(a)
Section 9.3
Schedule 4.1
Schedule 4.1
Schedule 4.1
Schedule 2.3(b)
Section 8.4(a)
Section 8.1(b)
Schedule 4.1
Schedule 4.1
Section 14.9(b)

Defined Term:

Surveyor
System
System Platform
System Software
Target Schedule
Task Order
Task Order 1
Task Order Proposal
Task Order Request
Technology and Business Process Evolution
Term
Termination Assistance Period
Termination Assistance Plan
Termination Assistance Services
Third Party Software Licenses
timely
Training Plan
Transitioned Materials
toxic substance
Unscheduled Maintenance Time
Update
Uptime
User Agency(ies)
User Project
Users
Vendor
Vendor Agreements
Vendor Facilities
Vendor Materials
Vendor Owned Materials

Defined In:

Schedule 4.1
Recital A
Section 2.3(a)
Section 11.4(c)
Schedule 4.1
Section 2.2(a)
Section 2.1
Section 2.2(a)
Section 2.2(a)
Section 3.6(b)
Section 19.1
Section 19.7 and Schedule 19.7
Schedule 19.7
Section 19.7 and Schedule 19.7
Section 11.4(d)
Schedule 4.1
Section 2.6 and Schedule 2.6
Schedule 19.7
Section 14.11(b)
Schedule 3.1(f)
Section 3.1(a)
Schedule 3.1(f)
Recital A
Section 16.2(b)
Section 1.1(a)
Prologue
Schedule 19.7
Section 10.1
Section 11.4(c)
Section 11.4(a)

Defined Term:

Vendor Owned System Software
Vendor Parties
Vendor Pass-Through Leases and Warranties
Vendor Personnel
Vendor System Third Party Software
Vendor Third Party Materials
Video System
Warranty Period
Waste Sections
Winter Suspension Period
Wireless Network
works made for hire

Defined In:

Section 11.4(a)
Section 6.6(b)
Section 11.1(a)
Section 8.1(b)
Section 11.4(c)
Section 11.4(c)
Schedule 2.3(b)
Section 16.2(b)
Section 14.11(a)
Schedule 4.1
Schedule 2.3(b)
Schedule 4.2

SCHEDULE 2.3(b)
PERFORMANCE STANDARDS FOR SPECIFIED SYSTEM ELEMENTS

Vendor shall comply with the following minimum standards and performance criteria for the System elements (including certain Goods and Software) to be provided pursuant to the Agreement and specified herein (also for purposes of this Schedule "**Specified System Elements**"). All Specified System Elements that are Goods must be newly manufactured and shall not be of an age or condition whereby such Goods would, in the applicable industry, be deemed to be obsolete, defective or damaged, and of such quality as required to meet the requirements of the Agreement. All Specified System Elements that are Software are of the most current version and able to be maintained by Vendor (or its third party contractors). The Vendor shall, if requested by the PBC, furnish reasonably satisfactory evidence as to kind and quality, and version (as the case may be) of the Specified System Elements.

1. DEFINITIONS.

- 1.1 "**Back Bone Network**" shall mean the primary data transmission system carrying information or data packets between the designated monitoring center, as (and if) agreed upon in a Task Order, and the primary device components (the Goods contained in the designated points of presence ("POP")), and among the POP's. The Back Bone Network with respect to the Project means the primary data transmission system carrying information or data packets between the OEMC monitoring center and the POP's, and among the POP's. The Back Bone Network is made up of electronic devices such as routers and fiber strands that carry the information between the designated monitoring center and among the POP's. The Back Bone Network design shall be fault tolerant and link users distributed through multiple interconnected locations, configured with redundant equipment and alternate data routes or paths such that the Back Bone Network will continue to function and user data connectivity will be maintained in the event of a failure of any single link, interface or equipment module.
- 1.2 "**Camera Systems**" means the cameras and other camera components used in the System to perform surveillance functions and collect video surveillance data.
- 1.3 "**Edge Network**" shall mean the data transmission system that brings the Back Bone Network connectivity to the Network Edge Kit. The Edge Network is primarily made up of fiber strands that carry information between a POP and Network Edge Kit.
- 1.4 "**Fiber Network**" shall mean the actual fiber cable comprised of individual fiber optic strands.
- 1.5 "**Network**" shall mean the Back Bone Network, Edge Network, Fiber Network, LAN and the Wireless Network (if the Wireless Network is approved by the PBC Project Manager).
- 1.6 "**Network Edge Kit**" or "**NEK**" means the enclosure and electronic components used to connect the camera to the Edge Network.
- 1.7 "**Local Area Network**" ("**LAN**") shall mean the network which connects the Back Bone Network to local computing systems or equipment.
- 1.8 "**Management System**" shall mean computing and communications equipment designed to provide the capability to configure, control, measure performance, illustrate operability, manage and maintain Network and System equipment from a central

location. The Management System uses Simple Network Management Protocol ("SNMP") to communicate management information across an IP network. The Management System has the capability of monitoring for fault conditions in equipment, displaying those results and initiating automated routines that will notify the operator or page/call emergency response personnel based on the severity of the alarm.

- 1.9 "Network Management Center" shall mean the management center of the OEMC.
- 1.10 "Storage Area Network" shall mean the high capacity fiber channel storage or disk drive arrays.
- 1.11 "Video System" means the Camera Systems, servers, Storage Area Network, Network Edge Kit, and Software.
- 1.12 "Wireless Network" shall mean the wireless high speed data connection supporting the access of camera and other data equipment with the Back Bone Network.

2. THE SYSTEM.

- 2.1 The System is comprised of all of the Networks (which may include the Wireless Network depending on approval by the PBC Project Manager), the Camera Systems, the Video Systems, the operating systems, the Management Systems, the storage and retrieval systems and the backup systems. The Vendor will also provide configuration and design details, and support to allow the PBC, the User Agency or User (as the case may be) to update the HP OpenView System.
- 2.2 The Fiber Network and surveillance technology used in the System will be linked through the Back Bone Network that allows City emergency management personnel to view recorded or real time video, to control the operation on all newly added cameras, and to have control over attached sensors or linked infrastructure that meets System standards.
- 2.3 Vendor shall connect all of the surveillance equipment to the Back Bone Network, allowing the OEMC emergency management personnel to view both real-time and recorded video from multiple locations. The System will provide the capability to incorporate cameras pursuant to Task Order 1 and cameras and technology set forth in additional Task Orders. The System will include several key components, or systems, as described further in this Schedule 2.3(b).

3. VIDEO SYSTEM.

The Video System, at a minimum, must integrate new camera locations, data sources, building and street information and provide the following functionality:

- 3.1 Selection methodology for new camera and data sources.
- 3.2 Viewing of live and recorded camera images.
- 3.3 All video from all camera sources shall be concurrently available. If video is sourced from cameras located on other User Agency or User property, such video will be

concurrently available to such User Agency or User. The User Agency shall also have a live, real-time view of the camera source.

1. Routine – OEMC has the ability to view and monitor through the User Agency or User camera on a routine basis.
 2. Emergency – OEMC has the capability to override the owning User Agency or User, use and assume full control of such User Agency or User camera and video sources on an as needed basis, and record at the designated recording source images produced by such User Agency or User cameras. The owning User Agency or User will be able to continue to monitor and record video from their camera sources during an OEMC override situation but will not have the ability to control any camera functions.
- 3.4 Vendor's solution will not preclude any User Agency (or other User) from recording video from its own camera sources utilizing its own resources.
- 3.5 The Video System will record approximately 264 camera sources at 30 frames per second, 640X480 resolution and a nominal bit rate of 512kbps simultaneously. Capability must be provided to store recorded video for a minimum of thirty (30) days. The Video System must be capable of recording and controlling additional cameras as they are added or integrated into the System.

4. CAMERA SYSTEMS.

Camera Systems installed as part of the System shall meet or exceed the following standards unless specified otherwise in a Task Order:

- 360/92 degree continuous rotation
- Pan, tilt and zoom
- Day/Night operability
- Completely weatherproof housings
- Thermal controlled heaters and fans
- Sunshield domes
- 480 lines of resolution
- Color capability
- Paintable camera housing and mount
- 768 horizontal by 494 vertical effective pixels
- Minimum illumination of 0.7 lux in color mode shutter
- 24 VAC
- 4.9 GHz wireless backhaul camera
- Operating temperature range: 32 to 144 degrees Fahrenheit
- Storage temperature range: (-) 4 to (+) 140 degrees Fahrenheit

5. STORAGE AND RETRIEVAL.

Vendor will provide a storage and retrieval system that has a series of functions, including the following:

- 5.1 Simultaneous recording of data from all cameras under the applicable Task Order.

- 5.2 Searching for specific data points based upon time, location, event or trigger.

6. NETWORK.

- 6.1 The Network design must incorporate the ability to control Pan, Tilt and Zoom ("PTZ") on all cameras to the extent possible based on control functions on existing cameras. The Network shall allow emergency management officials to have the ability to gather and view live and recorded video intelligence 24 x 7 x 365.
- 6.2 The Network must have the ability to transport all camera-based video, and control data information in accordance with System Specifications. Vendor's design of the System will allow for reasonable scalability to support additional cameras.
- 6.3 Vendor shall implement the Network using fault tolerant data Network equipment capable of supporting real time information using encryption from ingress to egress points. Video and control data information from cameras provided by Vendor must be encrypted from encoder or concentrator input across the transport Network to Network port at OEMC or any other backup operations center designated in a Task Order. The Network encryption shall provide, at a minimum, an end-to-end secure data connection using standards based on encryption methodology such as AES, 3DES, IPSEC or SSL protocols.
- 6.4 The Network is designed to provide and transport full motion video and data to the designated video distribution points. Fiber optic cabling existing as of the Effective Date will be unified to provide connectivity at the Back Bone Network and the camera concentrator locations. The Network design must provide for implementation of new fiber paths for the Fiber Network where no fiber cable currently exists, both backbone fiber and fiber laterals to camera concentrator locations, so as to complete the unified Fiber Network. Unless otherwise specified in a Task Order, in all cases any fiber constructed by Vendor will contain six (6) strands terminated from the NEK to the POP at all NEK locations. The Network will employ wireless solutions, as necessary (and subject to the approval of the PBC) to tie cameras and edge devices into the Back Bone Network. At full implementation, the Back Bone Network will support the deployment of a broad range of surveillance equipment, including license plate recognition detectors, facial recognition detectors, traffic cameras and sensors, intelligent video and CBR sensors that are compatible with System Specifications.
- 6.5 Vendor shall implement the Network using carrier grade data Network equipment, capable of supporting real time information using encryption from ingress to egress points. Network transport must be able to support stable, low latency data rate for real time information using techniques such as MPLS or others as required by the Network design. The Network must be capable of forwarding packets based on standard routing algorithms such as OSPF or RIP v2.
- 6.6 Network equipment provided under a Task Order, such as routers, switches, bridges, repeaters and transceivers and other similar devices, and Network equipment interfaces, including fiber optic, copper and wireless interfaces must support current (as of the date of installation) IEEE standards for Ethernet devices, including applicable standards 802.3z and 802.3ae governing Gigabit and 10 Gigabit Ethernet devices and interfaces.

7. WIRELESS NETWORK.

PBC shall have the right to approve the use of wireless technology at a camera location as a connectivity alternative if the ability to link that camera to the Back Bone Network with fiber cable has significant technical or physical barriers and/or the cost of cable installation would be extreme. If PBC approves the use of such wireless technology, Vendor shall provide the Wireless Network. At camera locations where wireless links are to be implemented, wireless connectivity must be based on the 4.9 GHz Public Safety band wireless equipment.

8. BACKUP SYSTEMS.

- 8.1 Vendor will provide to a backup facility designated by the PBC the same processing power and storage capability as the OEMC facility plus a basic viewing wall as described in 8.2.
- 8.2 The backup center must have a minimum of a 60" display (measured diagonally) or similar viewing area that can be viewed by all users in addition to the local workstations.
- 8.3 The use of an intelligent storage system with Fibre Channel, iSCSI or equivalent based links is required to provide a mirrored dataset of the primary facility at the backup facility.

9. NETWORK AND VIDEO SYSTEM MONITORING.

- 9.1 There must be a primary and redundant Management System as designated in a Task Order.
- 9.2 The Management System must be graphical in nature with the ability to display the operability of key System components and cameras. The System shall be based upon standards for network management, such as Simple Network Management Protocol.
- 9.3 Access to the Management System shall be available to maintenance personnel with valid logon and password validation as approved by the PBC in a distributed manner that will allow troubleshooting of problems to occur from any qualified system in the Network. Operator access to the statistics and control information available on the Management System must be defined and controlled through class or individual operator privileges as approved by the PBC.
- 9.4 Vendor will provide monitoring functions to determine the location of all fiber optic breaks or splice losses in the Fiber Network. Vendor shall alert the OEMC Network Management Center in accordance with the Procedures Manual and the Service Levels set forth in Schedule 3.1(f), and/or the User Agency and/or User as designated in a Task Order.

10. FIBER NETWORK.

- 10.1 Single-mode fiber optic cable that is part of the System shall meet or exceed the following standards:
 - Supports Dense Wave Division Multiplexing
 - Supports Coarse Wave Division Multiplexing

- Support Gigabit Ethernet Networking
- Supports 10GigE Ethernet Networking
- Compliant with standards including industry standards IEEE-383, ISO/IEC 11801, ANSI/TIA/EIA-568-B, ANSI/TIA/EIA-455-220, IEC 607931
- All-dielectric construction
- Maximum loss 0.5dB/km at 1310nm

SCHEDULE 2.3(c)
OPERATIONAL STANDARDS

Vendor will comply with following Operational Standards relating to the Project.

1. Fiber

- 1.1 Vendor will provide (in accordance with the unit pricing contained in the Fee Schedule) Services to connect, or support connection of as directed by the PBC, all fiber junctions required to complete Fiber Network unification for the System and in connection with unification to fiber that originates from a User Agency or User fiber plant. Vendor must provide the new fiber link required to make those junctions. The new fiber link must be made between the nearest junction point with existing termination panel or splice enclosure of each existing fiber plant.
- 1.2 No mid-span fiber splicing is permitted, unless otherwise agreed to in writing by the PBC.
- 1.3 All fiber installed in manholes will be protected with split flexible inner duct from point of entry to point of exit. Fiber will be attached to manhole wall with cable clamps avoiding ladders and climbing hooks and all fiber and cable owned by others.
- 1.4 Vendor will hand coil and secure to manhole wall with pipe clamps all slack fiber.
- 1.5 Vendor will identify with a cable tag and unique fiber number assigned to that cable all fiber installed in manholes. The number of feet of slack cable provided in the manhole will be identified on the cable tag. Vendor must provide as slack fiber, a length of fiber that is equal to at least ten percent (10%) of the applicable fiber run
- 1.6 Solid tracer wire, #12 Ga. or larger, must be installed with all new fiber routes. The tracer wire must be accessible at all manholes and junction points transitioned to facilitate the location of the new fiber cable.
- 1.7 Fiber installed between the camera location equipment or network equipment enclosure and the concentration point must be protected from weather or physical damage using conduit, inner duct, armored cable or other methods mutually acceptable to Vendor and PBC.
- 1.8 PBC will respond to requests for support in determining alternative routes for alternative duct plant only after the Administrator has demonstrated that he or she has exhausted all other routing options for that location.
- 1.9 Without prior written approval of the PBC, existing fiber optic cable cannot be orphaned.

2. Fiber Documentation

Vendor will provide final drawings of fiber installation information within thirty (30) days of completion of any phase related to fiber optic cable installation. "As-built" documentation and marked up drawings must be completed at the time of installation and provided to the PBC Project Manager within a reasonable period of time following completion of installation, not to exceed five (5) business days. The fiber installation drawings must:

- Include a legend for all items installed on drawing
- Identify SBC manhole with number
- Identify city manhole with Atlas number
- Indicate distance between manholes
- Identify all slack & splices
- Identify all camera locations with camera numbers
- Specify on drawing if new conduits are installed
- Include a site plan of all fiber cable routing and fiber termination points
- Include that overall schematic of the Network.

3. **Back-Office Equipment**

Vendor will provide Site Construction Work diagrams and obtain approval from the PBC before installing equipment in any floor space assignments, rack assignment, power tap and allocation or cutting, modification of or coring of flooring. Modifications to and changes in approved diagrams must be documented, and Construction Work drawings redlined before installation activity occurs.

4. **Interconnect Cabling**

The video, power and control cabling that links each camera to the Network equipment enclosure must be hardened using conduit, inner duct, armored cable or other methods mutually acceptable to Vendor and PBC in order to protect the cabling from damage during installation activities, normal pole movement and vibration or normal maintenance activities, or at locations identified by the PBC as locations where there is reasonable potential for vandalism.

5. **Network Edge Kit Equipment**

- 5.1 PBC approved enclosures are required to house camera control and network devices at the pole or building installation location. PBC requires that these enclosures provide appropriate protection of equipment from weather and environmental damage and appropriate hardening to prevent physical damage.
- 5.2 Vendor will test the number designated by the PBC of sample active devices to be placed at pole or other outdoor locations to characterize stability and survivability of such devices across the wide operating temperature ranges and operating (commercial power) voltage ranges represented by the User Agency or User (as the case may be) installation environment.

6. **Wireless Equipment**

Wireless connectivity solutions proposed for camera locations must be based on the 4.9 GHz Public Safety band wireless equipment. The cabling linking the camera to the wireless transceiver must be hardened using conduit, inner duct, armored cable or other methods mutually acceptable to Vendor and PBC in order to protect the cabling from damage.

7. **Power**

- 7.1 Prior to deployment of camera equipment, the PBC will establish a procedure for accessing power for the camera and associated network equipment from traffic

controllers. Vendor must comply with such procedures to reduce the risk of placing a traffic controller out of service or jeopardizing reliability of the traffic controller and associated power service.

- 7.2 Assignments for access to AC circuit panels, circuit breakers, and UPS systems must be documented in a Site Construction Work drawing with nominal and peak load calculations provided for the equipment type installed. Review of power and panel loading must be performed before equipment is placed into service for final turn-over to the PBC.

8. Network

- 8.1 As of the Effective Date, the Network within the City is based upon open standards such as OSPF and MPLS.
- 8.2 The high speed Ethernet data interfaces must be brought to the edge of the Network at the pole location or camera concentration point in order to support both current video requirements and future Network and connectivity needs.

9. Network and Video System Management

- 9.1 The Vendor will also provide configuration and design details, and support to allow the PBC, the User Agency or User (as applicable) to update and expand the HP OpenView System to provide monitoring for the System performance within the OVS servers and related Storage Area Network Devices. The following new component systems are monitored:
- Network stability and throughput statistics
 - Application uptime and performance
 - Hardware operability propagated from other network monitoring services
 - Storage capacity statistics collected from other network monitoring services

10. Capacity Planning

- 10.1 Vendor will provide a methodology and approach to calculate the capacity required for key System components and the Storage Area Network, and to integrate new features and functions. Vendor will provide key criteria to drive the addition or upgrade of the Backbone Network equipment, Edge Network devices, computing platform, application Software or storage system
- 10.2 Vendor will identify:
- Analytical tools such as OPNET or other hardware and software packages.
 - Standardized services for capacity planning for all aspects of the Network and systems.
 - Facility where benchmarking and operability testing can be performed to characterize the performance of hardware and Software systems when new applications are added or changes are proposed.
- Minimum training required for end-user and support staff.

Schedule 2.4(a)
Project Plan

SERVICES	Duration	Start Date	Actual Start	Finish Date	Actual Finish	Percent Complete	Resource	TO #	NTP #
PROJECT DURATION	783 days	01/09/06	NA	01/07/09	NA	0%			
CONTRACT SIGNED	1 day	12/30/05	NA	12/30/05	NA	0%			
IBM PROJECT MANAGEMENT OFFICE	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team		
Establish and Operate the Project Management Office	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team		
Staff the PMO with a Team Leader, Members of the Administrators Staff, and All Major Subcontractor Contract Staff	5 days	01/09/06	NA	01/14/06	NA	0%	IBM Team		
Establish, Staff, and Start Up the Governance Committee	10 days	01/09/06	NA	01/19/06	NA	0%	IBM Team		
PMO & Governance Established	0 days	01/19/06	NA	01/19/06	NA	0%	IBM Team, OEMC		
Be the Sole Contact for the City After Award of the Contract	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team		
Have Full Authority to Monitor and Perform all Required Subcontracting Functions	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team		
Maintain and Provide All Installation Documentation, Wiring Diagrams, and As-Built Documentation	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team		
Be Available via Phone or Page During Business Hours (6am to 8pm) and Return Calls Within 2 Hours.	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team		
Mutually Develop With the City a Network Training Plan and Schedule During the Network Engineering Design	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team		
Coordinate and Perform with the City All Training Requirements During the Contract Period	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team		
Aid the City in Performing any Audits of the System	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team		
Project Initiation	2 days	01/17/06	NA	01/18/06	NA	0%	IBM Team, OEMC		
Conduct Kickoff Meeting	2 days	01/17/06	NA	01/18/06	NA	0%	IBM Team, OEMC		
Review SOW and Preliminary Implementation Plan and Project Schedule	2 days	01/17/06	NA	01/18/06	NA	0%	IBM Team, OEMC		
Review all RFP/Q Specifications and Requirements	2 days	01/17/06	NA	01/18/06	NA	0%	IBM Team, OEMC		
Review OEMC Network Environment	2 days	01/17/06	NA	01/18/06	NA	0%	IBM Team, OEMC		
Review OVC Preliminary Design	2 days	01/17/06	NA	01/18/06	NA	0%	IBM Team, OEMC		
Define Preliminary OVC Performance	2 days	01/17/06	NA	01/18/06	NA	0%	IBM Team, OEMC		
Complete Project Initiation Activities	2 days	01/17/06	NA	01/18/06	NA	0%	IBM Team, OEMC		
Develop Implementation Plan and Project Schedule	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Review Statement of Work	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Create and Revise Implementation Plan and Project Schedule	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Deliver Final Version of the Implementation Plan and Project Schedule to the OEMC Within 90 Days of Contract Award	0 days	01/09/06	NA	04/11/06	NA	0%	OEMC		
OEMC Approves the Final Implementation Plan and Project Schedule	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Develop System Acceptance Test Procedures (SATP)	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Review all Testing and Validation Requirements	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Create and Revise System Acceptance Test Procedures	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Deliver Final Version of the System Acceptance Test Procedures to the OEMC Within 90 Days of Contract Award	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
OEMC Approves the Final System Acceptance Test Procedures	0 days	01/09/06	NA	04/11/06	NA	0%	OEMC		
Develop Network Maintenance Plan	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Review all Network Maintenance Requirements	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Create and Revise Network Maintenance Plan	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Deliver Final Version of the Network Maintenance Plan to the OEMC within 90 Days of Contract Award	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
OEMC Approves the Final Network Maintenance Plan	0 days	01/09/06	NA	04/11/06	NA	0%	OEMC		
Develop the Annual Maintenance Plan	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		
Include Initial Plan with Network Maintenance Plan and Then Provide City with an Annual Update	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		
Develop a Physical Inspection Schedule of Each Site	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		

SERVICES										NTP #
Task	Duration	Start Date	Actual Start	Finish Date	Actual Finish	Percent Complete	Resource	TO #		
Provide a Physical Inspection Report within Thirty (30) Days of Each Site Inspection	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Develop Quality Assurance Plan	22 days	01/09/06	NA	02/07/06	NA	0%	IBM Team, OEMC			
Review all Quality Assurance Requirements	22 days	01/09/06	NA	02/07/06	NA	0%	IBM Team, OEMC			
Create and Revise Quality Assurance Plan	22 days	01/09/06	NA	02/07/06	NA	0%	IBM Team, OEMC			
Deliver Final Version the Quality Assurance Plan to the OEMC	22 days	01/09/06	NA	02/07/06	NA	0%	IBM Team, OEMC			
Develop Procedures Manual	22 days	01/09/06	NA	02/07/06	NA	0%	IBM Team, OEMC			
Establish Project Standards & Compliance Mgmt (HW/SW, Performance, Operational, Telecom & NW, MBE/WBE, Construction Work, Privacy/Data Protection)	22 days	01/09/06	NA	02/07/06	NA	0%	IBM Team, OEMC			
Perform Services, Schedule, & Financial Tracking	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Perform Procurement and Deliverables Management	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Establish Confidential Information, Privacy, and Data Protection	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Project Task Orders	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Respond to Fixed Price Project Task Orders	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Respond to Fixed Billable Rate Projects	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Project Tracking	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Establish Escalation Procedures	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Order Equipment and Schedule all Deliveries	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Manage and Coordinate IBM Project Personnel Activities	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Measure and Evaluate Progress Against the Plan	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Perform Site Visitations as Necessary	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Be On-Site During the Installation of Fixed Equipment and Provide Required Assistance	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Coordinate with Subcontractors regarding Required Engineering	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Establish & Maintain Communications with OEMC Team Members	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Resolve Project Deviations/Issues	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Administer Change Control Process	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Release Billing on a Monthly Basis. Adjust Accordingly (pro rata) for any Additions or Deletions of Equipment	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Status Reporting	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Keep IBM and OEMC Management Informed of Project Status to Include Delivery Schedules for all Pertinent Equipment	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Keep City Informed on all Installations of Fiber and Cameras	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Provide Weekly Updates and Monthly Status Reports to OEMC Project Manager Throughout Contract Duration (Due on 5th business day of each month)	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Meet Every Month with the City Staff to Present the Monthly Report and Discuss Opportunities for Improvement	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Provide OEMC with Final Status Report	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Complete Project Management Services	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Bandwidth Functional Testing	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Utilize the SATP to Determine Bandwidth Functional Testing Requirements	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Perform Network Strength and Capacity Testing a Minimum of Five (5) Times. Use a "Sniffer" to Display Bandwidth Usage and Availability	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Provide a Detailed Bandwidth Usage Report to the City within five (5) Calendar Days After Testing is Complete	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Network Warranty, Maintenance, and Repair	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC			
Reserved										
Reserved										

SERVICES	Duration	Start Date	Actual Start	Finish Date	Actual Finish	Percent Complete	Resource	TO #	NTP #
Reserved									
Reserved									
Reserved									
Maintain the Network and Pertinent Applications in accordance with the Maintenance Services obligations under the Task Order	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		
Reserved									
Provide Continuous Monitoring of Transceiver Sites and Access Points	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		
Remedy Any Defects in Equipment Operation and Maintain Equipment in Good Working Order	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		
Provide Remedial Maintenance Service Within The Time Requirements - Remote Support Thirty (30) Minutes or Less; On Site Two (2) Hours. Report to the City in Writing any New Industry Trends and Newly Emerging Technologies.	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		
Install and Upgrade Equipment Firmware at no Additional Charge	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		
Use the Network Management Platform to allow Troubleshooting of Problems in the Fiber Optic Network	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		
Provide Site Management and Operations Services	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		
Be Responsible for Maintaining all Sites Against Damage and Notify the City Immediately of the Need for Unplanned Maintenance	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC		
Develop and Deliver the Annual Maintenance Report	7 days	06/23/08	NA	07/01/08	NA	0%	IBM Team, OEMC		
Project Closeout Activities	7 days	08/23/08	NA	07/01/08	NA	0%	IBM Team, OEMC		
Update and Summarize Project Status Reports	7 days	06/23/08	NA	07/01/08	NA	0%	IBM Team, OEMC		
Review all PCRs, Travel Expenses, and Other Fees	7 days	06/23/08	NA	07/01/08	NA	0%	IBM Team, OEMC		
Request End of Engagement Reviews	7 days	06/23/08	NA	07/01/08	NA	0%	IBM Team, OEMC		
Collect All Deliverables for the Project and Archive all Documents	7 days	06/23/08	NA	07/01/08	NA	0%	IBM Team, OEMC		
PHASE 1: DEVELOP AND IMPLEMENT CBD CAMERA SYSTEM	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Evaluate and Prioritize the Installation of New Cameras or Upgrades to Existing Cameras	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC, BOE		
Evaluate the Capacity of the Existing Network and Analyze Current/Future Needs of the City	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Evaluate the Capacity of the Existing Municipal and Private Camera Systems	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Site Surveys Completed (Evaluation and Analysis)	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Identify and Recommend the Network Equipment Suited for the Application	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Fortify, Through Splices and/or Links, the Existing Fiber, as Necessary	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Design Fiber/NW/Camera Systems	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Review/Change Site Surveys, Designs and Plans	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Approve Phase 1, 2, & 3 Site Surveys and Initial Designs and Plans	0 days	04/11/05	NA	04/11/05	NA	0%	IBM Team, OEMC		
Complete Site Preparation Activities (POP/DC-HVAC, rack space, etc)	67 days	01/09/06	NA	04/11/06	NA	0%	OEMC		
Procure and Install Any New Fiber, as Necessary	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Procure and Install Network Equipment, as Necessary	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Procure, Stage, and Install Cameras	0 days	04/11/05	NA	04/11/05	NA	0%	IBM Team, OEMC		
Procurement & Installation for Phase 1 Completed	67 days	01/09/06	NA	04/11/06	NA	0%	IBM Team, OEMC		
Validate and Verify CBD Camera System According to the System Acceptance Test Procedures	0 days	04/11/05	NA	04/11/05	NA	0%	OEMC		
Commission Phase 1 (Customer Acceptance)	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC		
PHASE 2: DEVELOP AND IMPLEMENT UNIFIED CITYWIDE FIBER NETWORK	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC		
Develop a Protocol and Standards to Create a Master Network Design, Utilizing the Existing Cable and Fiber Backbone	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC		
Implement the Master Network Design	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC		

SERVICES										TO #	NTP #
Prepare a Fiber Master Design Standard Which Will be Utilized to Procure System Installation and Upgrades	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC				
Prepare a Camera Master Design Standard, which will be Utilized to Procure Surveillance System Installation and Upgrades	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC				
Identify and Recommend the Type of Network Equipment Suited for the Application	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC				
Fortify, Through Splices and/or Links, the Existing Fiber as Necessary	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC				
Procure and Install Any New Fiber, as Necessary	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC				
Procure and Install Network Devices to Facilitate Cameras	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC				
Procure and Install Additional New Cameras	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC				
Procurement & Installation for Phase 2 Completed	0 days	01/09/07	NA	01/09/07	NA	0%	IBM Team, OEMC				
Validate and Verify CBD Camera System According to the System Acceptance Test Procedures	262 days	01/09/06	NA	01/09/07	NA	0%	IBM Team, OEMC				
Commission Phase 2 (Customer Acceptance)	0 days	01/09/07	NA	01/09/07	NA	0%	OEMC				
PHASE 3: DEVELOP AND IMPLEMENT LAKEFRONT CAMERA SYSTEM	132 days	01/09/06	NA	07/11/06	NA	0%	IBM Team, OEMC				
Identify and Recommend the Type of Camera and Wireless Network Equipment Suited for the Application	132 days	01/09/06	NA	07/11/06	NA	0%	IBM Team, OEMC				
Fortify, Through Splices and/or Links, the Existing Fiber, as necessary	132 days	01/09/06	NA	07/11/06	NA	0%	IBM Team, OEMC				
Procure and Install Any New Fiber, as Necessary	132 days	01/09/06	NA	07/11/06	NA	0%	IBM Team, OEMC				
Procure and Install Network Equipment, as Necessary	132 days	01/09/06	NA	07/11/06	NA	0%	IBM Team, OEMC				
Procure and Install Cameras	132 days	01/09/06	NA	07/11/06	NA	0%	IBM Team, OEMC				
Procurement & Installation for Phase 2 Completed	132 days	01/09/06	NA	07/11/06	NA	0%	IBM Team, OEMC				
Validate and Verify CBD Camera System According to the System Acceptance Test Procedures	132 days	01/09/06	NA	07/11/06	NA	0%	IBM Team, OEMC				
Commission Phase 3 (Customer Acceptance)	0 days	07/11/06	NA	07/11/06	NA	0%	OEMC				
PHASE 4: DEVELOP AND IMPLEMENT SUPPORT AND MAINTENANCE PLAN	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC				
Provide On-going Warranty, Maintenance and Support of all Fiber, Network, Camera Equipment Both City and Sister Agency Owned	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC				
Develop an On-going Maintenance and Support Plan that the City may Choose to Bid.	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC				
Conduct Training	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC				
Complete All Remaining Training	0 days	01/07/09	NA	01/07/09	NA	0%	IBM Team, OEMC				
Develop On-going Equipment and Fixed Price Lists for New Surveillance Technologies for the PBC and Sister Agencies	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC				
Develop On-going Analysis and Recommendations for Additional Surveillance Deployment and Technology Refresh	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC				
	783 days	01/09/06	NA	01/07/09	NA	0%	IBM Team, OEMC				

SCHEDULE 2.4(b)

Quality Control Standards

Within ninety (90) days from the Commencement Date, Vendor will provide a finalized QAP for the PBC or relevant User Agency to review, comment and approve. The QAP will be used to monitor and determine potential variances from PBC or the applicable User Agency's requirements. The QAP will include the following components:

1. Quality Policy
2. Quality Assurance Team
3. Quality Management
4. Quality Assurance
5. Quality Control Standards

Each of the components will cover the following topics:

1. Organizational structure
2. Documentation required
3. Procedures to be followed
4. Audits and reviews to be conducted
5. Process improvement
6. Quality/Deliverable contributors
7. Problem reporting and resolution
8. Quality Assurance metrics

Vendor will comply with the terms of the QAP including the Quality Control Standards in order to validate that the Services are performed, and that the System is being developed, or the Sister Agency Project is being implemented in accordance with the Specifications, Standards, and Service Levels set forth in the Agreement.

1. Quality Policy.

Vendor will provide quality assurance ("QA") services as part of the Services under the Agreement. In adhering with this policy, Vendor will:

- Document all quality control and quality measurement activities;
- Designate a senior management team to be responsible for QA;
- Foster constructive communication;
- Identify variances from the Specifications and Standards;
- Discuss alternative solutions with the PBC or applicable User Agency;
- Address technical, project, and business compliance; and
- Facilitate the ability for Vendor to meet the Project Timetable.

2. QA Team.

The QA team will consist of Vendor technical, project, and business management team members. The QA team will, among other things, review and audit the Services and System to verify that they comply with the agreed upon Specifications and Standards and that they are meeting the applicable Service Levels.

3. Quality Management.

Vendor will manage, the Services, processes, tools, Vendor Personnel and resources required so that the Services are performed, and that the System is being developed, or the Sister Agency Project is being implemented in accordance with the Specifications, Standards, and Service Levels set forth in the Agreement. Quality management will also include Vendor managing other parts of the QA process such as quality planning, quality control, QA, and improvement.

4. QA.

In order to schedule, track and evaluate overall Project performance (or the overall Sister Agency Project performance), Vendor will perform the following activities relating to QA at the times and dates agreed to by the PBC or relevant Sister Agency:

- a) Walkthroughs
- b) Testing, and Inspection.
- c) Performance Reporting
- d) Establish Quality Checkpoints, Meetings, Reviews
- e) Conduct Required Audits
- f) Establish Escalation/Communication Management Procedures
- g) Conduct Required Evaluations
- h) Process Improvement

a. Walkthroughs.

Vendor will provide formal or informal, structured walkthroughs for orientation, examining ideas, identifying variances from Standards, Specifications and Service Levels, and improving the Services at any stage in the process (provided that no such walkthroughs may have a materially adverse impact upon the ability of the Vendor to perform its Services). Walkthroughs are beneficial for evaluating plans, documentation and other Deliverables and serve to orient Vendor Personnel to new technology products and services. Walkthroughs will be conducted internally and on an as-needed basis as jointly agreed upon between Vendor and the PBC or the relevant User Agency. These will be used to:

- Present plans, documentation, or other Deliverables for review and approval.
- Review material in the preparation stages.
- Critique and report variances in plans, processes, and procedures.

As a result of the walkthroughs, Vendor will identify the variances and resulting action which will be taken. Records of these walkthroughs will be maintained. PBC or the applicable User Agency may either accept the variances "as is" or require the Vendor to perform additional Services. If PBC or the relevant User Agency requires further discussion regarding a variance, Vendor will schedule an additional walkthrough.

b. Testing, Inspection.

Modular Testing: Many System components such as cameras and NEK's can be tested in a modular or in a bay concept before deployment to the site location. This practice is a preferred method because it may constitute a reduction in impact to City operations.

System Wide Testing: Vendor will perform System wide testing on groups of modular components or subsystems. As an example, Vendor will perform System testing, which will be comprised of sending live images across the network to command and control facilities and controlling camera PTZ functions.

- c. **Performance Reporting.** The following Deliverables will assist Vendor with the QA process:

- Detailed Implementation Plan
- Detailed Project Schedule
- System Acceptance Test Procedures Document
- Network Maintenance Plan
- Network Training Plan And Schedule
- Quality Assurance Plan
- Detailed Design Document

- d. **Establish Quality Checkpoints, Meetings, and Reviews.**

Vendor will initiate meetings and conduct reviews as part of the QA process. An independent/joint evaluation of an activity or process may be requested to assess compliance with the Project plan, or to examine processes or the Services.

Vendor will conduct a technical and business review in order to verify that: (1) the Services conform with the Standards, Specifications and Service Levels; (2) the Services meet the Project Timetable; (3) foreseeable technical risks are identified, assessed, and containment plans are recommended; and (4) the System can be supported by the Maintenance Services.

Vendor will conduct an initial plan review with the PBC or User Agency which provides assessment of the status of the Project in order to verify that it gets off to a sound start, by establishing proper communication, organization, planning, tracking, change control, quality management, and reporting plans so that the Vendor Personnel understands the Agreement, scope of Services, the relevant Task Order and performance baselines.

Vendor will provide an independent ongoing assessment of the status of the Project in order to verify that the Project is being managed in accordance with the Agreement.

Vendor will assess and review the Deliverables and the Milestone Deliverables in order to validate that the Services are performed, and that the System is being developed, or the Sister Agency Project is being implemented in accordance with the Specifications, Standards, and Service Levels set forth in the Agreement.

Vendor will validate that the Network and all applications are implemented in accordance with the requirements of the Agreement.

If during the engagement, Vendor, the PBC or relevant User Agency identifies a gap in progress or performance, the QA team will work with Vendor Personnel in determining the root cause and taking corrective actions as appropriate. These checkpoints are a critical element for QA to be blended into the Project.

- e. **Conduct Required Audits.**

The QA team will conduct audits relating to the Services and processes. The purpose of such audits is to identify variances in process performance, to identify noncompliance items that cannot be resolved by the Project Managers, to validate process improvement/corrective action achievements, and to provide relevant reports to relevant management levels.

A Deliverable or Material audit is an independent examination by Vendor of a Deliverable or Material to assess compliance with the corresponding agreed upon Standards, Specifications and Service Levels. Deliverable or Material audits are used to verify that the Deliverable or Material was evaluated before it was delivered to the PBC or applicable User Agency and that variances are identified, documented, and tracked for closure and correction.

The QA team will perform the following activities when conducting an audit.

1. Prepare an audit plan
 2. Define the scope and purpose of the audit within the audit plan.
 3. Prepare audit procedures and checklists for the audit.
 4. Examine evidence of implementation and controls.
 5. Interview personnel to learn the status and functions of the processes and the status of the Services.
 6. Discuss findings with the technical staff and Project Managers.
 7. Prepare and submit an audit report to the Project Managers
 8. Escalate unresolved variances to technical monitor/senior management for resolution if required by the PBC or User Agency.
- f. **Establish Escalation/Communication Management Procedures.** These procedures are documented in the Procedures Manual.
- g. **Conduct Evaluations.**

Vendor will develop criteria for evaluations, conduct the evaluations and collect the metrics from the evaluation in order to validate that the Services are performed, and that the System is being developed, or the Sister Agency Project is being implemented in accordance with the Specifications, Standards, and Service Levels set forth in the Agreement.

h. **Process Improvement.**

Vendor will develop a process improvement program. Process improvement is successful when an effective process emerges or evolves that can be characterized as: practiced, documented, maintained, trained, measured, and improvable.

A corrective action plan must be developed when a variance in the process is detected. Corrective action should prevent the variance from recurring.

Vendor's process improvement program will include:

1. Detection of variances
2. Identification of responsibility
3. Evaluation of importance
4. Investigation of possible causes
5. Analysis of problem
6. Preventive action
7. Process controls
8. Disposition of nonconforming items
9. Permanent changes

The QA team will analyze the results of their findings in relation to the results of documented processes used to provide Services, Goods and Deliverables. This comparison will be used to determine which process may need improvement and to determine the effectiveness of changes to the processes. This comparison will also be used to identify Vendor proven best practices that should be continued or implemented at other sites.

5. Quality Control.

Vendor will provide those operational techniques and activities aimed both at monitoring a process and at addressing, mitigating, escalating, and/or eliminating variances in order to validate that the Services are performed, and that the System is being developed, or the Sister Agency Project is being implemented in accordance with the Specifications, Standards, and Service Levels set forth in the Agreement.

a. Quality control includes:

1. **One Architecture to support all requirements** – minimizes cost, reduces risk, speeds implementation; scalable
2. **Open Standards** – enables use of existing infrastructure and, as importantly, helps to facilitate the adoption of emerging technologies (e.g., pattern recognition, advanced sensors) in the future;
3. **Phased Implementation** – controls cost and risk by piloting and testing, highest priorities addressed first; Project scales as needed; and
4. **Security** – documented, demonstrable and auditable security to verify the integrity of the System in accordance with the Specifications and Standards.
5. **Monitor and control the Project's technical and business compliance plans**
6. **Change/Configuration Control & Management**
7. **Perform Trend Analysis**

8. Harvest Feedback & Lessons Learned

b. Quality Control Activities.

Vendor will monitor specific Project results and Service Levels to determine if there are variances from the Specifications and Standards set forth in the Agreement. In order to accomplish this, Vendor will provide the following quality control activities:

- Validate that the Services are performed in compliance with the requirements set forth in the Agreement.
- Establish a job specific QA program.
- Perform the Services in accordance with the requirements set forth in the Agreement.
- Manage and coordinate QA activities, submittals, tests, samples, and results.
- Hold weekly Project briefings with the PBC or applicable User Agency, to discuss quality.
- Maintain up-to-date drawings and documentation with the proper revisions and provide these to the PBC or the User Agency.
- Inspect Hardware and equipment to be installed, and reject the Hardware and equipment if they are found to be non-compliant with their specifications or damaged during transportation.
- Investigate and resolve warranty problems, and indicate the action taken to the PBC or User Agency.
- Perform start-up and testing activities in accordance with Vendor proven best practices and the Agreement.
- Conduct reviews
- Monitor Deliverables
- Track, monitor & report on the Services, Project Timetable and procurement.
- Apply a consulting and design methodology. The methodology will include the use of Vendor's Asset Based Services approach and Intellectual Capital/PM tools. (i.e., WWPPM, Engagement Support Environment, and Rational Portfolio Management)

Schedule 2.5
Procedures Manual

1. Document Information
 - 1.1 Current Document
 - 1.2 Approval
 - 1.3 Revision History
 - 1.4 Initial Distribution
2. Guide to the Procedures Manual
3. Services Overview
 - 3.1 Fiber Infrastructure Survey
 - 3.1.1 Fiber Infrastructure Survey Procedures
 - 3.1.1.1 Required Notifications
 - 3.1.1.2 Required Approvals
 - 3.1.1.3 Required Escalations in Case of Emergencies and/or Jeopardy Activities
 - 3.1.1.4 Required Reports and Documentation
 - 3.2 Point of Presence (POP) Survey
 - 3.2.1 Point of Presence (POP) Survey Procedures
 - 3.2.1.1 Required Notifications
 - 3.2.1.2 Required Approvals
 - 3.2.1.3 Required Escalations in Case of Emergencies and/or Jeopardy Activities
 - 3.2.1.4 Required Reports and Documentation
 - 3.3 Camera/Video Site Survey
 - 3.3.1 Camera/Video Site Survey Procedures
 - 3.3.1.1 Required Notifications
 - 3.3.1.2 Required Approvals
 - 3.3.1.3 Required Escalations in Case of Emergencies and/or Jeopardy Activities
 - 3.3.1.4 Required Reports and Documentation
 - 3.4 Fiber Infrastructure Installation
 - 3.4.1 Fiber Infrastructure Installation Procedures
 - 3.4.1.1 Required Notifications
 - 3.4.1.2 Required Approvals
 - 3.4.1.3 Required Escalations in Case of Emergencies and/or Jeopardy Activities
 - 3.4.1.4 Required Testing and Validation Activities
 - 3.4.1.5 Required As-Built Documentation
 - 3.4.1.6 Required Turn-Over Activities and Final Documentation
 - 3.5 Point of Presence (POP) Installation
 - 3.5.1 Point of Presence (POP) Installation Procedures
 - 3.5.1.1 Required Notifications
 - 3.5.1.2 Required Approvals

- 3.5.1.3 Required Escalations in Case of Emergencies and/or Jeopardy Activities
 - 3.5.1.4 Required Testing and Validation Activities
 - 3.5.1.5 Required As-Built Documentation
 - 3.5.1.6 Required Turn-Over Activities and Final Documentation
 - 3.6 Camera/Video Installation
 - 3.6.1 Camera/Video Installation Procedures
 - 3.6.1.1 Required Notifications
 - 3.6.1.2 Required Approvals
 - 3.6.1.3 Required Escalations in Case of Emergencies and/or Jeopardy Activities
 - 3.6.1.4 Required Testing and Validation Activities
 - 3.6.1.5 Required As-Built Documentation
 - 3.6.1.6 Required Turn-Over Activities and Final Documentation
 - 3.7 Disaster Recovery
 - 3.7.1 Failover Procedures
 - 3.7.1.1 Required Notifications
 - 3.7.1.2 Failover Mitigation and Rollback Activities
 - 3.7.1.3 Required Escalations in Case of Emergencies and/or Jeopardy Activities
 - 3.7.1.4 Required Testing and Validation Activities
 - 3.7.1.5 Required Mitigation Data and Reports
 - 3.7.2 Documentation Archival Procedures
 - 3.7.2.1 As-Built Documents
 - 3.7.2.2 Reports
 - 3.7.2.3 Any other documents as specified by OEMC, PBC
- 4. Maintenance Services Procedures
 - 4.1 Basic Maintenance Call Flow Procedures
 - 4.2 Fiber Maintenance Procedures
 - 4.3 Camera Maintenance Procedures
 - 4.4 POP Server and Storage Area Network Maintenance Procedures
- 5. Governance and Customer Communication
 - 5.1 IBM Organizational Structure
 - 5.2 PBC Organizational Structure
 - 5.3 OEMC Organizational Structure
 - 5.4 Communications Management Plan
 - 5.4.1 Communications with Sponsor
 - 5.4.2 Communications with Functional Management
 - 5.4.3 Communications with Subcontractors
 - 5.4.4 Communications within the Team
 - 5.4.5 Media
 - 5.4.6 Scheduled Meetings
 - 5.4.6.1 PBC and Vendor Review Meetings
 - 5.4.7 Reporting
 - 5.4.8 Other communications

- 5.5 Security/Access
- 6. Service Management
 - 6.1 Problem Management
 - 6.2 Availability Management
- 7. Procurement Services
- 8. Subcontractors and 3rd Party Suppliers
- 9. Appendix A: Contact List
- 10. Appendix B: Responsibility Matrix
- 11. Appendix C: Status Report Form
- 12. Appendix D: Glossary
- 13. Appendix E: User Manuals or Guides
- 14. Appendix F: Hardware and Software Specifications

SCHEDULE 2.6

Training Plan

Pursuant to Section 2.6 of the Master Agreement, this Schedule sets forth the preliminary Training Plan. Within thirty (30) days of the effective date of the appropriate Notice to Proceed, Vendor will deliver to the PBC for its approval a finalized Training Plan and training schedule with respect to Phase 1 and Phase 2. The purpose of the Training Plan, as finalized, is to document and track the training necessary to allow users of the System (or portions thereof) to utilize the System (or portions thereof). The Training Plan will also be used to bring new PBC or an User Agency's personnel on board to the Project.

Training will be provided to any administrator, supervisor or end user as determined by the PBC or relevant User Agency (the "**Training Participants**") with regard to the System. Vendor will train the Training Participants on the Video System and the Fiber Network along with the use of the PowerCONTROL Management Interface to the PBC or User Agency. Vendor will also provide on-the-job training to reinforce the material learned in the classes and give the Training Participants a full understanding of the Fiber Network. A mentor support system or help desk will also be established to provide support and timely help to the Training Participants.

The following sections describe in detail Vendor's obligations with regard to training.

1. Video System Training

A. Overview. Vendor will provide Video System Administration Training and End-User Training on the Video System. The Video System Training will be conducted at an appropriate training facility in Chicago. If conducted at Vendor's facility, Vendor will furnish all the required peripherals such as computers, encoder kits, cameras and other classroom materials.

B. Video System Administration Training. Video System Administration Training will be provided to all: (1) PBC or User Agency personnel who are responsible for managing the System; and (2) supervisors. The course will cover:

- Configuration of the Video System
- System administration maintenance training (including how to provide first line support to end-users)
- Problem determination and resolution (including deciding when PBC or the User Agency should call Vendor support)
- Security administration (including review of Video System access control logs and event logs);
- Application process monitoring (insuring all uploads have executed as scheduled, back-ups are completed, storage and service loads, deletions, etc.)
- Generating reports on Video System operations and logs.

C. End User Training. Vendor will provide End-User Training using a "Train-the Trainer" approach. Therefore, training on how to provide end-user training will be given to PBC and User Agency personnel identified by the PBC or User Agency as training personnel. This may include some or all of the Video System administrators and other personnel designated as Video System trainers. There will be some content overlap on use of the end-user application but most of the content of this course will be on how to present the training and include the following:

- The end user Video System application and its uses;
- The curriculum and the purpose of each Video System module and key points;

- Video System demonstrations and scenario scripts;
- Video System training materials, including computer based training for users to use after the initial training for remedial or refresher training;
- Skills assessment, testing; and
- Course evaluation and feedback to ensure consistency and quality are maintained.

The End-User Training will be scheduled to accommodate End Users shifts to minimize the impact on User Agency's normal operations and scheduling. Vendor will support the trainers in setting up facilities and testing the classroom equipment in advance of the training. There will be remote technical support available if there is a technical problem. For this End-User Training, the PBC or applicable User Agency will provide a classroom setting in order to conduct the End-User Training on the work site. Class size will be based on the personnel working each shift and schedules so that classes could be rotated to minimize operational impact.

D. Video System Training Curriculum. During the course of the four-day class, Training Participants will gain hands-on experience by creating their own video network solution by installing and configuring software, encoders and cameras.

Day 1: Introduction & concepts.

- Video System solution highlights & terminology
- Networking basics
- Video System architecture
- Live viewer
- Overview
- Labs
- Archive player
- Overview
- Labs

Days 2: Fixed installation.

Configuration of the Video System, including

- Client
- Encoder & camera
- Server
- Labs

Days 3: Maintenance & redundancy.

- System administration maintenance training (including how to provide first line support to end-users)
- Information regarding some of the types of failover & redundancy configuration which might be implemented
- Directory
- Archiver
- Remote site archiver
- Labs

Days 4: Alarms & advanced configuration.

- Alarm management
- Overview
- Creation
- Managing

- Searching
- Labs
- Advanced configuration options
- Motion detection
- User-defined events
- Macros
- Coverage
- Labs
- Trouble shooting
- Question and answer session

2. Network Training

A. Overview. Network Training will include training on Cisco technology. PBC or the applicable User Agency will determine which personnel require training. The PBC or User Agency may have some employees that are already certified or have skills and experience equivalent to the certifications. Those employees can apply for re-certification or take the certification tests without having attended the recommended training. Individual training criteria will be determined based on an assessment of each individual student's skills, experience, and prior training to insure that all employees can effectively manage and maintain the System. The Network training will be conducted at an appropriate training facility located in Chicago. Vendor will furnish all classroom materials.

B. CCNA Certification. The CCNA certification indicates a foundation in and apprentice knowledge of the Network. CCNA certified professionals can install, configure, and operate LAN, WAN, and dial access services for small networks (100 nodes or fewer), including but not limited to use of these protocols: IP, IGRP, Serial, Frame Relay, IP RIP, VLANs, RIP, Ethernet, and Access Lists. The CCNA certification provides the prerequisites for the CCNP certification. Some PBC or User Agency employees may already be certified or have equivalent skills and experience.

CCNA training has no prerequisites. The training classes are as follows:

- Introduction to Cisco Networking Technologies (INTRO)
- Interconnecting Cisco Networking Devices (ICND)
- Required Exams for CCNA certification after training classes
- 640-801 CCNA
- 640-821 INTRO
- 640-811 ICND

C. CCNP Certification. The CCNP certification indicates advanced or journeyman knowledge of the Network. With a CCNP, a network resource can install, configure, and troubleshoot local and wide area networks for enterprise organizations with networks having from 100 to more than 500 nodes. The content emphasizes topics such as security, converged Networks, quality of service (also "QOS"), virtual private networks (also "VPN") and broadband technologies (including optical technologies).

CCNP Training has CCNA as a prerequisite. The training classes for CCNP certification are as follows:

- Building Scalable Cisco Internetworks (BSCI)
- Building Cisco Multilayer Switched Networks (BCMSN)
- Building Cisco Remote Access Networks (BCRAN)
- Cisco Internetwork Troubleshooting (CIT)

Required exams for CCNP certification after training classes are as follows:

- 642-891 Composite
- 642-821 BCRAN
- 642-831 CIT
- Optical network training
- Training specifically for the optical network will consist of the following classes:
- Synchronous Optical Network (SONET) – (Web based)
- The Synchronous Digital Hierarchy (SDH) (Web based)
- Dense Wavelength Division Multiplexing (DWDM) (Web based)
- Explaining Optical Transmission (Web based)
- Cisco ONS 15454 MSTP Turn Up, Test, Provisioning, and Operation (OMSTP)
- Cisco ONS 15216 Provisioning and Operation Training (OPODA) 2.3
- Examinations for optical certification
- Cisco Optical SONET Exam (SONET 642-311)

D. On-the-job Training. In addition to the classes, Vendor will provide on-the-job training so that the PBC or User Agency network personnel can shadow the Vendor network implementation team as the Network is installed and begins operation. This on-the-job training will reinforce the material learned in the classes and give PBC and the User Agency a full understanding of the Fiber Network.

E. Centrepath Training. Vendor will also train the PBC or User Agency's network staff on the use of Centrepath's PowerCONTROL Management Interface. This portal will allow PBC or the User Agency to see the status of the Network.

F. Other Training. Vendor will design and present a forty (40) hour block of training that is specific to the System's architecture and all of its components (to include problem identification, resolution and routine support protocols).

3. **Mentors**

In addition to course materials and self-directed refresher training materials provided to PBC or the applicable User Agency, Vendor will provide a mentor support system and help desk to provide support and timely help to users. Mentors will be available via phone, online or e-mail as dictated by the level of urgency. Mentor calls will be logged in and provide level-one resolution or escalate issues to a technical support team. Generation of incident reports will be provided weekly to present the nature, status, resolution/escalation and closing of issues raised by users. The selection of an acceptable tracking program to follow incident requests will be determined based on the needs of the PBC or applicable User Agency. Mentor services will be available as a 24 X 7 multi-shift operation as part of the Help Desk support.

4. **Development Approach**

[Insert methodology used to analyze training requirements in terms of performance objectives and to develop course objectives that are appropriate for each target group. List the topics or subjects on which the training will be conducted will be listed].

5. **Issues and Recommendations**

[Insert any current and foreseeable issues surrounding training and recommendations for resolving each issue and constraints and limitations.]

6. Needs and Skills Analysis

[Insert audiences for courses to be developed, tasks that will be taught to meet objectives successfully and the skills that are needed to accomplish those tasks]

7. Instructional Methods

A. Training Methods. [Insert the training methods to be used in the proposed courses; these methods should relate to the needs and skills identified in Section 3 Needs and Skills Analysis, and should take into account such factors as course objectives, the target audience for a particular course, media characteristics, training and setting criteria. List the materials for the chosen training approach, such as course outlines, audiovisual aids, instructor and student guides, student workbooks, examinations, and reference manuals].

B. Training Database. [Identify and discuss the training database and how it will be used during computer systems training. List the simulated production data related to various training scenarios and cases developed for instructional purposes.

C. Testing and Evaluation. [Insert methods used to establish and maintain Quality Assurance over the curriculum development process. This description should include methods used to test and evaluate training effectiveness, evaluate student progress and performance, and apply feedback to modify or enhance the course materials and structure].

8. Training Resources

A. Course Administration. [Insert methods used to administer the training program, including procedures for class enrollment, student release, reporting of academic progress, course completion and certification, monitoring of the training program, training records management, and security, as required].

B. Resources and Facilities. [Insert resources required by both instructors and students for the training, including classroom, training, and laboratory facilities; equipment such as an overhead projector, projection screen, flipchart or visual aids panel with markers, and computer and printer workstations; and materials such as memo pads and pencils, diskettes, viewgraphs, and slides].

C. Schedules. [Insert schedule for implementing the training strategy and schedule for the courses].

9. Training Curriculum

[Insert any additional relevant training curriculum which is not specified above. Each course may comprise one or more modules. A course description will be developed for each module. At a minimum, each course description will include the course/module name; the length of time the course/module will take; the expected class size (minimum, maximum, optimal); the target audience; course objectives; module content/syllabus; specific training resources required, such as devices, aids, equipment, materials, and media to be used; and any special student prerequisites. The course description will also include information on instructor-to-student ratio, total number of students to be trained, estimated number of classes, location of classes, and testing methods].

10. Training Records

[Insert the capture and storage of the training records].

SCHEDULE 3.1

Task Order 1

This Task Order 1 is effective as of February 14, 2006 and is by and between the Public Building Commission of Chicago, a municipal corporation of local government existing under the Constitution of the State of Illinois ("PBC" or "**Commission**") on behalf of itself and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois (the "**City**") and the other agencies, branches and divisions of state or local government in Illinois (the "**Sister Agencies**"), and International Business Machines Corporation, a New York corporation ("**Vendor**" or "**IBM**") and is issued under and is subject to the terms and conditions set forth in the Master Agreement, dated February 3, 2006, between the PBC and Vendor (the "**Agreement**"), and is incorporated by reference therein. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

RECITALS

- A. The Agreement provides that Services, and Goods and Software must be authorized in writing in a Task Order that describes with particularity such Services, and Goods and Software, together with any Deliverables, a timetable for delivery, and other specific commercial terms regarding such Services, Goods and Software, including the applicable Fees.
- B. PBC desires that Vendor provide certain Services, Goods and Software in connection with Phase 1, Phase 2 and Phase 4 of the Project in accordance with the Agreement and as set forth herein, and Vendor desires to provide such Services, Goods and Software in accordance with the Agreement and as set forth herein.
- C. Vendor is solely responsible for successful completion of all work (regardless if performed by a subcontractor), customer satisfaction and any remediation required.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, the Parties agree as follows:

ARTICLE 1. TASK ORDER AND NOTICE TO PROCEED

Vendor shall not commence the Services under this Task Order 1 unless and until the PBC issues to Vendor a Notice to Proceed authorizing Services that are within the scope of this Task Order 1, describing on such notice the specific scope of the Services to be performed to be delivered, and attaching or incorporating this Task Order 1. Upon receipt of an executed Notice to Proceed issued by the Executive Director or Designee, and acceptance of such Notice to Proceed by Vendor, Vendor will promptly commence (upon the effective date as provided in such Notice to Proceed) and perform, in accordance with the Agreement, including this Task Order 1 and such Notice to Proceed, only the Services set forth in such Notice to Proceed.

ARTICLE 2. ASSUMPTIONS

2.1. Overview

The Parties acknowledge and agree that they have entered into this Task Order 1 based on the assumptions stated in this Article 2 (the "Assumptions"), and that they will negotiate in good faith adjustments to this Task Order 1 (i) pursuant to the Change Control Process to the extent deviations in the Assumptions have a direct impact on the Goods, Software and Services or (ii) as otherwise provided in this Article 2. Vendor agrees that if an Assumption is not true, Vendor will promptly notify the PBC in writing and use commercially reasonable efforts to mitigate any adverse impact on the Goods, Software and Services and any potential increase in the Fees, including abiding by the Procedures Manual. Vendor agrees that these Assumptions are the only assumptions regarding the Services under this Task Order 1.

2.2. Assumptions

1. Vendor will provide Services under Task Order 1 during normal business hours, 08:00 a.m. to 05:00 pm Monday through Friday within your location's time zone, except national holidays, unless otherwise mutually agreed. Services labor pricing has been based upon the above operating hours.
2. The Services will be performed at locations in Chicago, IL.
3. Vendor may utilize subcontractors to staff some of this engagement.
4. Underwriters Laboratory approval and certification requires approximately 6-8 weeks after designs are approved by the PBC.
5. Vendor will place all packing materials and refuse in areas and/or containers designated by the PBC, within the same floor or POP of the work performed.
6. The information contained in Task Order 1 is based on information provided to Vendor by the PBC. If elements are found to differ from what was indicated, any changes necessary must be addressed via the Change Control Process. Vendor reserves the right to modify pricing or schedules if assumptions prove to be materially different during due diligence.
7. Delivery of Goods and Software is dependent upon availability from the manufacturer. In the event that availability through the normal ordering process does not meet the needs of the PBC, the Change Control Process may be used to procure the Goods and Software through other channels. Additional charges may apply.
8. All non-Vendor Goods must be approved by Vendor's Product Safety Review Board prior to Vendor placing an order. If any Good does not meet Vendor safety specifications, Vendor will work with PBC to identify an alternate. Procurement of an alternate will occur only upon PBC approval.
9. The Fees assume that there are not any material environmental, structural, electrical or plumbing problems at the Sites and that Vendor will be able to perform the Construction

Work and other installation Service activity without delay or costs related to any such problems.

10. Vendor will have access to all available architectural design documentation, configuration information, and network topology documentation necessary to perform analysis and evaluation.
11. The bill of materials associated with the planned installations may change as a result of the findings in the site survey or during installation activity. All changes to the Goods or Software proposed or the Services for such Goods or Software will be processed through the Change Control Process.
12. Vendor E-box will be mounted to the side of the existing A cabinet.
13. E-box is accessible at street level.
14. Existing light poles can support the weight and wind loading of the proposed camera and wireless equipment.
15. Conduit pathway exists between each light pole and the supporting A cabinet. Conduit between pole and A-cabinet is free of any blockage and has adequate space available.
16. A-cabinet has adequate room for cabling passing through it from conduit to attached E-box.
17. The conduits documented in MAP room as available at the site ingress/egress are accurately depicted as to location and usability for the intended tasks in the Network.
18. Demarcation for all fiber cable plant will be within 25 feet of the DWDM equipment at all sites.
19. All handoffs from PBC equipment are single-mode fiber, multimode fiber, or Category-5e/Category-6 UTP copper.
20. Existing fiber optic cable is capable of supporting the services specified.
21. Fiber amplification and regeneration is not required on the fiber optic cable.
22. OTDR and chromatic dispersion test will be performed on the optical rings by Vendor.
23. Power level test (only) will be performed on the fiber optic cabling between the E-box and the associated POP by IBM. Other tests may be provided at PBC request.
24. In the Financial District of the Central Business District - 100% of existing conduit between POP location and each E-box location is free of any blockage and has adequate space available.
25. For the remainder of CBD Fiber, Installation and Duct, we are assuming 75% of existing conduit between POP location and each E-box location is free of any blockage and has adequate space available. 25% of existing conduit between POP location and each E-box location is blocked and requires trenching and replacement or is nonexistent and requires installation of conduit. Up to 44 miles of fiber optic cabling is required.

26. For the services surrounding the Phase 2 Fiber, Installation and Duct, we are assuming 25% of existing conduit between POP locations is free of any blockage and has adequate space available. 75% of existing conduit between POP locations is blocked or does not exist and requires trenching and replacement or is nonexistent and requires installation of conduit. Up to 20 miles of fiber optic cabling is required.
27. Robust route diversity required for network survivability is contingent upon finding adequate fiber routes among the pathways and streets.
28. An operational IP-based network exists in locations where the integration work will occur.
29. The existing Goods as of the Effective Date that are City-owned can be integrated into the Network so that the System, with such Goods, meets the applicable Specifications.
30. The types of cameras existing at the effective date can be integrated into the System.
31. All POP and data center sites will have adequate physical space, proper AC and/or DC power systems, power receptacles, UPS system, equipment racks, cable trays, cable ladders, cables, patch panels, HVAC and other facility and ancillary items that are required for completion of the project.
32. Expansion beyond 32 wavelengths (lambdas) of service channels may require a change of optical multiplexing hardware and installation of additional fiber between sites.
33. Each City agency will provide an IP addressing scheme. The required number of IP addresses is available.
34. Pricing is based upon work being completed within a 3-month timeframe from the NTP effective start date.
35. Stored video files will be accessible from existing City workstations based on video surveillance command and control computer hardware residing on the City network based on City security policies and procedures.
36. VidShield is a backend high-level command and control system to which the Vendor system will provide a video feed hand off.
37. The Vendor system can integrate with OEMC VidShield. The integration services and equipment are not included in Task Order 1.
38. Each video server will handle 60 cameras.
39. The addition of any cameras above a quantity of 264 will require additional servers, storage, software and ancillary equipment at both the primary and backup facilities.
40. Each additional server will require an incremental amount of additional storage added to the Storage Area Network. Additional storage controllers will also be required at certain points of scalability.
41. Up to 264 new cameras are required in Phase 1.

42. Vendor pricing is based on providing only one fiber pair to each E-box location.
43. Vendor will not be obligated to rent space for meetings with the PBC, Sister Agency or other Users.
44. A suitable quantity of existing fiber strands will be available to build a resilient backbone network.

2.3. PBC Responsibilities

The PBC will perform its obligations under the Agreement and as outlined in the approved Project Plan and Procedures Manual.

2.3.1. PBC Project Manager. PBC will provide a PBC Project Manager as set forth in Section 8.2 of the Master Agreement. The PBC Project Manager's responsibilities include:

- A) Serve as the interface between Vendor and the PBC.
- B) Adhere to the Change Control Process with the Vendor Project Manager.
- C) Provide agenda items for PBC meetings in a reasonable timeframe.
- D) Attend Project status meetings.
- E) Help resolve Project issues and escalate issues as set forth in the Master Agreement and the approved Procedures Manual.
- F) Comply with PBC's obligations with respect to licenses as set forth under this Agreement.

2.3.2. PBC's Responsibilities. PBC will perform PBC's responsibilities in cooperation with Vendor as set forth in the approved Project Plan and Procedures Manual.

- A) For all product returns, PBC will work with Vendor and not the Original Equipment Manufacturer (OEM).
- B) PBC will operate the IBM system along side the Vidshield system to determine future roadmap, integration and migration path.

2.3.3. Office Space. Upon request by Vendor, PBC will arrange at a City Facility temporary working space for the number of Vendor Personnel identified in the approved Project Plan.

2.3.4. Maintenance & Warranty.

- A) PBC will require the City to agree to limit access to the Vendor Software and information databases under the City's control to those who are authorized to use them.
- B) PBC will participate in periodic status meetings and comply with reasonable information requests related to the Services in this Task Order 1.
- C) PBC will pay any communications charges associated with accessing optional services unless Vendor specifies otherwise in writing.

2.3.5. Cisco.

- A) PBC will follow all Cisco and Vendor provided guidelines (such as operators manuals and call placement procedures) pertaining to operator responsibilities, maintenance procedures, and supplies prior to placing a Service request as set forth in the approved Procedures Manual.
- B) Upon request and as set forth in the approved Procedures Manual, provide Vendor access to PBC's Hardware via modem or the Internet for remote problem diagnosis and correction. PBC will be responsible for supplying the modem and telephone lines required at the City Facilities and providing Vendor temporary user access to the Hardware while under the PBC's control at the City Facilities. The PBC will remain responsible for the security of PBC's information as long as a breach of the security is not caused by an act or omission of Vendor.
- C) PBC agrees to notify VENDOR of any modification to the Hardware or Software configuration, including upgrades or changes to Field replaceable Units (FRUs) not in the original configuration, within five (5) days of such modification.
- D) Provide VENDOR with reasonable notice (preferably 1 month) for moves, additions, or deletions of Hardware.
- E) When requested, provide a list, including annual updates, of all PBC or the City personnel that PBC has authorized to use Cisco resources (e.g. TAC, OCO, Cisco.com) under this Task Order 1.

2.3.6. On-Site Services.

- A) Ensure all Cisco and back office Hardware is installed below ten (10) feet. For Hardware installed above four (4) feet, provide ladders that reach the height of the Hardware.
- B) Upon request by Vendor, provide TFTP capabilities or Internet access for the purpose of downloading Software images by Vendor Personnel.

ARTICLE 3. EVALUATION, ANALYSIS AND DESIGN SERVICES

3.1. Camera System

The services described within this section will be performed to the standards established in the Agreement.

3.1.1. Services. Vendor will perform the following Services:

- A) Develop criteria for the placement and selection of 264 (two hundred sixty four) cameras.
- B) Create a printable electronic site Survey document format to record data gathered from each of the camera locations.
- C) Perform a street level Survey in order to document camera mounting location and camera view. This Survey will contain digital photographs from the Submittal cameras proposed by Vendor for use in the Project. The Survey form will also contain high resolution digital camera photos of the camera installation location.

3.1.2. Critical Deliverable

- A) 264 site Survey forms

3.2. E-Box System

3.2.1. Services. Vendor will perform the following Services:

- A) Create a printable electronic Survey in document format to record data gathered from each of the E-Box locations.
- B) Perform intersection level Surveys to document availability and usability of existing underground conduit pathways from camera location (pole) to existing P-cabinet and proposed E-Box locations.
- C) Determine if the P-Cabinet can satisfy power requirements of the E-Box.
- D) Produce and deliver to the PBC the IT Design Documents and the Construction Work Design Documents that relate to the E-Box.
- E) Construct prototype E-Box for submission to the PBC for approval.
- F) Submit prototype E-Box to Underwriters' Laboratory for approval.

3.2.2. Critical Deliverable

- A) 264 site Survey forms
- B) IT Design Documents and the Construction Work Design Documents

- C) Vendor shall submit the prototype E-Box to Underwriters' Laboratory for testing and approval and certification

3.3. Fiber Edge Network

3.3.1. Services. Vendor will perform the following Services:

- A) Create a printable electronic Survey document format to record data gathered from fiber pathway.
- B) Perform analysis and evaluation of documentation provided by PBC (maps, drawings, surveys, reports etc) of existing fiber resources and pathways available for use.
- C) Update the Design Documents an analysis and evaluation of the use of existing and new fiber pathways in connection with implementation of the System, including a detailed GIS map and proposed fiber routes identifying new (trench) and existing conduit pathways.

3.3.2. Critical Deliverable.

- A) Updated Design Documents

3.4. POP, Primary and Backup Sites

3.4.1. Services. Vendor will perform the following Services:

- A) Evaluate PBC provided possible CBD POP site list required to support the five (5) POPs.
- B) Gain a thorough understanding of the physical aspects of the OEMC and selected POP sites from the standpoint of equipment installation and fiber connectivity by:
 - (1) Surveying each POP site to determine availability of adequate power, grounding, rack space, HVAC capacity, UPS systems, network connectivity & connections, cabling, conduits etc required to support the new equipment.
 - (2) Evaluate existing fiber strands from each of these POP sites to support the remaining CBD fiber ring.
 - (3) Documenting the security requirements and access arrangements for each site.
 - (4) Develop a list of contacts and reach numbers related to each Site.
 - (5) Determine the requirements for shipping materials to each Site (e.g. – loading dock access, freight elevator size, reservation required, etc.).
- C) Once the POP sites have been determined in the task above, IBM will:

- (1) Identify which E-Box (cameras) will be connected to the appropriate POPs determined above.
- (2) Provide high-level analysis of conduit pathway from the 264 E-Box locations noted above to five (5) POP sites in the analysis above.
- D) Update the Design Documents to include Site Survey analysis of the five (5) POP locations, including digital photos of the equipment rooms and support equipment requirements (HVAC, AC, Racks, Space, etc.), and a detailed GIS map documenting the locations of the POPs and pathways to the associated E-Boxes.

3.4.2. Critical Deliverable

- A) Survey documents (electronic format)
- B) Updated Design Documents

3.5. Fiber Back Bone

3.5.1. Services. Vendor will perform the following Services:

- A) Evaluate PBC provided possible POP site list required to support the five (5) POPs.
- B) Gain a thorough understanding of the physical aspects of the OEMC fiber pathways and selected POP site pathways.
- C) Gain a thorough understanding of the city street and right-of-way conduit options for interconnecting the OEMC centers and the POP sites.
- D) Surveying each POP site to determine fiber entry/exit points, building riser requirements and patch panel locations.
- E) Evaluate existing fiber strands presented by PBC from each of these POP sites to support the remaining CBD fiber ring.
- F) Update the Design Documents to include a summary with respect to, and an evaluation of, the results of the Services provided in A) through E) of this Section 3.5. Such summary and evaluation shall also (i) recommend a plan for re-use of existing fiber strands and (ii) propose POP Site locations.

3.5.2. Critical Deliverables.

- A) Updated Design Documents

3.6. Video System

3.6.1. Services. Vendor will perform the following Services:

- A) Analyze the existing video system (VidShield) and its operation.

- B) Determine the location for servers and storage at OEMC and Backup Command Center locations.
- C) Update Design Documents to include a summary with respect to, and an evaluation of, the results of the Services provided in A) and B) of this Section 3.6. The update shall include a building layout depicting the location of servers / storage and network connectivity.

3.6.2. Critical Deliverables.

- A) Updated Design Documents

3.7. Network LAN and Management System

3.7.1. Services. Vendor will perform the following Services:

- A) Evaluate existing LAN port availability, switch configuration, VLAN, IP addressing scheme used at the OEMC and Backup Command Center.
- B) Analyze the existing management systems' operation and software systems.
- C) Update Design Documents to include the evaluation and analysis of the results of the Services provided in A) and B) of this Section 3.7, including a Layer 3 analysis.

3.7.2. Critical Deliverables

- A) Updated Design Documents

3.8. Design Documents

3.8.1. Services. Vendor will perform the following Services:

- A) Develop the final Construction Design Documents, and the final IT Design Documents relating to Phase 1 and Phase 2 (collectively, the "Design Documents"). The Design Documents shall include the results of the surveys of Sites as provided in this Article 3 ("Survey").
- B) Identify and provide to the PBC the Submittals proposed by Vendor and approved for review by the PBC.

3.8.2. Milestone Deliverables.

- A) Construction Design Documents.
- B) IT Design Documents

ARTICLE 4. PROCUREMENT SERVICES

4.1. Introduction

Vendor will provide Services and procure Goods and Software in order to implement the Network and System with respect to Phase 1, Phase 2 and Phase 4, including the LAN, Vendor provided components of the Management System, the Storage Area Network and the Video System at a primary data center located at 1411 West Madison, Chicago, IL 60607 (the "PDC") and a backup communications facility located at 2111 W. Lexington, Chicago, IL 60607 (the "BCF"). Vendor will procure the Goods and Software in accordance with the terms of the Master Agreement and Schedule 4.2 (Terms and Conditions Related to Goods). If any of the Goods or Software is stored at a Vendor Facility, Vendor shall amend Schedule 10.4(b) to list the City property located at the Vendor Facility. Vendor shall then label the City property as agreed to by the PBC. The services described within this section will be performed to the standards established in the Agreement.

4.2. Procurement of the Goods and Software

4.2.1. Cameras. Vendor will procure the following cameras.

Table 4.1

Camera Configuration		
Quantity	Part#	Description
264	SD53CBW-PG-EO	Pelco Spectra 3, Day/Night, 23X Pan Tilt Zoom

4.2.2. Network Edge Kit. Vendor will procure the following components in order to complete 264 Network Edge Kits.

Table 4.2

Network Edge Kit (NEK) Configuration		
Quantity	Part#	Description
1	V1500-E-A	Single port video encoder with audio
2	282005	VIDEOEASE CCTV PASS-THRU BALUN
100 feet	CM-422-7B-08-CCTP	CCTP VIDEO CABLE NON-PLENUM
1	226124	MILAN TECH MEDIA CONVERTER
1	MM03-AV6-01	CAT5E T568A/B 3FT
2	170001	ST CONNECTOR 62.5/125 CER
1	231048	POWER SUPPLY, TRANSFORMER
1	1097.100	NEMA ENCLOSURE
1	2535.000	T HANDLE W/LOCK
1	2584.000	POLE MOUNTING
1	2433.000	BRACKETS 3/8 STANDOFF
1	3107.00	HEATER
1	3321.115	FAN
1	3321.200	EXHAUST
2	3110.00	THERMOSTAT
2	3321.800	SHROUD

4.2.3. Point of Presence ("POP") – 5 Locations in the CBD, 2 locations in the north fiber ring and 3 in the south in the south fiber ring. Vendor will procure the following Goods and Software.

Table 4.2.3-1

CBD RING Qty= 4 Pops		
Qty	Product Number	Description
	Cisco 7606	
1	CISCO7606	Cisco 7606 Chassis Bundle
1	FAN-MOD-6HS	High Speed Fan Module for CISCO7606 Chassis
1	7606-2SUP7203B-2PS	Cisco 7606 Chassis, 6-slot, 2 SUP7203B, 2 Power Supply
1	SUP720-3B	Supervisor Engine 720-3B
1	SUP720-3B	Supervisor Engine 720-3B
2	2700W-DC/6	2700 W DC Power Supply for 7606
4	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
1	S763ZK9M-12218SXD	Cisco 7600-SUP720 IOS ADV IP W/MPLS/IPV6/SSH/3DES
1	WS-X6748-SFP	Catalyst 6500 48-port GigE Mod: fabric-enabled (Req. SFPs)
1	MEM-XCEF720-256M	Catalyst 6500 256MB DDR, xCEF720 (67xx interface, DFC3A)
1	WS-F6700-CFC	Catalyst 6500 Central Fwd Card for WS-X67xx modules
29	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
2	PWR-2700-DC	2700W DC power supply for CISCO7606
2	7606-PEM-CVR	Cisco 7606 PEM Cover
	DWDM 15454	
1	CISCO15454	15454 ATO (Assemble to Order).
1	15454-SA-HD	15454 SA HD NEBS3 ANSI w/ RCA and Ship Kit
1	15454-FTA3-T	Shelf Fan Tray Assembly, ANSI, 15454, HPCFM, I-Temp
2	15454-TCC2P-K9	Timing Communications Control Two Plus, I-Temp
2	SF15454-R6.0.0K9	Rel. 6.0.0 SW, Pre-loaded on TCC
1	15454-R6.0.0SWK9	Rel. 6.0.0 Feature Pkg., CD, Right To Use License
9	15454-BLANK	Empty slot Filler Panel
1	15454-AIR-RAMP=	ONS 15454 Air Ramp / Baffle for the ANSI Chassis
1	15454-FBR-STRG=	Fiber Storage Shelf
2	15454-OSC-CSM=	ONS 15454 Combiner and Separator with OSC Module
2	15454-AD-4C-58.1=	ONS 15454 OADM - 4 Chs - 100GHz - 58.17-58.98-59.79-60.61
2	15454-MR-L1-58.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1558.17-1560.61
4	15454-LC-LC-2=	Fiber patchcord - LC to LC - 2m

2	15454-SFP-GE+LX=	SFP - GE/1G-FC/2G-FC/HDTV - 1310nm - SM - LC

Table 4.2.3-2

CBD RING: Qty= 1 POP		
Qty	Product Number	Description
	Cisco 7606	
1	CISCO7606	Cisco 7606 Chassis Bundle
1	FAN-MOD-6HS	High Speed Fan Module for CISCO7606 Chassis
1	7606-2SUP7203B-2PS	Cisco 7606 Chassis, 6-slot, 2 SUP7203B, 2 Power Supply
1	SUP720-3B	Supervisor Engine 720-3B
1	SUP720-3B	Supervisor Engine 720-3B
2	2700W-DC/6	2700 W DC Power Supply for 7606
4	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
1	S763ZK9M-12218SXD	Cisco 7600-SUP720 IOS ADV IP W/MPLS/IPV6/SSH/3DES
1	WS-X6748-SFP	Catalyst 6500 48-port GigE Mod: fabric-enabled (Req. SFPs)
1	MEM-XCEF720-256M	Catalyst 6500 256MB DDR, xCEF720 (67xx interface, DFC3A)
1	WS-F6700-CFC	Catalyst 6500 Central Fwd Card for WS-X67xx modules
29	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
2	PWR-2700-DC	2700W DC power supply for CISCO7606
2	7606-PEM-CVR	Cisco 7606 PEM Cover
	DWDM 15454	
1	CISCO15454	15454 ATO (Assemble to Order).
1	15454-SA-HD	15454 SA HD NEBS3 ANSI w/ RCA and Ship Kit
1	15454-FTA3-T	Shelf Fan Tray Assembly, ANSI, 15454, HPCFM, I-Temp
2	15454-TCC2P-K9	Timing Communications Control Two Plus, I-Temp
2	SF15454-R6.0.0K9	Rel. 6.0.0 SW, Pre-loaded on TCC
1	15454-R6.0.0SWK9	Rel. 6.0.0 Feature Pkg., CD, Right To Use License
9	15454-BLANK	Empty slot Filler Panel
1	15454-AIR-RAMP=	ONS 15454 Air Ramp / Baffle for the ANSI Chassis
1	15454-FBR-STRG=	Fiber Storage Shelf
2	15454-OSC-CSM=	ONS 15454 Combiner and Separator with OSC Module
2	15454-AD-4C-54.1=	ONS 15454 OADM - 4 Chs - 100GHz - 54.13-54.94-55.75-56.55
2	15454-MR-L1-54.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1554.13-1556.55
4	15454-LC-LC-2=	Fiber patchcord - LC to LC - 2m
2	15454-SFP-GE+LX=	SFP - GE/1G-FC/2G-FC/HDTV - 1310nm - SM - LC

Table 4.2.3-3

North Ring POPs Qty=2		
Qty	Product Number	Description
	Cisco 7606	
1	CISCO7606	Cisco 7606 Chassis Bundle
1	FAN-MOD-6HS	High Speed Fan Module for CISCO7606 Chassis
1	7606-2SUP7203B-2PS	Cisco 7606 Chassis, 6-slot, 2 SUP7203B, 2 Power Supply
1	SUP720-3B	Supervisor Engine 720-3B
1	SUP720-3B	Supervisor Engine 720-3B
2	2700W-DC/6	2700 W DC Power Supply for 7606
4	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
1	S7632K9M-12218SXD	Cisco 7600-SUP720 IOS ADV IP W/MPLS/IPV6/SSH/3DES
1	WS-X6748-SFP	Catalyst 6500 48-port GigE Mod: fabric-enabled (Req. SFPs)
1	MEM-XCEF720-256M	Catalyst 6500 256MB DDR, xCEF720 (67xx interface, DFC3A)
1	WS-F6700-CFC	Catalyst 6500 Central Fwd Card for WS-X67xx modules
29	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
2	PWR-2700-DC	2700W DC power supply for CISCO7606
2	7606-PEM-CVR	Cisco 7606 PEM Cover
		Chassis Total (US Dollar):
	DWDM 15454	
1	CISCO15454	15454 ATO (Assemble to Order).
1	15454-SA-HD	15454 SA HD NEBS3 ANSI w/ RCA and Ship Kit
1	15454-FTA3-T	Shelf Fan Tray Assembly, ANSI, 15454, HPCFM, I-Temp
2	15454-TCC2P-K9	Timing Communications Control Two Plus, I-Temp
2	SF15454-R6.0.0K9	Rel. 6.0.0 SW, Pre-loaded on TCC
1	15454-R6.0.0SWK9	Rel. 6.0.0 Feature Pkg., CD, Right To Use License
9	15454-BLANK	Empty slot Filler Panel
1	15454-AIR-RAMP=	ONS 15454 Air Ramp / Baffle for the ANSI Chassis
1	15454-FBR-STRG=	Fiber Storage Shelf
2	15454-OSC-CSM=	ONS 15454 Combiner and Separator with OSC Module
2	15454-AD-4C-58.1=	ONS 15454 OADM - 4 Chs - 100GHz - 58.17-58.98-59.79-60.61
2	15454-MR-L1-58.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1558.17-1560.61
4	15454-LC-LC-2=	Fiber patchcord - LC to LC - 2m
2	15454-SFP-GE+LX=	SFP - GE/1G-FC/2G-FC/HDTV - 1310nm - SM - LC

Table 4.2.3-4

South Ring POPs: Qty=3		
Qty	Product Number	Description
Cisco 7606		
1	CISCO7606	Cisco 7606 Chassis Bundle
1	FAN-MOD-6HS	High Speed Fan Module for CISCO7606 Chassis
1	7606-2SUP7203B-2PS	Cisco 7606 Chassis, 6-slot, 2 SUP7203B, 2 Power Supply
1	SUP720-3B	Supervisor Engine 720-3B
1	SUP720-3B	Supervisor Engine 720-3B
2	2700W-DC/6	2700 W DC Power Supply for 7606
4	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
1	S763ZK9M-12218SXD	Cisco 7600-SUP720 IOS ADV IP W/MPLS/IPV6/SSH/3DES
1	WS-X6748-SFP	Catalyst 6500 48-port GigE Mod: fabric-enabled (Req. SFPs)
1	MEM-XCEF720-256M	Catalyst 6500 256MB DDR, xCEF720 (67xx interface, DFC3A)
1	WS-F6700-CFC	Catalyst 6500 Central Fwd Card for WS-X67xx modules
29	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
2	PWR-2700-DC	2700W DC power supply for CISCO7606
2	7606-PEM-CVR	Cisco 7606 PEM Cover
DWDM 15454		
1	CISCO15454	15454 ATO (Assemble to Order)
1	15454-SA-HD	15454 SA HD NEBS3 ANSI w/ RCA and Ship Kit
1	15454-FTA3-T	Shelf Fan Tray Assembly, ANSI, 15454, HPCFM, I-Temp
2	15454-TCC2P-K9	Timing Communications Control Two Plus, I-Temp
2	SF15454-R6.0.0K9	Rel. 6.0.0 SW, Pre-loaded on TCC
1	15454-R6.0.0SWK9	Rel. 6.0.0 Feature Pkg., CD, Right To Use License
9	15454-BLANK	Empty slot Filler Panel
1	15454-AIR-RAMP=	ONS 15454 Air Ramp / Baffle for the ANSI Chassis
1	15454-FBR-STRG=	Fiber Storage Shelf
2	15454-OSC-CSM=	ONS 15454 Combiner and Separator with OSC Module
2	15454-AD-4C-58.1=	ONS 15454 OADM - 4 Chs - 100GHz - 58.17-58.98-59.79-60.61
2	15454-MR-L1-58.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1558.17-1560.61
4	15454-LC-LC-2=	Fiber patchcord - LC to LC - 2m
2	15454-SFP-GE+LX=	SFP - GE/1G-FC/2G-FC/HDTV - 1310nm - SM - LC

Table 4.2.3-5

Quantity	Part#	Description
3	246868	2-F JUMPER 10FT/3MT 8.3/125
1	248883	18/36-F RACK-MT ENCLOSURE
2	270999	6 PORT PANEL LC DUPLEX LOADED
1	521095	BLANK ADAPTER PANEL
24	268815	LC CONNECTOR DUPLEX

4.2.4. Primary Data Center (PDC). In addition to procuring the Goods and Software set forth above, Vendor will procure the following Goods and Software to perform the Services at the PDC.

Table 4.2.4-1

		PDC CBD Support
Qty	Product Number	Description
	Cisco 7606	
1	CISCO7606	Cisco 7606 Chassis Bundle
1	FAN-MOD-6HS	High Speed Fan Module for CISCO7606 Chassis
1	7606-2SUP7203B-2PS	Cisco 7606 Chassis, 6-slot, 2 SUP7203B, 2 Power Supply
1	SUP720-3B	Supervisor Engine 720-3B
1	SUP720-3B	Supervisor Engine 720-3B
2	2700W-AC/6	2700 W AC Power Supply for 7606
4	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
2	CAB-GSR16-US	Cisco 12016 GSR AC Power Supply Cord, US
1	S763ZK9M-12218SXD	Cisco 7600-SUP720 IOS ADV IP W/MPLS/IPV6/SSH/3DES
1	WS-X6724-SFP	Catalyst 6500 24-port GigE Mod: fabric-enabled (Req. SFPs)
22	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
2	PWR-2700-AC	2700W AC power supply for CISCO7606
1	MEM-XCEF720-256M	Catalyst 6500 256MB DDR, xCEF720 (67xx interface, DFC3A)
1	WS-F6700-CFC	Catalyst 6500 Central Fwd Card for WS-X67xx modules
2	7606-PEM-CVR	Cisco 7606 PEM Cover
	DWDM 15454	
2	CISCO15454	15454 ATO (Assemble to Order).
2	15454-SA-HD	15454 SA HD NEBS3 ANSI w/ RCA and Ship Kit
2	15454-FTA3-T	Shelf Fan Tray Assembly, ANSI, 15454, HPCFM, I-Temp

4	15454-TCC2P-K9	Timing Communications Control Two Plus, I-Temp
4	SF15454-R6.0.0K9	Rel. 6.0.0 SW, Pre-loaded on TCC
2	15454-R6.0.0SWK9	Rel. 6.0.0 Feature Pkg., CD, Right To Use License
16	15454-BLANK	Empty slot Filler Panel
1	15454-AIR-RAMP=	ONS 15454 Air Ramp / Baffle for the ANSI Chassis
1	15454-FBR-STRG=	Fiber Storage Shelf
2	15454-PP-64-LC=	Patch Panel Shelf - 64 Connectors - LC/UPC
2	15454-OSCM=	ONS 15454 Optical Service Channel Module
2	15454-32-WSS=	32 Ch Wavelength Selective Switch
2	15454-32-DMX=	32 Ch DMUX 100 GHz (for use with 32.WSS)
3	15454-MR-L1-58.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1558.17-1560.61
2	15454-MR-L1-54.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1554.13-1556.55
4	15454-MPO-8LC-2=	Multi-fiber patchcord - MPO to 8xLC - 2m
40	15454-LC-LC-2=	Fiber patchcord - LC to LC - 2m
	15454-LC-LC-5=	Not Available - quantity added to item above
5	15454-SFP-GE+LX=	SFP - GE/1G-FC/2G-FC/HDTV - 1310nm - SM - LC

Table 4.2.4-2

PDC North Ring Support		
Qty	Product Number	Description
	DWDM 15454	
1	CISCO15454	15454 ATO (Assemble to Order).
1	15454-SA-HD	15454 SA HD NEBS3 ANSI w/ RCA and Ship Kit
1	15454-FTA3-T	Shelf Fan Tray Assembly, ANSI, 15454, HPCFM, I-Temp
2	15454-TCC2P-K9	Timing Communications Control Two Plus, I-Temp
1	SF15454-R6.0.0K9	Rel. 6.0.0 SW, Pre-loaded on TCC
2	15454-R6.0.0SWK9	Rel. 6.0.0 Feature Pkg., CD, Right To Use License
2	15454-BLANK	Empty slot Filler Panel
1	15454-AIR-RAMP=	ONS 15454 Air Ramp / Baffle for the ANSI Chassis
1	15454-FBR-STRG=	Fiber Storage Shelf
1	15454-PP-64-LC=	Patch Panel Shelf - 64 Connectors - LC/UPC
1	15454-OSCM=	ONS 15454 Optical Service Channel Module
1	15454-OSC-CSM=	ONS 15454 Combiner and Separator with OSC Module
2	15454-32-WSS=	32 Ch Wavelength Selective Switch
2	15454-32-DMX=	32 Ch DMUX 100 GHz (for use with 32.WSS)
2	15454-MR-L1-58.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1558.17-1560.61
4	15454-MPO-8LC-2=	Multi-fiber patchcord - MPO to 8xLC - 2m
16	15454-LC-LC-2=	Fiber patchcord - LC to LC - 2m
2	15454-SFP-GE+LX=	SFP - GE/1G-FC/2G-FC/HDTV - 1310nm - SM - LC

Table 4.2.4-3

PDC: South Ring Support		
Qty	Product Number	Description
	DWDM 15454	
1	CISCO15454	15454 ATO (Assemble to Order)
1	15454-SA-HD	15454 SA HD NEBS3 ANSI w/ RCA and Ship Kit
1	15454-FTA3-T	Shelf Fan Tray Assembly, ANSI, 15454, HPCFM, I-Temp
2	15454-TCC2P-K9	Timing Communications Control Two Plus, I-Temp
1	SF15454-R6.0.0K9	Rel. 6.0.0 SW, Pre-loaded on TCC
2	15454-R6.0.0SWK9	Rel. 6.0.0 Feature Pkg., CD, Right To Use License
2	15454-BLANK	Empty slot Filler Panel
1	15454-AIR-RAMP=	ONS 15454 Air Ramp / Baffle for the ANSI Chassis
1	15454-FBR-STRG=	Fiber Storage Shelf
1	15454-PP-64-LC=	Patch Panel Shelf - 64 Connectors - LC/UPC
2	15454-OSCM=	ONS 15454 Optical Service Channel Module
2	15454-32-WSS=	32 Ch Wavelength Selective Switch
2	15454-32-DMX=	32 Ch DMUX 100 GHz (for use with 32.WSS)
3	15454-MR-L1-58.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1558.17-1560.61
4	15454-MPO-BLC-2=	Multi-fiber patchcord - MPO to 8xLC - 2m
24	15454-LC-LC-2=	Fiber patchcord - LC to LC - 2m
3	15454-SFP-GE+LX=	SFP - GE/1G-FC/2G-FC/HDTV - 1310nm - SM - LC

4.2.5. Backup Communication Facility (BCF). In addition to procuring the Goods and Software set forth above, Vendor will procure the following Goods and Software to perform the Services at the BCF.

Table 4.2.5-1

BCF: CBD Support		
Qty	Product Number	Description
	Cisco 7606	
1	CISCO7606	Cisco 7606 Chassis Bundle
1	FAN-MOD-6HS	High Speed Fan Module for CISCO7606 Chassis
1	7606-2SUP7203B-2PS	Cisco 7606 Chassis, 6-slot, 2 SUP7203B, 2 Power Supply
1	SUP720-3B	Supervisor Engine 720-3B
1	SUP720-3B	Supervisor Engine 720-3B
2	2700W-AC/6	2700 W AC Power Supply for 7606
4	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver
2	CAB-GSR16-US	Cisco 12016 GSR AC Power Supply Cord, US
1	S763ZK9M-12218SXD	Cisco 7600-SUP720 IOS ADV IP W/MPLS/IPV6/SSH/3DES
1	WS-X6724-SFP	Catalyst 6500 24-port GigE Mod: fabric-enabled (Req. SFPs)
22	GLC-LH-SM	GE SFP, LC connector LX/LH transceiver

1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
1	WS-SUP720-3B	Catalyst 6500 / Cisco 7600 Supervisor 720 Fabric MSFC3 PFC3B
1	MEM-S2-512MB	Catalyst 6500 512MB DRAM on the Supervisor (SUP2 or SUP720)
1	MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on the MSFC2 or SUP720 MSFC3
2	PWR-2700-AC	2700W AC power supply for CISCO7606
1	MEM-XCEF720-256M	Catalyst 6500 256MB DDR, xCEF720 (67xx interface, DFC3A)
1	WS-F6700-CFC	Catalyst 6500 Central Fwd Card for WS-X67xx modules
2	7606-PEM-CVR	Cisco 7606 PEM Cover
DWDM 15454		
2	CISCO15454	15454 ATO (Assemble to Order).
2	15454-SA-HD	15454 SA HD NEBS3 ANSI w/ RCA and Ship Kit
2	15454-FTA3-T	Shelf Fan Tray Assembly, ANSI, 15454, HPCFM, I-Temp
4	15454-TCC2P-K9	Timing Communications Control Two Plus, I-Temp
4	SF15454-R6.0.0K9	Rel. 6.0.0 SW, Pre-loaded on TCC
2	15454-R6.0.0SWK9	Rel. 6.0.0 Feature Pkg., CD, Right To Use License
16	15454-BLANK	Empty slot Filler Panel
1	15454-AIR-RAMP=	ONS 15454 Air Ramp / Baffle for the ANSI Chassis
1	15454-FBR-STRG=	Fiber Storage Shelf
2	15454-PP-64-LC=	Patch Panel Shelf - 64 Connectors - LC/UPC
2	15454-OSCM=	ONS 15454 Optical Service Channel Module
2	15454-32-WSS=	32 Ch Wavelength Selective Switch
2	15454-32-DMX=	32 Ch DMUX 100 GHz (for use with 32.WSS)
3	15454-MR-L1-58.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1558.17-1560.61
2	15454-MR-L1-54.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1554.13-1556.55
4	15454-MPO-8LC-2=	Multi-fiber patchcord - MPO to 8xLC - 2m
40	15454-LC-LC-2=	Fiber patchcord - LC to LC - 2m
	15454-LC-LC-5=	Not Available - quantity added to item above
5	15454-SFP-GE+LX=	SFP - GE/1G-FC/2G-FC/HDTV - 1310nm - SM - LC

Table 4.2.5-2

BCF: North Ring Support		
DWDM 15454		
1	CISCO15454	15454 ATO (Assemble to Order).
1	15454-SA-HD	15454 SA HD NEBS3 ANSI w/ RCA and Ship Kit
1	15454-FTA3-T	Shelf Fan Tray Assembly, ANSI, 15454, HPCFM, I-Temp
2	15454-TCC2P-K9	Timing Communications Control Two Plus, I-Temp
1	SF15454-R6.0.0K9	Rel. 6.0.0 SW, Pre-loaded on TCC
2	15454-R6.0.0SWK9	Rel. 6.0.0 Feature Pkg., CD, Right To Use License
2	15454-BLANK	Empty slot Filler Panel

1	15454-AIR-RAMP=	ONS 15454 Air Ramp / Baffle for the ANSI Chassis
1	15454-FBR-STRG=	Fiber Storage Shelf
1	15454-PP-64-LC=	Patch Panel Shelf - 64 Connectors - LC/UPC
1	15454-OSCM=	ONS 15454 Optical Service Channel Module
1	15454-OSC-CSM=	ONS 15454 Combiner and Separator with OSC Module
2	15454-32-WSS=	32 Ch Wavelength Selective Switch
2	15454-32-DMX=	32 Ch DMUX 100 GHz (for use with 32.WSS)
2	15454-MR-L1-58.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1558.17-1560.61
4	15454-MPO-8LC-2=	Multi-fiber patchcord - MPO to 8xLC - 2m
16	15454-LC-LC-2=	Fiber patchcord - LC to LC - 2m
2	15454-SFP-GE+LX=	SFP - GE/1G-FC/2G-FC/HDTV - 1310nm - SM - LC

Table 4.2.5-3

BCF South Ring Support		
DWDM 15454		
1	CISCO15454	15454 ATO (Assemble to Order).
1	15454-SA-HD	15454 SA HD NEBS3 ANSI w/ RCA and Ship Kit
1	15454-FTA3-T	Shelf Fan Tray Assembly, ANSI, 15454, HPCFM, I-Temp
2	15454-TCC2P-K9	Timing Communications Control Two Plus, I-Temp
1	SF15454-R6.0.0K9	Rel. 6.0.0 SW, Pre-loaded on TCC
2	15454-R6.0.0SWK9	Rel. 6.0.0 Feature Pkg., CD, Right To Use License
2	15454-BLANK	Empty slot Filler Panel
1	15454-AIR-RAMP=	ONS 15454 Air Ramp / Baffle for the ANSI Chassis
1	15454-FBR-STRG=	Fiber Storage Shelf
1	15454-PP-64-LC=	Patch Panel Shelf - 64 Connectors - LC/UPC
2	15454-OSCM=	ONS 15454 Optical Service Channel Module
2	15454-32-WSS=	32 Ch Wavelength Selective Switch
2	15454-32-DMX=	32 Ch DMUX 100 GHz (for use with 32.WSS)
3	15454-MR-L1-58.1=	Multi-Rate Txp 100M-2.5G 100G 4ch 1558.17-1560.61
4	15454-MPO-8LC-2=	Multi-fiber patchcord - MPO to 8xLC - 2m
24	15454-LC-LC-2=	Fiber patchcord - LC to LC - 2m
3	15454-SFP-GE+LX=	SFP - GE/1G-FC/2G-FC/HDTV - 1310nm - SM - LC

4.2.6. Video System Hardware and Software. Vendor will procure the following Goods and Software for the Video System (Servers and Storage Area Network):

Table 4.2.6-1

VENDOR xSeries Server Configuration		
Quantity	Part#	Description
10	884015U	X346, Xeon 3.0 GHZ Processor/800MHz, 2MB L2, 2x512MB, 625w p/s

VENDOR xSeries Server Configuration		
Quantity	Part#	Description
10	25R8092	VENDOR XSERIES 3.0 GHZ/800 MHZ - 2 MB L2 CACHE XEON PROCESSOR
10	73P3522	1GB PC2-3200 (2X512MB) ECC DDR2 NON CHIPKILL SDRAM RDIMM
10	02R0988	SERVERAID-6M ULTRA320 SCSI CONTROLLER (256MB
20	24P0960	VENDOR TOTALSTORAGE FASTT FC-133 HOST BUS ADAPTE
20	90P1380	VENDOR 36 GB 15,000-RPM ULTRA320 SCSI HOT-SWAP HDD
10	26K5097	X346 625W HS REDUNDANT POWER SUPPLY OPTION
10	73P9341	REMOTE SUPERVISOR ADAPTER II RSA II SLIM LINE
10	29R5396	RTS - 3 YEAR REMOTE TECHNICAL SUPPORT FOR XSE
2	45594UX	VENDOR 4U RACKMOUNT TAPE ENCLOSURE
2	25R0012	LTO 400/800GB FULL HIGH GEN 3 INTERNAL BACK -UP
2	13N2249	ULTRA320 SCSI CONTROLLER 2
2	930842S	NETBAY42 ENTERPRISE RACK CABINET
4	94G7448	12 FT POWER CABLE C13/C14-TYPE C12 (TIGER 3)
8	32P1736	DPI UNIVERSAL RACK PDU W/ NEMA L5-20P & L6-20
2	17231UX	VENDOR 17" 1U FLAT PANEL MONITOR CONSOLE KIT (WI
2	17351LX	VENDOR 1X8 CONSOLE SWITCH
12	94G7447	NETBAY CONSOLE CABLE 12FT
14	25R5560	VENDOR 3U QUICK INSTALL FILLER PANEL SET
12	25R5559	VENDOR 1U QUICK INSTALL FILLER PANEL SET
4	930842S	NETBAY42 ENTERPRISE RACK CABINET
24	32P1736	DPI UNIVERSAL RACK PDU W/ NEMA L5-20P & L6-20
4	25R5560	VENDOR 3U QUICK INSTALL FILLER PANEL SET
8	25R5559	VENDOR 1U QUICK INSTALL FILLER PANEL SET
1	8849E1U	XSERIES 306M 3G 1 1/0
2	26K5709	73GB HOT SWAP 15K RPM DRIVE
1	40M7079	WARRANTY SERVICE UPGRADE 3 YEAR ONSITE REPAI
1	29R5395	RTS - 3 YEAR REMOTE TECHNICAL SUPPORT FOR XSE
11	90P0221	Microsoft Windows Server 2003 Standard Edition - license (1-4 Processors; 5CAL)
10	228-04013	SQL SVR STANDARD EDTN 2005 X64 English CD/DVD 5 CLT
1	INST	INSTALLATION

Table 4.2.6-2

VENDOR TotalStorage DS4800 System Configuration		
Quantity	Part#	Description
36	1740-710	DS4000 EXP710 Storage Expansion
144	2210	(19K1271) 2GB Fibre Channel Short Wave GBIC
464	5208	(73P8005) 2GB FC, 300 GB /10K
48	5601	(19K1247) 1m 50u Fiber Optic Cable (LC-LC)
24	5605	(19K1248) Fiber Cable 5m Multimode (LC-LC)
4	1815-82A	DS4800 Disk System Model 82 (4 GB Cache)
16	2410	(22R4242) SW 4Gbps SFP transcvr pair
16	5605	(19K1248) Fiber Cable 5m Multimode (LC-LC)
4	7305	(22R4247) DS4800 Enh. Remote Mirror

4	7700	(22R4251) Windows Host Kit
4	8870	DS4800 8-Storage Partitions
4	2062-D1A	Cisco MDS 9216A Multilayer Fabric Switch
64	5230	FC Port SW SFP Transceiver
48	5605	5m LC-LC Fibre Cable
16	5625	25 m LC/LC Fibre Cable
8	8011	Cisco Post-Warr
1	ALERT	DS4000 Alert Manager
1	INST	INSTALLATION

4.2.7. Video System Software. Vendor will procure the following Software for the Video System.

Table 4.2.7

Video System Software Configuration		
Quantity	Part#	Description
1	Insight-B-3.5	Video Management/Storage Software with 8 connection licenses and 2 user licenses: Includes IVS
256	Insight-B-70C-3.5	31 to 70 connection licenses
18	Insight-B-2U-3.5	1 workstation license (user license)
0	Insight-B-1P-3.5	1 Pocket PC connection License
1	Insight-B-1M-3.5	1 Hardware matrix connections license
1	Insight-B-1G-3.5	1 Media Gateway Streaming License
2	Insight-B-IVS-3.5	Additional IVS server
2	Insight-B-VMS-3.5	Additional Virtual Matrix server
1	Insight-B-FOD-3.5	Failover directory server
9	Insight-B-70-RAS-3.5	Remote Archiver for 33-70 cameras
0	Insight-B-WEB-3.5	Web Pack (includes 1 IVS and web client software)
1	Insight-B-Audio-3.5	Audio
1	Insight-B-MAPS-3.5	Maps and Procedures option
1	Insight-B-OLA-3.5	Offline Archiving (back-up and restore)
0	Insight-B-FOA-3.5	Failover archiving
5	Insight-B-RDA-3.5	Redundant archiving
1	Insight-B-CAB-3.5	Camera blocking
1	Insight-B-LAR-3.5	Local Archiving

Video System Software Configuration		
Quantity	Part#	Description
1	Insight-B-VM-MA-3.5	Macros
1	Insight-B-VM-CS-3.5	Camera Sequences
1	Insight-B-VM-AL-3.5	Alarm Management

ARTICLE 5. INSTALLATION SERVICES

5.1. Camera System

The services described within this section will be performed to the standards established in the Agreement.

5.1.1. Services. Vendor will perform the following Services for 264 cameras in Phase 1:

- A) Remove camera and mounting equipment from packaging materials and prepare for installation.
- B) Install mounting hardware and camera dome on appropriate pole in accordance with design documents.
- C) Connect all camera cables to dome housing connection points and run through street pole pathway to E-Box location.
- D) Install PTZ motor and camera component in dome.
- E) Install camera smoke dome cover.
- F) Take digital picture of camera installation.
- G) Connect camera cables in E-Box in accordance with the Construction Work Design Documents and the IT Design Documents (collectively, the "Design Documents").
- H) Power up camera and run on board diagnostic program to verify proper operation.

5.1.2. Milestone Deliverable

- A) 264 Camera Systems are installed

5.1.3. Critical Deliverable

- A) Redline "As Built" System Documentation reflecting installation of the 264 Camera Systems

5.2. E-Boxes

5.2.1. Services. Vendor will perform the following Services:

- A) Remove E-Box from packaging material and prepare for installation.
- B) Install all NEK components in E-Box (i.e. Video encoder, network switch environmental systems, etc.).
- C) Configure NEK equipment in accordance with Design Documents.
- D) Prepare Pole (i.e. drill egress holes) to receive E-Box.
- E) Run power cable from existing traffic controller (i.e. P-Box, M-Box, Super P-Box) through predetermined pathway to the E-Box location.
- F) Install E-Box in accordance with the Design Documents.
- G) Connect Power cables in E-Box in accordance with the Design Documentation.
- H) Connect power cables at the existing traffic controller and enable power.
- I) Verify startup operation of E-Box components (NEK) per Procedures Manual.

5.2.2. Milestone Deliverable

- A) 264 E-boxes to support the 264 Camera Systems

5.2.3. Critical Deliverable

- A) Redline "As Built" System Documentation – Including digital picture of the E-Box installation

5.3. Edge Network

5.3.1. Services. Vendor will perform the following Services:

- A) Run fiber optic cable from the POP location to E-Box locations in accordance with design documentation.
- B) Terminate Fiber Optic Cable ends at the POP location at designated termination block in accordance with the design documentation.
- C) Terminate Fiber Optic Cable ends at the E-Box locations in accordance with the design documentation.
- D) Strands will be tested to be qualified for use in the optical Back Bone to support Dense Wave Division Multiplex (DWDM) optical signal transmission. The network engineers will utilize sophisticated equipment to run a series of tests that determine the fiber optic cables' characteristics.

5.3.2. Milestone Deliverable

- A) Test documentation for fiber cabling to each E-box.

5.3.3. Critical Deliverable

- A) Updated Design Documents for the 264 Cameras including the characterization of the fiber plant providing optical power loss measurements, optical return loss (ORL) measurements and OTDR measurements (Microsoft PowerPoint format)

5.4. POP locations, Primary (PDC) and Backup (BCF) Sites

5.4.1. Services. Vendor will perform the following Services:

- A) Unpack, inspect and stage optical networking chassis/cages, and fiber optic patch panels in the intended networking room.
- B) Position the optical networking devices in the equipment racks per the design drawings prepared by Vendor for each networking room site.
- C) Connect alternating current (AC) and direct current (DC) power supplies to optical networking equipment, and check for successful power-on self-test routines.
- D) Run initial diagnostics to affirm correct operation of the transmission control and timing processor in the optical networking devices.
- E) Unpack, inspect and stage IP routing chassis and associated LAN switches in the intended networking room.

- F) Position the IP routing devices in the equipment racks per the design drawings prepared by Vendor for each networking room site.
- G) Connect AC power supplies to IP routing equipment and check for successful power-on self-test routines.
- H) Run initial diagnostics to affirm correct operation of the supervising processor in the IP networking equipment.
- I) Configure optical networking shelves with port allocations and circuit definitions that conform to the Design Documents created by the Vendor design specialists and Accepted by the PBC.
- J) Configure IP routing devices with IP addressing scheme to conform to the Design Documents created by the Vendor design specialists and Accepted by the PBC.
- K) Configure IP routing devices with MPLS definitions for Forwarding Equivalence Classes and VPN definitions conform to the Design Documents created by the Vendor design specialists and Accepted by the PBC.
- L) Perform network acceptance testing to verify the network functions as designed in the Design Documents.
- M) Provision and run simulated traffic over the provisioned circuits.
- N) Complete post installation quality audit.
- O) Optical time domain reflectometer ("OTDR") and chromatic dispersion test will be performed on the optical rings by Vendor.
- P) Power level test (only) will be performed on the fiber optic cabling between the E-box and the associated POP by Vendor. Other tests may be provided at PBC's request.

5.4.2. Critical Deliverables

- A) Updated Design Documents
- B) Redline "As-Built" System Documentation

5.5. Video System, Storage Area Network

5.5.1. Services. Vendor will perform the following Services:

- A) Assemble rack equipment to support servers and storage at the PDC and BCF.
- B) Remove servers and storage from shipping containers.

- C) Install servers and storage in rack equipment.
- D) Connect servers to LAN network and storage system.
- E) Configure storage system including RAID and LUN in accordance with the Design Documents.
- F) Format the Storage Area Network and the Video System using Microsoft NTFS file system.
- G) Install operating system, SQL database management system software on the Video System.
- H) Install Video System software on the Video System.
- I) Configure server operating systems
- J) Configure storage systems per design documents
- K) Configure Video System software per design documents.
- L) Add two hundred sixty four (264) video encoders to the Video System.
- M) Configure two hundred sixty four (264) encoders including naming convention, quality settings, recording settings, PTZ control, and E-Box door alarm.
- N) Create and implement system GIS map for navigating to cameras.
- O) Configure Video System security settings in accordance with the Design Documents.
- P) Install viewing software on Microsoft Windows workstations as designated by the PBC.

5.5.2. Critical Deliverables

- A) Video System is completed
- B) Storage Area Network
- C) Redline "As-Built" Document - to include Video System as-built documentation
- D) Updated Design Documents

ARTICLE 6. PROJECT MANAGEMENT SERVICES

6.1. Overview

A Project Management Office (PMO) will be created in order to provide direction and control of the Project, and to establish a framework for Project communications, reporting, procedural and contractual Services activity to meet the needs and complexity of the project.

The PMO will be staffed by a Project Executive who will lead the PMO and be responsible for the overall success of each of the major project phases. This Project Executive will serve as the team leader and be the single point of contact for coordination of all IBM responsibilities. The Project Executive assigned to Operation Virtual Shield will be empowered to make local decisions and have the required support from IBM Executives responsible for the delivery of Public Sector projects.

The PMO will also include three Delivery Project Managers (DPM). The first DPM will be responsible for the integration and build out of the fiber and networking backbone. The second will be responsible for implementing the integrated camera systems and connecting them to the command center via the unified backbone. The third will be responsible for maintenance and repair activities throughout the term of the project.

The PMO staff will be rounded out with one Office Administrator and two Technical Architects (TA). The Office Administrator will assist the Project Executive and the Delivery Project Managers with asset management, process development, billing, and other administrative tasks. The first TA will be the Video System Architect (VSA) and will be responsible for architecting the design and interfaces required for the video solution. The second TA will be the Network Architect (NA) who will be responsible for architecting the design and interfaces required for the unified backbone comprised of new and existing fiber optic resources along with copper cable resources. Both of the Technology leads will be responsible for investigating technology developments and trends. Additionally they will be responsible to participate and oversee the preparation and quality of the technical, procedures and report documentation created during the project.

The PMO members will work closely together and communicate constantly with PBC and subcontractor personnel to provide the coordination of project activities from start to finish. All activities of the PMO will be monitored and overseen by the Project Executive.

The PMO will perform all Project management Services necessary and appropriate to deliver the Services including those listed in this Task Order 1. The services described within this section will be performed to the standards established in the Agreement.

6.2. Project Management Services

Vendor will perform the following Services:

6.2.1. Establish the Project Management Office

- A) Secure office space and facilities;

- B) Interview candidates. Select PE, DPMs, Architects and Office Administrator;
- 6.2.2. Establish documentation and procedural standards for the development of this Project.
- 6.2.3. Participate in the Management Committee in accordance with Section 9.1 of the Master Agreement.
- 6.2.4. Maintain communications about the status of the Services hereunder through the PBC Project Manager.
- 6.2.5. Prepare a Project Plan at the onset of this Project for performance of the Services.
- A) The Project Plan will define Services tasks, Schedule and responsible person(s) or organization for each Services milestone.
- 6.2.6. Initiate, plan, execute, control and close out project activities.
- 6.2.7. Coordinate, monitor, track and manage the technical activities and/or progress of project personnel.
- 6.2.8. Provide problem/issue resolution management
- 6.2.9. Review and adhere to the Project Change Control procedures
- 6.2.10. Schedule and Conduct Project Kick Off and Status Meetings
- A) Kick Off Meeting Elements to include:
- Discuss Project Background
 - Discuss Vendor Selection
 - Project Charter/Key Benefits Expected
 - Discuss the project goals and deliverables
 - Identify the project team members and their responsibilities
 - Discuss the project assumptions list
 - Discuss the preliminary project plan
 - Define key success factors
 - Discuss Other kickoff meeting materials to all participants
 - Identify key issues and project dependencies
 - Discuss Next Steps
- B) Status Meeting Elements to Include:
- Report project/document accomplishments
 - Discuss current state vs. plan
 - Forecasts future state and progress
 - Describes significant risks and issues
- 6.2.11. Prepare and submit monthly status reports as defined in Schedule 9.3- Reports.
- 6.2.12. Review trends, exceptions, and initiate escalation as required.
- 6.2.13. Provide quality assurance Services in accordance with the QAP.

6.2.14. Perform risk management activities to identify the activities that have been planned to reduce the probability of the occurrence of a particular risk and/or to minimize the adverse impact of the occurrence of a particular risk. Develop risk contingency/containment activities that define the strategies that have been planned for responding to a particular risk, if and when the risk occurs.

6.2.15. Perform Resource Management activities to include:

- A) Develop a Resource Plan to address the number of staff required, costing information and assumptions.
 - Define when the staff are needed and for how long,
 - Determine any special skills required over and above those that people in the category would normally be expected to have, as well as the required level of proficiency and the relative importance of these skills,
 - Follow Background Check and Drug Screening procedures in accordance with Schedule 8.1(c).
 - Identify Training requirements needed specifically for the project.
 - Define Office and materiel requirements,
 - Develop Team building activities.
- B) Acquire Staff – Determine and activate resource sources, Evaluate and Select personnel.
- C) Perform Project Staff Orientation and assimilation:
 - Orient staff towards a clear description of the project and their respective roles, responsibilities and authorities within it.
 - Provide the facilities they require to carry out their assigned roles.
- D) Manage Project Staff Performance:
 - Set objectives for the team.
 - Assess the performance of the team members.
 - Enhance the individual and team performance
- E) Manage Staff Change/Termination:

6.2.16. Perform Procurement Management.

6.2.17. Perform financial management activities to track financial data at the project level, based on progress related to work units, and prepare financial documents.

- A) Collect, validate, and prepare the project financial data
 - Hardware
 - Software
 - Services
 - Staff labor/Other – MBE/WBE
- B) Reconcile project data with the PBC

6.2.18. Perform compliance management activities to record, assess, and ensure project compliance. Evaluate the effectiveness of compliance actions and update plans.

6.2.19. Perform Deliverable management activities to ensure that Deliverables are developed in accordance with the Specifications and the Project Timetable. Ensure

that the integrity and trace ability of the Deliverables are maintained. Ensure Deliverables receipt, deliverable release, review, and Acceptance. Also manage and resolve Deliverable findings and/defects where appropriate.

6.2.20. Conduct/participate in required audits/inspections/reviews/tests as appropriate.

6.3. Milestone Deliverables

- 6.3.1. Project Plan as it relates to this Task Order 1
- 6.3.2. Implementation Plan as it relates to this Task Order 1
- 6.3.3. Evidence of Insurance
- 6.3.4. Evidence of Bonds, Licenses, Permits (as required in connection with the Service hereunder).
- 6.3.5. Underwriters' Laboratories (UL).
- 6.3.6. Results of Background Checks and Drug Screening results (as designated by the PBC).
- 6.3.7. Physical Inspection Report.
- 6.3.8. Procedures Manual as it relates to this Task Order 1
- 6.3.9. QAP as it relates to this Task Order 1
- 6.3.10. System Acceptance Test Procedures as it relates to this Task Order 1
- 6.3.11. Customer Satisfaction Survey is completed as required.
- 6.3.12. An acceptance test plan as it relates to Task Order 1 will be completed
- 6.3.13. Project Schedule as it relates to this Task Order 1
- 6.3.14. Weekly Status Report will be completed every Tuesday.
- 6.3.15. Monthly Status Report
- 6.3.16. Quarterly Report
- 6.3.17. Monthly System Performance Reports

ARTICLE 7. TESTING

7.1. **Services.** Vendor will update the Design Documents provided to PBC under Task Order 1A to include the Specifications for each Deliverable under this Task Order 1. Vendor will develop an Acceptance Test Plan as it relates to the Services set forth in this Task Order 1 as set forth in Schedule 5.2 (Common Elements of Acceptance Criteria and Acceptance Testing) and submit the plan to the PBC for its approval. The Acceptance Test Plan will be comprised of the relevant Specifications, Acceptance Criteria and the Acceptance Tests for each Deliverable. Vendor will then provide Acceptance Testing for each Deliverable under this Task Order 1 in accordance with the common elements specified in Schedule 5.2 (Common Elements of Acceptance Criteria and Acceptance Testing). Each Deliverable must have a Completion Certificate in order to be Accepted. The services described within this section will be performed to the standards established in the Agreement.

7.2. Critical Deliverables.

- A) Acceptance Test Plan
- B) The Completion Certificate for each Deliverable.

ARTICLE 8. TRAINING

8.1. **Services.** The services described within this section will be performed to the standards established in the Agreement. Vendor will provide a detailed Training Plan as set forth in Schedule 2.6 (Training Plan) and will perform the Services set forth in the Training Plan, including

8.1.1. Video System Administrator Training

8.1.2. Video System End User Training

8.1.3. Network Training

8.1.4. Mentoring

8.1.5. Education pool of hours. PBC and Vendor will mutually agree on content, timing and amount of local Cisco training to be provided, equivalent to an IBM Education Card offered in October 2005 (\$10,000 value).

8.2. Critical Deliverable.

8.2.1. Finalized Training Plan

8.2.2. Finalized training schedule

ARTICLE 9. MAINTENANCE SERVICES

9.1. Overview

Vendor will provide to the PBC a maintenance services solution as described in this Task Order to support the Goods and Software purchased from this Task Order and applicable NTP(s). The Vendor managed maintenance services solution will include the following: remote hardware diagnostics and repair; onsite hardware diagnostics and repair; remote network monitoring and support of the fiber network; video system software help desk support; and video system software fixes, patches and upgrades. Vendor will provide service delivery project management for implementing, monitoring, and reporting on IBM's managed maintenance services performance. A representative of the Vendor Project Office will meet with the PBC on a monthly, quarterly and annual basis to present deliverables and review statistics, performance and other PBC related maintenance topics.

Hardware and software support is subject to the availability of repair parts and any technical support required of the original equipment manufacturer (OEM). Periodically, an OEM may issue a notification of change or discontinuance of support for specific products. Upon receipt of this notification, Vendor will submit suitable substitutions to the PBC for consideration as provided for in the Procedures Manual and will make commercially reasonable efforts to complete the substitution process prior to the discontinuance of OEM support. Upon notice from OEM of discontinuance of support, Vendor may withdraw coverage of specified Goods due to said lack of OEM support. If no suitable substitution is available, the PBC will seek a credit for the service not provided.

As part of the managed maintenance services implementation program, Vendor will develop and document for the PBC the procedures required to place a service request to IBM. Vendor will train the PBC on how to place a service request to Vendor and how to escalate a service request if there is a problem. IBM, within 90 days of issuance of the Notice to Proceed, will deliver to the PBC a documented maintenance delivery plan detailing the personnel, procedures, and reports used to support the video surveillance solution.

Vendor will provide the Maintenance Services as set forth in the Agreement and this Task Order 1. VENDOR will commence Maintenance Services at the earliest of the Services for (1) the PDC, (2) the BCF; or (3) the first Camera System are Accepted. Maintenance Services under this Task Order 1 will end three years from Acceptance of all the Services and Deliverables for the first Notice To Proceed that includes Goods. The tables, definitions and descriptions in Article 9 (Maintenance Services) are summaries and are subject to the terms and conditions of the Master Agreement and the other Schedules.

Table 9.1

Section	Product	SLA	Location	Term
9.3	Cameras, Network Edge Kit	Next day onsite (severity 3)	Camera location	3 year
9.3	Cameras, Network Edge Kit	4 hour onsite (severity 1)	Camera location	Severity 1 (4) calls per month
9.4	IBM Servers and Storage	24x7x4 hour onsite	OEMC/ Backup site	3 year
9.5	Cisco ONS, Routers	24x7x4 hour onsite	OEMC/ Backup site/POPS	3 year
9.6	Video System Software	All patches, revisions, versions	OEMC/Backup site	3 years
9.7	Fiber Network Monitoring	24x7 hour remote	OEMC/Backup site/POPS	3 years
9.7	LAN/WAN Network Monitoring	24x7 hour remote	OEMC/Backup site/POPS	3 years

9.2. Services not included under maintenance or warranty:

9.2.1. performing Cisco Hardware or Cisco Software installation, configuration, or customization (these are provided for in other phases);

9.2.2. furnishing of any Cisco Hardware and/or memory upgrade required to run new or updated Cisco Software;

9.2.3. electrical or site work external to the hardware;

9.2.4. failures caused by a product for which IBM is not responsible; or

9.2.5. service of a Machine on which PBC is using capacity or capability, other than that authorized by IBM in writing.

9.2.6. engineering change activity;

9.2.7. correction of date related errors. IBM will make the final determination of whether a date related error is the source of the problem;

9.2.8. service upgrade of microcode or firmware;

9.2.9. service of features, parts, or devices not supplied by either a) the Machine's original manufacturer or b) IBM during the performance of this Service;

9.2.10. service for accessories, supply items, and consumable parts, such as batteries, frames, and covers;

9.2.11. service of a Machine damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by PBC;

9.2.12. service of a Machine with removed or altered Machine or parts identification labels;

9.2.13. service of Machine alterations.

9.3. Cameras and Network Edge Kit

Table 9.3

Product	SLA	Location	Term
Cameras, Network Edge Kit	Next day onsite (severity 3)	Camera location	3 year
Cameras, Network Edge Kit	4 hour onsite (severity 1)	Camera location	(4) Severity 1 calls per month

Vendor warrants the Camera Systems and Network Edge Kits in accordance with Section 16.2 of the Master Agreement.

In accordance with Schedule 3.2 (Severity Level Response Times), IBM will provide Next Day on site hardware repair and remote technical support on cameras, encoders and associated video devices that are included in the NEK bill of materials. These support services will consist of parts, labor, 7 X 24 X 365 dispatching and one (1) annual preventive maintenance call per camera for a period of 3 years from Acceptance of the first NTP containing cameras and NEKs.

For onsite repair activity, IBM will dispatch a trained technician to arrive at the location within 24 hours after request for service is received from PBC. Upon completion of the Service repair activity, the

technician will notify the PBC that the repair action has been completed or that further action may be required for resolution.

During a calendar month, the PBC may designate up to four (4) incidents with respect to the Camera Systems, as a Severity Level One Fault which would not otherwise be considered a Severity Level One Fault. Vendor shall treat such incidents as a Severity Level One Fault and respond in accordance with Schedule 3.2 (Severity Level Response Times). These four (4) incidents do not carry over from month to month. If the PBC requests more than four (4) incidents with respect to the Camera Systems, as a Severity Level One Fault which would not otherwise be considered a Severity Level One Fault, Vendor will treat such incidents as a Severity Level One Fault, and will charge the PBC the rate specified in Schedule 7.1 for each incident in addition to the Fees set forth in this Task Order 1.

9.4. IBM xSeries Servers and Storage

Table 9.4

Product	SLA	Location	Term
IBM xSeries Servers and Storage	24x7x4 hour onsite	OEMC/ Backup site	3 year

Vendor warrants the IBM xSeries servers and storage products in accordance with Section 16.2 of the Master Agreement. The enhanced warranty upgrade solution for the IBM xSeries servers and IBM storage products is a prepaid 3 year solution and as a warranty upgrade is not refundable and non-transferable to other machines.

In accordance with Schedule 3.2 (Severity Level Response Times), IBM will provide 7 X 24 X 4 hour on site hardware repair and remote technical support for IBM xSeries servers, and IBM storage devices. These support services will consist of parts, labor and 7 X 24 X 365 service call dispatching. If an on Site Service repair activity is required, IBM will dispatch a trained technician to be on Site within 4 hours. Upon completion of the Service repair activity, the technician will notify the PBC that the repair action has been completed or that further action may be required for resolution.

9.5. Cisco Products

Vendor warrants the Cisco Products in accordance with Section 16.2 of the Master Agreement. The Cisco products are covered by an enhanced maintenance upgrade solution for a 3 year term. This upgrade may not be cancelled during the first year. Refunds for early termination in years 2 and 3 will be provided on a pro-rated basis. IBM will contact PBC within 6 months of expiration to discuss renewal of coverage. All eligible Cisco machines by type at a given specified location must be maintained at the same Service support level.

The Maintenance Services will consist of parts, labor and 7 X 24 X 365 service call dispatching in accordance with Schedule 3.2 (Severity Level Response Times).

Table 9.5

Product	SLA	Location	Term

Cisco ONS, Routers	24x7x4 hour onsite	OEMC/ Backup site/POPS	3 year
Cisco IOS Software	Provide patches, updates	From IBM	3 years

9.5.1. Service Definitions (Pertains to Section 8.5 ONLY)

- A) **Field Replacement Unit (FRU)** means any component or sub assembly of an item or unit of Cisco Hardware which can reasonably be replaced at your location. FRU(s) may also be subject to size and weight limitations.
- B) **Cisco Hardware** means those eligible Cisco Machines which you currently have covered under this Service contract.
- C) **Remedial Hardware Maintenance** means diagnosis and on-site replacement of Hardware components with FRU(s).
- D) **Cisco Software** means supported releases of those Cisco software programs which are installed on the Cisco Hardware and for which you maintain a current valid paid license.

9.5.2. Cisco Services by Vendor

- A) Vendor will provide a managed maintenance solution for Cisco Products (MMS) with four hour response for Remedial Hardware Maintenance twenty four (24) hours per day, seven (7) days per week including observed holidays, together with parts, labor and materials.
- B) In addition, for Cisco IOS software installed on the eligible Cisco machines, Vendor will support each major release and version of the Cisco software for the same period as supported by Cisco.
- C) Vendor requires up to thirty days from time of order to implement support on all eligible Cisco machines added to this contract. However, Vendor will make a commercially reasonable effort to provide support to you sooner if the PBC has a specific service request.
- D) Cisco Hardware replacement will provide for up to three (3) FRUs, including those replacements due to pervasive issues documented in an engineering change notice or field alert unless Vendor has troubleshoot failed Cisco Hardware down to the FRU level.

9.5.3. Vendor will:

- A) perform initial problem determination remotely via the IBM Remote Support Center for every Cisco Hardware and Cisco Software Service request;
- B) for On-Site Service levels, Vendor will dispatch a Service technician if on-site support under this Task Order is required for a Cisco Hardware problem;

- C) assist in providing interim solutions to reported Cisco Software problems, or work with Cisco to implement a patch to newly reported problems;
- D) provide PBC with one copy of Cisco Software updates and one copy of available applicable supporting documentation, per Cisco Software release. Cisco Software updates and any supporting documentation will be made available from the Cisco.com Software Center (www.cisco.com/software) or on physical media such as CDROM.
- E) authorize PBC for access to the Cisco Technical Assistance Center (TAC) which is available 24 hours per day, 7 days per week to assist with your Cisco Hardware and Cisco Software use, configuration and trouble shooting issues and access to Cisco.com;
- F) authorize PBC for electronic access to Cisco Connection Online ("CCO"). CCO provides you with technical and general information on Cisco Hardware and Cisco Software, access to Cisco's online Cisco Software library, and solutions to known Cisco Software problems.

9.6. Video System Software

Table 9.6

Product	SLA	Location	Term
Video System Software	All patches, revisions, versions	OEMC/Backup site	3 years

Vendor warrants the Video System software in accordance with Section 16.2 of the Master Agreement.

9.6.1. Software and Help Desk Support

- A) Extended Services ESAF003-3.5 (3) Year Extended Services Agreement
- B) (3) year maintenance package: Includes helpdesk support and unlimited software patches, fixes, updates and upgrades. Version upgrades are released approximately twice a year and include major feature advancements.
- C) Helpdesk services are available from 6:00 AM to 6:00 PM Pacific time, Monday through Friday (excluding holidays). Off hours support is available via the emergency help line. Calls will be routed to the on-duty support personnel for prompt response (within 1 hour).

9.7. Network Monitoring Services

Table 9.7

Product	SLA	Location	Term
Fiber Network Monitoring	24x7 hour remote	OEMC/Backup site/POPS	3 years
LAN/WAN Network Monitoring	24x7 hour remote	OEMC/Backup site/POPS	3 years

Vendor warrants the Network in accordance with Section 16.2 of the Master Agreement. The Cisco Products include Cisco ONS, Routers and Cisco IOS Software.

9.7.1. IBM will perform Optical Network Monitoring services for the Cisco 15454's to be installed at the designated POP locations, Primary Data Facility and Backup Communication Facility. The Optical Network Monitoring service will include:

- A) problem resolution
- B) performance management
- C) configuration management
- D) change management.

9.7.2. Problem identification and resolution will be performed as a routine part of problem management within the Optical Network Monitoring service.

9.7.3. Performance management service activities will consist of setting appropriate alarm thresholds for a variety of network parameters.

9.7.4. Configuration management service activities are performed on a regular basis so that the firmware and other equipment-specific software is maintained at appropriate and stable release levels. These configuration changes and release levels are pre-tested in the IBM interoperability lab.

9.7.5. Change management activities are initiated either by the OEMC via a PowerControl entry or phone call to IBM's Optical Network Monitoring service center. Once a change has been assessed, tested, scheduled and implemented, the databases are updated and visibility into the new environment is enabled upon completion of the Change Order.

9.7.6. Network Monitoring for the Routers at the POPs and OEMC will consist of the following services:

- A) The routers will be monitored for up/down status.
- B) Respond to alerts generated by the monitoring tools by performing 2nd level problem determination and recovery management. The Center will dispatch remediation technicians as required.
- C) Generate problem records on all severities using applicable Problem and Change Management Systems. The OEMC or other authorized City of Chicago personnel will have visibility to the problem records via a Web portal provided by IBM.

- D) Provide critical situation leader coverage on all SEV 1 (Severity-1) problems and open OneView alerts on Severity 1 problems.
- E) Provide network performance monitoring to measure essential characteristics of network operation.

9.8. Critical Deliverables

9.8.1. PowerControl Training Materials for the designated OEMC personnel to login and use the portal access to the SurveillanceNet data.

9.8.2. SurveillanceNet "As-built" documentation of the network denoting all provisioned circuits, the network topology, rack elevations and DC power diagram.

9.8.3. Monthly network monitoring management report

9.8.4. Maintenance Services Dispatching Procedures

9.8.5. System Maintenance Plan

9.8.6. Annual Maintenance Report

9.8.7. Maintenance SLA/SLO Report – Monthly

9.8.8. Maintenance SLA/SLO Report – Quarterly

9.8.9. Maintenance Issue Action Item Log

9.8.10. Monthly Maintenance Report

9.8.11. Annual Maintenance Plan

9.8.12. System Performance Report – Monthly

9.8.13. Root Cause Analysis to be completed as set forth in Schedule 2.3 (Severity Level Response Times).

ARTICLE 10. FEES

10.1. Fees

The Fees for the Services under this Task Order 1 shall be \$39,855,000.00. The Fees shall be subject to the terms and conditions set forth in the Agreement, including the Fee Schedule.

[The remainder of this page intentionally left blank.]

- D) Provide critical situation leader coverage on all SEV 1 (Severity-1) problems and open OneView alerts on Severity 1 problems.
- E) Provide network performance monitoring to measure essential characteristics of network operation.

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9.8.1. PowerControl Training Materials for the designated OEMC personnel to login and use the portal access to the SurveillanceNet data.

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9.8.10. Monthly Maintenance Report

9.8.11. Annual Maintenance Plan

9.8.12. System Performance Report – Monthly

9.8.13. Root Cause Analysis to be completed as set forth in Schedule 2.3 (Severity Level Response Times).

ARTICLE 10. FEES

10.1. Fees

The Fees for the Services under this Task Order 1 shall be \$39,855,000.00. The Fees shall be subject to the terms and conditions set forth in the Agreement, including the Fee Schedule.

[The remainder of this page intentionally left blank.]

In Witness Whereof, the Parties hereto have executed this Task Order 1 as of the date first written above.

Agreed to:

The Public Building Commission of Chicago

By: James E. Gallagher Jr
Authorized signature

JAMES E. GALLAGHER JR
Name (type or print)

Date: 3-8-06

Customer number: 1790761

Customer Address:

The Public Building Commission of Chicago
50 W. Washington Street
Chicago, IL 60602

Agreed to:

International Business Machines Corporation

By: Richard A. Jacob
Authorized signature

Richard A. Jacob
Name (type or print)

Date: 3/8/06

Agreement Number: PS805

Task Order Number: 01

Vendor Office Address:

IBM Corporation
71 S. Wacker Drive
Chicago, IL 60611

In Witness Whereof, the Parties hereto have executed this Task Order 1 as of the date first written above.

Agreed to:

The Public Building Commission of Chicago

By: James C. Gallagher
Authorized signature

JAMES E. GALLAGHER JR
Name (type or print)

Date: 3-8-06

Customer number: 1790761

Customer Address:

The Public Building Commission of Chicago
50 W. Washington Street
Chicago, IL 60602

Agreed to:

International Business Machines Corporation

By: Richard A. Jacob
Authorized signature

Richard A. Jacob
Name (type or print)

Date: 3/8/06

Agreement Number: PS805

Task Order Number: 01

Vendor Office Address:

IBM Corporation
71 S. Wacker Drive
Chicago, IL 60611

replaced
3/8/06 - vlc

In Witness Whereof, the Parties hereto have executed this Task Order 1A as of the date first written above.

Agreed to:

The Public Building Commission of Chicago

By: Jim Gallagher
Authorized signature

JIM GALLAGHER
Name (type or print)

Date: 2/14/06

Customer number: 1790761

Customer Address:

The Public Building Commission of Chicago
50 W. Washington Street
Chicago, IL 60602

Agreed to:

International Business Machines Corporation

By: Rich Jacob
Authorized signature

Rich Jacob
Name (type or print)

Date: 2/14/06

Agreement Number: PS805

Task Order Number: 01A

IBM Office Address:

IBM Corporation
71 S. Wacker Drive
Chicago, IL 60611

replaced
3/8/06 - vlc

In Witness Whereof, the Parties hereto have executed this Task Order 1A as of the date first written above.

Agreed to:

The Public Building Commission of Chicago

By: Jim Gallagher
Authorized signature

JIM GALLAGHER
Name (type or print)

Date: 2/14/06

Customer number: 1790761

Customer Address:

The Public Building Commission of Chicago
50 W. Washington Street
Chicago, IL 60602

Agreed to:

International Business Machines Corporation

By: Rich Jacob
Authorized signature

Rich Jacob
Name (type or print)

Date: 2/14/06

Agreement Number: PS805

Task Order Number: 01A

IBM Office Address:

IBM Corporation
71 S. Wacker Drive
Chicago, IL 60611

NOTICE TO PROCEED #1
February 14, 2006

James Lautenbach
IBM, Client Director
International Business Machines Corporation
71 S. Wacker Drive
Chicago, IL 60606

Dear Mr. Lautenbach:

This Notice to Proceed No. 1 ("**NTP**") authorizes International Business Machines Corporation, a New York corporation ("**Vendor**" or "**IBM**") to perform the Services outlined below from Task Order 1 dated February 14, 2006 (the "**Task Order**") and for the Fees as set forth below in relation to Task Order 1. Vendor will provide the Services outline below, including the development and delivery of all the Deliverables (including the Milestone Deliverables and the Critical Deliverables) to The Public Building Commission of Chicago, a municipal corporation of local government existing under the Constitution of the State of Illinois ("**PBC**"). This NTP is subject to the terms and conditions set forth in the Master Agreement and the Schedules and Attachments attached thereto, dated February 03, 2006, between the PBC and Vendor (the "**Agreement**") and the Task Order. All capitalized terms not defined herein shall have the meaning as set forth in the Agreement or the Task Order.

Subject to the foregoing paragraphs, PBC and Vendor have agreed upon the following terms and conditions with regard to this NTP:

1. Assumptions made within Task Order #1 are applicable as they relate to this NTP.
2. Upon receipt of this NTP, Vendor will provide the following Services as set forth in Task Order #1:
 - A. Article 3 Evaluation, Analysis and Design Services:
Sections: 3.1, 3.2, 3.3 3.4, 3.5, 3.6, 3.7, 3.8
 - B. Article 6 Project Management:
Section 6.2 exclusive of subsections 6.2.3 and 6.2.16
 - C. These Services will be provided in form and substance commensurate with the Services provided in 2.A above.
3. Vendor will provide the following Critical and Milestone Deliverables as set forth in Task Order #1:
 - A. Article 3 Evaluation, Analysis and Design Services: 3.1.2, 3.2.2, 3.3.2, 3.4.2, 3.5.2, 3.6.2, 3.7.2, 3.8.2.

- B. Article 6 Project Management: Section 6.3 exclusive of subsections 6.3.16 and 6.3.17.
- C. These Deliverables will be provided in form and substance commensurate with the Services provided in this NTP.
- D. The duration for completing each Deliverable will be as specified in the Project Plan. At the time of issuance of this NTP #1, the duration is not expected to exceed 70 days from the signature date.
4. The Fees under this NTP 1 are \$1,430,000 and are divided as follows:
- (a) \$1,300,000 for the evaluation and analysis services and subsequent design and documentation.
- (b) \$130,000 for project management services.
5. All payments are subject to the applicable Retainage. Retainage will be released to Vendor when the NTP is complete. The NTP is complete when all Milestone Deliverables within this NTP have been Accepted.

Agreed to:

The Public Building Commission of Chicago

By: James E. Gallagher Jr.
Authorized signature

JAMES E. GALLAGHER JR.
Name (type or print)

3-10-06
Date:

Customer number: 1790761
Customer Address: Public Building Commission
of Chicago
50 W. Washington Street
Chicago, IL 60602

Agreed to:

International Business Machines Corporation

By: Richard A. Jacob
Authorized signature

Richard A. Jacob
Name (type or print)

3/10/06
Date:

Agreement Number: PS805
Task Order Number: 1
Notice to Proceed Number: 1
IBM Office Address: IBM Corporation
71 S. Wacker Drive
Chicago, IL 60611

NOTICE TO PROCEED #2
March 10, 2006

James Lautenbach
IBM, Client Director
71 S. Wacker Drive
Chicago, IL 60606

Dear Mr. Lautenbach:

This Notice to Proceed No. 2 ("NTP") authorizes International Business Machines Corporation, a New York corporation ("Vendor") or ("IBM") to perform certain Services for the Public Building Commission of Chicago, a municipal corporation of local government existing under the Constitution of the State of Illinois ("PBC") as set forth in Task Order #1 dated **February 14, 2006** (the "Task Order") on the terms and conditions set forth in this NTP. This NTP is subject to the terms and conditions set forth in the Master Agreement and all Schedules and exhibits dated February 03, 2006 between the PBC and Vendor (the "Agreement"). All capitalized terms not defined herein shall have the meaning as set forth in the Agreement or the Task Order.

In summary, this NTP will provide the following: 1) The financial district of the Chicago central business district will serve as a proof of concept area for the deployment of the Project and will have 27 cameras and supporting fiber optic cable. It will also include the video system back-office infrastructure comprised of ten IBM xSeries servers, two IBM DS4800 storage systems and the digital video application software solution. A training package will be provided for end users and system administrators of the video application and also network administrators of the fiber optic backbone and LAN/WAN. Maintenance will be delivered in the form of a first year warranty package and two years additional maintenance with varying Service Levels assigned to the different equipment types; and 2) The Vendor's Project Management Office will be expanded to provide the additional resources required to support the activities associated with the Goods, Services and Software in NTP #2.

Subject to the foregoing paragraphs, PBC and Vendor have agreed upon the following terms and conditions with regard to this NTP:

1. Assumptions made within Task Order #1 are applicable as they relate to this NTP.
2. Upon receipt of this NTP, Vendor will provide the following Goods, Services and Software as set forth in Task Order #1:

A. Article 4 Procurement of the Goods and Software:

1. Section 4.2.1 Quantity=27 cameras;
2. Section 4.2.2 Quantity=27 Network Edge Kits;
3. Section 4.2.3 Point of Presence Table 4.2.3-1 CBD POP Quantity=1
4. Section 4.2.3 Point of Presence Table 4.2.4-1 PDC: CBD Support Quantity=1

5. Section 4.2.3 Point of Presence Table 4.2.5-1 BCF: CBD Support Quantity=1
6. Section 4.2.6 Video System Hardware and Software Table 4.2.6-1
7. Section 4.2.6 Video System Hardware and Software Table 4.2.6-2
8. Section 4.2.7 Video System Software Table 4.2.7 with modification to part number "Insight-B-70C-3.5" connection license. Quantity=27

B. Article 5 Installation Services:

1. Sections 5.1, 5.2, 5.3
These Services will be provided as appropriate for Quantity=27
2. Section 5.4
These Services will be provided for the PDC and BDF Quantity 1
3. Section 5.5

C. Article 6 Project Management:

1. Section 6.2
These Services will be provided in form and substance commensurate with the Goods, Services and Software provided in this NTP#2.

D. Article 7 Testing:

1. Section 7.1
These Services will be provided in form and substance commensurate with the Goods, Services and Software provided in this NTP#2.

E. Article 8 Training:

1. Section 8.1
These Services will be provided in form and substance commensurate with the Goods, Services and Software provided in this NTP#2.

F. Article 9 Maintenance Services:

1. Sections 9.2, 9.3, 9.4, 9.5, 9.6
These Services will be provided in form and substance commensurate with the Goods, Services and Software provided in this NTP#2.

3. Vendor will provide the following Milestone Deliverables and Critical Milestone Deliverables as set forth in Task Order #1:

A. Article 5 Installation Services:

1. Section 5.1.2, 5.1.3, 5.2.2, 5.2.3, 5.3.2, 5.3.3
These Services will be provided as appropriate for Quantity=27
2. Section 5.4.2
These Services will be provided for the PDC and BDF Quantity 1
3. Section 5.5.2

B. Article 6 Project Management:

1. Section 6.3
These Deliverables will be provided in form and substance commensurate with the Services provided in this NTP#2

C. Article 7 Testing:

1. Section 7.2
These Services will be provided in form and substance commensurate with the Goods, Services and Software provided in this NTP#2.

D. Article 8 Training:

1. Section 8.2
These Services will be provided in form and substance commensurate with the Goods, Services and Software provided in this NTP#2.

E. Article 9 Maintenance Services:

F. Sections 9.8.4, 9.8.5, 9.8.6, 9.8.7, 9.8.8, 9.8.9, 9.8.10, 9.8.11, 9.8.12, 9.8.13

G. These Services will be provided in form and substance commensurate with the Goods, Services and Software provided in this NTP#2.

H. The duration for completing each Deliverable will be as specified in the Project Plan. At the time of issuance of this NTP #2, the duration is not expected to exceed 70 days from the signature date.

4. The Fees under this NTP 1 are \$2,970,000 and are divided as follows:

- (a) \$ 242,000 for project management services
- (b) \$1,552,545 for IBM servers, storage, software
- (b) \$ 788,032 for Goods, Software and Services
- (c) \$ 387,423 for Maintenance services

5. All payments are subject to the applicable Retainage. Retainage will be released to Vendor when the NTP is complete. The NTP is complete when all Deliverables within this NTP have been Accepted.

Vendor and PBC agree that the complete agreement between us about these Services consists of (1) this NTP (2) the Agreement, and (3) the Task Order.

Agreed to:

The Public Building Commission of Chicago

By: James E. Gallagher Jr.
Authorized signature

JAMES E. GALLAGHER JR.
Name (type or print)

3-10-06
Date:

Customer number: 1790761
Customer Address: Public Building Commission
of Chicago
50 W. Washington Street
Chicago, IL 60602

Agreed to:

International Business Machines Corporation

By: Richard A. Jacob
Authorized signature

RICHARD A. JACOB
Name (type or print)

3/10/06
Date:

Agreement Number: PS805
Task Order Number: 1
Notice to Proceed Number: 2
IBM Office Address: IBM Corporation
71 S. Wacker Drive
Chicago, IL 60611

SCHEDULE 3.1(f)
Service Level Agreement

1. OVERVIEW

1.1 Scope of SLA

This Service Level Agreement ("SLA") sets forth the Service Levels at which Vendor will provide the Maintenance Services pursuant to the Agreement. This SLA also sets forth the principles and parameters applicable to any Service Level Default and the formula for calculation of Service Level Credits and Deliverable Credits. This SLA establishes a framework for Vendor to provide to the PBC for the benefit of the City, the User Agencies and Users (as the case may be), the Maintenance Services at the Service Levels. Vendor acknowledges and agrees that if a User Agency or User enters into an inter-governmental agreement with the PBC pursuant to which the PBC negotiates with Vendor and executes, on behalf of such User Agency or User, a Task Order, this Schedule 3.1(f) may be applicable to the User Project covered by such Task Order. Accordingly, the Service Levels applicable to Maintenance Services delivered under such Task Order shall be subject to the terms of this SLA and set forth on another Attachment to this SLA.

1.2 Definitions

(a) Capitalized terms used in this SLA that are not otherwise defined in this SLA shall have the meanings ascribed to them in the Agreement.

(b) The following defined terms used in this SLA shall have the meanings set forth below:

At-Risk Amount means, with respect to each Task Order, an amount equal to fifteen percent (15%) of the Fees for Maintenance Services delivered under such Task Order for any Measurement Period, excluding any expenses and taxes. The aggregate amount of Service Level Credits that can be earned with respect to any Measurement Period cannot exceed the At-Risk Amount.

Base Time means twenty four (24) hours minus the sum of Scheduled Maintenance Time plus Unscheduled Maintenance Time.

Critical Services means Services that are identified as Critical Services on an Attachment to this SLA. The Critical Services under Task Order 1 are set forth on Table 1 on Attachment 1 to this SLA. Critical Services with respect to other Task Orders will be set forth on another Attachment to this SLA. The failure to meet a Service Level established for a Critical Service shall provide the basis for application of a corresponding Service Level Credit as set forth herein.

Deliverable Default means Vendor's failure to receive Acceptance of a Critical Milestone by the mutually agreed date specified in the Project Timetable.

Key Service means a Service in which the PBC desires information regarding delivery parameters (service levels related to such delivery parameters, the "KPIs"). The Service Levels established for Key Services shall not be subject to Service Level Credits. The Key Services with respect to Task Order 1 are set forth in Table 2 on Attachment 1 to this SLA. KPI's with respect to other Task Orders will be set forth in another Attachment to this SLA.

Measurement Period is the period of time set forth on Table 1 with respect to the Critical Services and the Key Services, respectively, during which the actual Service Level for an individual Critical Service or Key Service is measured.

Scheduled Maintenance Time is the period of time that the System is down due to Vendor's provision of routine, proactive Maintenance Services on the System or any part thereof or, with respect to Milestone Deliverables in connection with a User Project. Vendor will provide to the PBC prior written notice no less than ten (10) days prior to the Scheduled Maintenance and Scheduled Maintenance shall only be scheduled provided that the PBC with prior notice to Vendor can direct Vendor to change the scheduled time.

Service Level Credit means the credit due to PBC for Vendor's failure to meet the Service Levels for the Critical Services.

Service Level Default occurs when the Service Level is not met for a Measurement Period.

Service Level Measure means, for any Critical Service or Key Service, the method specified in this SLA for quantitatively calculating Vendor's actual performance of such Critical Service or Key Service. The results of these calculations are used to evaluate Vendor's compliance with Service Levels.

Service Weight means the portion of the At Risk Amount associated with a Critical Service as set forth on an Attachment. The allocation of Service Weights for Task Order 1 are set forth on Table 1 on Attachment 1 to this SLA. The sum of all Service Weights for each Task Order shall not exceed 200%. Service Weight allocations with respect to other Task Orders will be set forth in another Attachment to this SLA.

Unscheduled Maintenance Time is the period of time that the System is down due to services being performed by the PBC or a third party under the control of the PBC. PBC will provide to Vendor prior notice of any Unscheduled Maintenance Time.

Uptime is the measurement of time, express as a percentage of Base Time, that the System or part thereof is available in accordance with the applicable Specifications.

1.3 Reports

No later than fifteen (15) days following the end of each Measurement Period, or as otherwise agreed by the Parties, Vendor shall submit to the User Agency or User (as the case may be) the SLA/SLO Report (as set forth on Schedule 9.3 (Reports)) assessing Vendor's performance during such Measurement Period of the applicable Key Services and Critical Services relative to the applicable Service Levels, using the applicable Service Level Measures. The standard set of such reports shall be approved by the Parties within thirty (30) days after the Commencement Date of the Agreement.

1.4 Quarterly Reports

In addition to the monthly performance reports provided by Vendor to PBC pursuant to Section 1.3 of this Schedule 3.1(f), Vendor shall provide to PBC, within 30 days after the end of each calendar quarter during the Term and the Termination Assistance Period, (if any), a SLA/SLO Report (as set forth in Schedule 9.3 (Reports)) setting forth, at a minimum, the following information:

- (a) the amount of Service Level Credits and Deliverable Credits incurred by Vendor during such calendar quarter in respect of Service Level Defaults and Deliverable Defaults, respectively; and

- (b) any KPI defaults.

1.5 Commencement Date for Service Levels

When Vendor begins the delivery of the Maintenance Services, Vendor will deliver the Critical Services at the applicable Critical Service Levels.

2. SERVICE LEVEL ADJUSTMENTS

2.1 Additions and Deletions of Service Levels

Notwithstanding anything to the contrary herein, at any time after the effective date of a Task Order, PBC, the User Agency or the User (as the case may be) may request the addition or deletion of Service Levels with respect to such Task Order.

2.2 Review of Adjustments to Service Levels During the Term

The Project Managers shall meet quarterly to review the Critical Service Levels and agree upon changes to (e.g., improvements in; additions to; deletions of) the Critical Service Levels, which shall be reflected as amendments to the applicable Table, and with respect to the KPIs, as applicable. The Project Managers shall consider in their evaluation of the Service Levels (i) results of any technology review; (ii) results of any Benchmarking; (iii) any change in the PBC's or the City's needs; and (iv) any other information relevant to the Service Levels, and shall adjust the Critical Service Levels by mutual agreement. PBC may, upon notice to Vendor, initiate negotiations to review and adjust a Critical Service Level at that time. For the avoidance of doubt, such changes shall not allow for an increase in the At Risk Amount or the Service Weight.

2.3 Changes to Service Weights

PBC may, in its sole discretion, adjust the Service Weights for one or more Critical Service Levels upon 30 days' notice to Vendor; provided that, following any such adjustment, the sum of the Service Weights shall not exceed two hundred percent (200%).

2.4 Effect on Credits

The deletion or modification of a Critical Service Level in accordance with the procedures set forth in Section 2.2 shall not affect any Service Level Credits incurred with respect to the deleted or modified Critical Service Level prior to the effective date of the deletion or modification.

3. SERVICE LEVEL DEFAULTS

3.1 Method of Calculation

If Vendor fails to meet or exceed a Critical Service Level, Vendor shall issue to PBC a Service Level Credit equal to the product of (1) the Service Weight assigned to such Critical Service Level multiplied by (2) the At Risk Amount. The total of all Service Weights shall be 2.00 (i.e., a 200% percentage pool).

If Vendor fails to receive Acceptance of a Critical Deliverable by the date specified in the Project Timetable, then Vendor shall issue to the PBC a Deliverable Credit as provided in Section 3.1(f)(iii)(2) of the Agreement.

Vendor may, at its option, (i) pay to PBC the applicable Service Level Credit or Deliverable Credit within thirty (30) days of (1) with respect to a Service Level Default, the end of the Measurement Period in which such Service Level Default occurred, or (2) with respect to a Deliverable Default, the date the Deliverable Default is cured or (ii) apply against Fees otherwise payable to Vendor on the PBC's invoice issued immediately subsequent to the Measurement Period in which the Service Level Default or the Deliverable Default occurred, a credit equal to such Service Level Credit or Deliverable Credit.

3.2 Remedies

The provision of Service Level Credits and Deliverable Credits will not constitute the sole and exclusive remedy for a Service Level Default or a Deliverable Default, respectively; PBC shall have all other rights available in law and equity with respect to Service Level Defaults and Deliverable Defaults, respectively.

TABLE 1

	CRITICAL SERVICE	SERVICE LEVEL	SERVICE LEVEL MEASURE	MEASUREMENT PERIOD	SERVICE WEIGHT
1.	Vendor will contact the User Agency or User (as the case may be), after receipt of a Severity Level 1 Fault within 30 minutes as a goal, but not to exceed 60 minutes.	A person who has knowledge of the System and capabilities to address the Fault and responsibility for mobilization of resources to conduct the repair activity will call the PBC within 60 minutes 100% of the time in the Measurement Period.	Call back time	1 month	5%
2.	Vendor will contact the User Agency or User (as the case may be) after receipt of a Severity Level 2 Fault within 30 minutes as a goal, but not to exceed 60 minutes.	A person who has knowledge of the System and capabilities to address the Fault and responsibility for mobilization of resources to conduct the repair activity will call the PBC within 60 minutes 100% of the time in the Measurement Period.	Call back time	1 month	5%
3.	Vendor will contact the User Agency or User (as the case may be) after receipt of a Severity Level 3 Fault within 30 minutes as a goal, but not to exceed 60 minutes.	A person who has knowledge of the System and capabilities to address the Fault and responsibility for mobilization of resources to conduct the repair activity will call the PBC within 60 minutes 100% of the time in the Measurement Period.	Call back time	1 month	5%
4.	Vendor will promptly begin a Root Cause Analysis with respect to a Severity Level 1 Fault and continue with such Root Cause Analysis until such Root Cause Analysis is complete.	100% of the time in the Measurement Period.	Completion of Root Cause Analysis and delivery of a report	1 month	10%
5.	Vendor will promptly begin a Root Cause Analysis with respect to a Severity Level 2 Fault and continue with such Root Cause Analysis until such Root Cause Analysis is	100% of the time in the Measurement Period.	Completion of Root Cause Analysis	1 month	10%

	CRITICAL SERVICE	SERVICE LEVEL	SERVICE LEVEL MEASURE	MEASUREMENT PERIOD	SERVICE WEIGHT
	complete.				
6.	Vendor will immediately begin a Root Cause Analysis with respect to a Severity Level 3 Fault within 2 days of the log of the Severity Level 3 Fault.	100% of the time in the Measurement Period.	Completion of Root Cause Analysis	1 month	10%
7.	Vendor will arrive on-site at the location of the Severity Level 1 Fault within 4 hours after receipt of the request for on-site service.	100% of the time in the Measurement Period.	Arrival time	1 month	20%
8.	Vendor will arrive on-site at the location of the Severity Level 2 Fault within 4 hours after receipt of the request for on-site service.	100% of the time in the Measurement Period.	Arrival time	1 month	20%
9.	Vendor will arrive on-site at the location of the Severity Level 3 Fault within 24 hours after receipt of the request for on-site service.	100% of the time in the Measurement Period.	Arrival time	1 month	15%
10.	Vendor shall resolve the Severity Level 1 Fault on a continuous basis until the Severity Level 1 fault is resolved.	100% of the time in the Measurement Period.	Resolving the Severity Level 1 Fault	1 month	15%
11.	Vendor shall resolve the Severity Level 2 Fault on a continuous basis until the Severity Level 2 fault is resolved.	100% of the time in the Measurement Period.	Resolving the Severity Level 2 Fault	1 month	10%
12.	Vendor shall monitor the status of actions toward resolution of a Severity Level 1 Fault and provide updates to the User Agency or User (as the case may be) every hour or as required by the User Agency or User.	100% of the time in the Measurement Period.	Providing status updates	1 month	10%
13.	Vendor shall monitor the status of actions toward resolution of a Severity Level 2 Fault and provide updates to the User Agency or User (as the case may be) every 2 hours or as required	100% of the time in the Measurement Period.	Providing status updates	1 month	10%

	CRITICAL SERVICE	SERVICE LEVEL	SERVICE LEVEL MEASURE	MEASUREMENT PERIOD	SERVICE WEIGHT
	by the User Agency or User.				
14.	Vendor shall monitor the status of actions toward resolution of a Severity Level 3 Fault and provide updates to the User Agency or User (as the case may be) every 2 hours or as required by the User Agency or User.	100% of the time in the Measurement Period.	Providing status updates	1 month	10%
15.	The Camera Systems then installed (for which Acceptance has been issued) are able to perform all surveillance functions and collect video surveillance data in accordance with the applicable Specifications.	95% of the cameras are able to perform all such functions 97% of the time.	Uptime / Number of functioning cameras	1 month	5%
16	Each Camera System will not have more than 2 Faults (defined in Schedule 3.2 (Severity Level Response Times)) in the Measurement Period.	100% of the time during a Measurement Period.	Uptime / Each camera	30 days from the time the first Fault occurs	5%
17.	The Management System shall work in accordance with the Specifications and Standards.	99% Uptime	Uptime	1 month	15%
18.	The Storage Area Network is working in accordance with the Specifications and Standards.	100% Uptime	Uptime	1 month	20%

Key Services

TABLE 2

1. Providing the Reports set forth on Schedule 9.3 (Reports).

SCHEDULE 3.2
SEVERITY LEVEL RESPONSE TIMES

Severity Level	Definition	Response Time	Resolution Time
Severity Level 1 – Critical	A nonperformance, problem, error, degradation or defect (a "Fault") or a series of Faults which causes a full System failure or a Fault in a Camera System or series of Camera Systems designated as critical by the PBC, User Agency or User (as the case may be).	Vendor will promptly log the issue after receipt of a call from the User Agency or User (as the case may be) or after Vendor becomes aware of the Fault, and contact the User Agency or User within 30 minutes as a goal, but not to exceed 60 minutes, by having a person call the User Agency or User who has knowledge of the System and capabilities to address the Fault and responsibility for mobilization of resources to conduct the repair activity. Vendor will promptly begin a Root Cause Analysis with respect to the Fault and continue with such Root Cause Analysis until such Root Cause Analysis is complete. Vendor will arrive on-site at the location of the Fault within 4 hours after receipt of the request for on-site service.	Vendor shall give Severity Level 1 Faults priority over all other requests. Vendor shall resolve the Severity Level 1 Fault on a continuous basis until the Severity Level 1 Fault is fully resolved. Vendor shall monitor the status of actions toward resolution and provide updates to the User Agency or User (as the case may be) every hour as practicable or as required by the User Agency or User.

Severity Level 2 - Medium - High	A Fault, or series of Faults, which prevent normal use of a material function of the System or a Fault in a Camera System or series of Camera Systems designated as critical by the PBC, User Agency or User (as the case may be).	Vendor will promptly log the issue after receipt of a call from the User Agency or User (as the case may be) or after Vendor becomes aware of the Fault, and contact the User Agency or User within 30 minutes as a goal, but not to exceed 60 minutes, by having a person call the User Agency or User who has knowledge of the System and capabilities to address the Fault and responsibility for mobilization of resources to conduct the repair activity. Vendor will promptly begin a Root Cause Analysis with respect to the Fault and continue with such Root Cause Analysis until such Root Cause Analysis is complete. Vendor will arrive on-site at the location of the Fault within 4 hours after receipt of the request for on-site service.	Severity Level 2 Faults are not given priority over Severity Level 1 Faults, but will be given priority over Severity Level 3 Faults. Vendor shall resolve the Severity Level 2 Fault on a continuous basis until the Severity Level 2 Fault is fully resolved. Vendor shall monitor the status of actions toward resolution and provide updates to the User Agency or User (as the case may be) every 2 hours as practicable or as required by the User Agency or User.

Severity Level 3 – Low Without incurring any additional charge, the PBC may designate, during a calendar month, 4 incidents with respect to the Camera Systems, as a Severity Level One Fault, which would not otherwise be considered a Severity Level One Fault.	A Fault, or series of Faults, which cause a limitation in a function performed by the System or an application of the System or a failure of a camera location, or a network component that is identified by the PBC, User Agency or User (as the case may be) as not critical to the System.	Vendor will immediately log the issue immediately after receipt of a call from the User Agency or User (as the case may be) or after Vendor becomes aware of the Fault, and contact the User Agency or User within 30 minutes as a goal, but not to exceed 60 minutes, by having a person call the User Agency or User who has knowledge of the System and capabilities to address the Fault and responsibility for mobilization of resources to conduct the repair activity. Vendor will complete a Root Cause Analysis with respect to the Fault within 2 days of the log of the Fault. Vendor will arrive on-site at the location of the Fault within 24 hours of the receipt of the request for on-site service. Vendor maintenance may be deferred if directed by the User Agency or User (as the case may be) in writing.	Severity Level 3 Faults are not given priority over other requests. Vendor shall monitor the status of actions toward resolution and provide updates to the User Agency or User (as the case may be) every 4 hours as practicable or as required by the User Agency or User. Vendor and the User Agency or User will mutually agree to a specific resolution time frame for each Severity Level 3 Fault.

SCHEDULE 4.1

Terms and Conditions for Construction

Section 1. General.

Vendor shall provide, in compliance with the Agreement, the labor (including supervision, coordination, and administration), machinery, materials, parts, supplies, tools, scaffolding, transportation, permits, inspections, occupancy approvals, equipment, temporary power, shop drawings, design development drawings, construction drawings and incidentals and facilities, and other building and construction items necessary to perform Services in connection with the Project that are Construction Work and Construction Work Design Services as described in this Schedule 4.1 and the Task Orders. "**Construction Work**" means the work related to permitting, hanging or attaching cameras (including to infrastructure such as street standards and fixed structures), preparation for, performing and finishing street openings (such as trenching, excavation, filling, laying asphalt and other property restoration), demolition activities, installation (including laying and pulling) of fiber and laterals, and connection (including plugging and splicing cables) of newly installed fiber with then-existing fiber, connecting power sources and any other building and construction activities necessary to build, devise and systematically implement the physical environment and tangible components of the System so that the System, upon Final Acceptance, conforms to the Specifications and Standards.

Before undertaking Construction Work, Vendor must provide (and the Services include) Construction Work Design Documents, Submittals and Construction Work Design Services acceptable to the PBC for Construction Work, produced by its Construction Work Design Services Subcontractor in accordance with this Schedule.

Vendor will undertake the Construction Work and Construction Work Design Services on a design-build basis such that once completed they will cause the System to conform to Specifications and Standards.

Section 2. Definitions.

Defined terms used in this Agreement are listed in Attachment 1 (Defined Terms) with the citation to the Agreement provision in which each such term is defined.

Section 3. Construction Work Design Documents.

In carrying out its Construction Work Design Services, Vendor must prepare or provide to the PBC for review and approval various Construction Work Design Documents for the Construction Work, which shall be Deliverables pursuant to which the Construction Work will be undertaken and which shall include work product, such as written plans, drawings and specifications reports and analyses related to implementation of the Construction Work ("**Construction Work Design Documents**").

The PBC may reject Construction Work Design Documents that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or which are reasonably necessary for the proper implementation of the Project. If the PBC determines that Vendor has failed to comply with the foregoing standards, it will notify Vendor of its failure. If Vendor does not correct the failure, if it is possible to do so, within fifteen (15) days after receipt of notice from the PBC specifying such failure, or the longer period approved by the PBC, then the PBC, by written notice, may treat the failure as a default under the Agreement.

Partial or incomplete Construction Work Design Documents may be accepted for review only when required for a specific and well-defined purpose for the benefit of the PBC and when consented to in advance by the PBC. Such Construction Work Design Documents will not be considered as having satisfied the requirements of this Agreement, and partial or incomplete Deliverables for Construction Work in no way relieve Vendor of its obligations under this Agreement.

Vendor must deliver Construction Work Design Documents for Construction Work at the 50% level of completion, and at the 90% and 100% level of completion. Vendor will provide hard copies and electronic copies of such incremental Construction Work Design Documents, and will also make such incremental Construction Work Design Documents available on the Intranet Site. The PBC will in each instance review and provide comments to Vendor.

If Vendor disagrees with any of the PBC's comments, it will notify the PBC in writing. PBC will respond to Vendor's notice of dispute. Should the Vendor disagree with any of the PBC's comments, Vendor must comply with the PBC's directive after advising the PBC in writing of adverse effects that the PBC's directive may have on the functionality of the System, and/or the time for completion or the cost of the System, and after being directed in writing by the PBC to proceed. In such case, Vendor will not be in breach of the Agreement if and to the extent that Vendor can reasonably demonstrate that the Vendor advised the PBC in writing of potential effects of the PBC's directions to proceed and the PBC's directives were the direct cause of Vendor's non-compliance with the Agreement. If Vendor believes that the PBC's directive will cause increases in System costs or delays in completion of the System, and the PBC disagrees, Vendor may file a claim under Section 9.5 (Claims) of the Master Agreement, but only to the extent that, before proceeding with the PBC's directive, Vendor advised the PBC in writing of such incremental increase in costs and/or time delays.

PBC and Vendor agree that, to the extent permitted by law, the Construction Work Design Documents and Submittals to be provided by Vendor or its Construction Work Design Services Subcontractor under this Agreement are conclusively deemed "**works made for hire**" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 *et seq.*, and that PBC will be the sole copyright owner of such Construction Work Design Documents and Submittals and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

To the extent that the Construction Work Design Documents and Submittals do not qualify as a "work made for hire," Vendor irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers (or shall cause its Construction Work Design Services Subcontractor to do so) to the PBC its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Construction Work Design Documents and Submittals prepared for the PBC under this Agreement, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Vendor will, and will cause all of its subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the PBC may reasonably request in order to assist the PBC in perfecting its rights in and to the copyrights relating to the Construction Work Design Documents and Submittals produced by Vendor, at the sole expense of the PBC. Vendor warrants to the PBC, its successors and assigns, that on the date of transfer Vendor (or other transferor) is the lawful owner of good and marketable title in and to the copyrights for the Construction Work Design Documents and Submittals provided by Vendor and has the legal rights to fully assign them. Vendor further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Construction Work Design Documents and Submittals. Vendor warrants that Construction Work Design Documents and Submittals produced by Vendor constitute a work of original authorship.

Section 4. Construction Work Design Services.

1. Consistent with the Illinois Architecture and Engineering Practice Acts of 1989, 225 ILCS 305, et seq. and 225 ILCS 325, et seq. and other applicable State licensing laws (the "Acts"), Vendor will provide through qualified licensed design professionals employed by Vendor (the "**Construction Work Design Services Subcontractor**"), the necessary Construction Work Design Services, including engineering, and other design professional services for the preparation of the required Construction Work Design Documents and Submittals to permit Vendor to complete any Task Order, and the Project, in accordance with the requirements of the Agreement ("**Construction Work Design Services**"). The Construction Work Design Services Subcontractor must be appropriately licensed to perform the Construction Work Design Services, and must ensure that all Construction Work Design Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as may be required by Applicable Law. Vendor must deliver to PBC copies of any such licenses before the Construction Work Design Services Subcontractor begins the Construction Work Design Services. Vendor remains responsible for the professional and technical accuracy of all Construction Work Design Services and Submittals furnished to the PBC whether by Vendor or its Subcontractors or others on its behalf. All Construction Work Design Documents and Submittals must be prepared in a form

and content satisfactory to the PBC and delivered in a timely manner consistent with the requirements of this Agreement. Notwithstanding anything to the contrary or otherwise in the Agreement, the PBC's acceptance and/or approval of any Construction Work Design Documents and Submittals is a general approval of concept, but shall not be deemed to be an approval of Vendor's means and methods and does not relieve Vendor of its obligations under the Agreement. "Submittal" means a schedule (including the Schedule), Shop Drawings, video tape, Product Data, Samples, or other items as may be required by the Agreement for review and/or approval before prosecution of a portion of the Construction Work. "Engineer" means a licensed engineer pursuant to Illinois State law.

2. Vendor shall perform all Construction Work Design Services covered by this Article in a manner such that Construction Work built in accordance with approved Construction Work Design Documents will be in compliance with the requirements of the Agreement and, in addition (and without limiting the preceding sentence), with that degree of care, skill and diligence consistent with the construction standards prevailing in the Chicago metropolitan area for services of comparable skill and magnitude.
3. If Vendor fails to comply with the foregoing standards, Vendor must, at the PBC's option, perform again, at its own expense, all Construction Work Design Services required to be re-performed as a direct or indirect result of such failure.
4. Except as provided in Section 3 of this Schedule 4.1, notwithstanding any review, approval, acceptance, or payment by the PBC of any Construction Work Design Services and Submittals, Vendor remains responsible for the Construction Work Design Services and for performing the Construction Work so that the Milestone Deliverables and the System meet the applicable Acceptance Criteria.
5. The Construction Work Design Services Subcontractor must have direct supervision of all Construction Work Design Services and other professional services for which licensure is required under the Acts. The Construction Work Design Services Subcontractor must participate substantially in the preparation and coordination of delivery of Submittals and must verify the adherence and completion of Construction Work in accordance with Construction Work Design Documents and Submittals. In the event that the Construction Work Design Services of the Construction Work Design Services Subcontractor terminate or are terminated for any reason, Vendor must replace the Construction Work Design Services Subcontractor in accordance with Section 8.4 of the Master Agreement at no cost to the PBC with another Construction Work Design Services Subcontractor acceptable to the PBC, which meets the requirements of the Acts.

Section 5. Construction Obligations.

1. The Vendor must perform everything required to be performed as part of the Construction Work and provide all of the labor, necessary tools, machinery and materials, and all facilities for the completion of the Construction Work and perform all other work necessary to perform and complete in a workmanlike manner, and within the specified time, all of the Construction Work in strict accordance with the Agreement. Except as may be provided in the Agreement, Vendor is solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Construction Work.
2. The Vendor must begin Construction Work on the date specified in the Notice to Proceed. The PBC is not obligated to issue the Notice to Proceed until it has approved 100% complete Construction Work Design Documents for the Construction Work. In addition, upon receipt of Notice to Proceed, the Vendor must assign and maintain during the term of the Agreement and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as required by Applicable Law, available as needed, and qualified to perform the Construction Work. Vendor shall deliver to the PBC, prior to beginning the Construction Work, copies of all license held by Vendor Personnel who are required to be licensed under Applicable Law. Notwithstanding the foregoing, delivery of copies of such licenses does not affect Vendor's obligation hereunder.
3. The Vendor is solely responsible for properly laying out the Construction Work, and for all lines, elevations and measurements for all of the Construction Work executed under the Agreement. The Vendor shall verify the figures shown on the applicable drawings before laying out the Construction Work and will be held responsible for any errors or inaccuracies resulting from the failure to do so. The PBC will not be responsible for laying out, or checking or otherwise auditing the lay out of, the Construction Work.
4. The Vendor is responsible for the coordination of the various parts of the Construction Work so that no part is left in an unfinished or incomplete condition as a result of any disagreement between the various Subcontractors or between any of the Subcontractors and the Vendor, as to where the Construction Work of one begins and ends with relation to the Construction Work of the other.
5. The Construction Work is under the charge and care of the Vendor until Final Completion of such Construction Work. The Vendor assumes all responsibility for injury or damage of the Construction Work by action of elements, fire or any other causes whatsoever proximately caused by Vendor or its Subcontractors, including injury or damage arising from the execution or non-execution of the Construction Work until Final Completion. The Vendor must rebuild, repair, restore, and make good, at no additional cost to the PBC, all injuries or damages

to any portion of its Construction Work before Final Completion. When equipment or materials are furnished to the Vendor by the PBC for use or inclusion in the Construction Work, the Vendor's responsibility for safeguarding all such equipment and materials must be the same as for equipment and materials furnished by Vendor, but in no event shall Vendor use less than reasonable care.

6. The Construction Work will not be considered completed and accepted until Final Completion.
7. The Vendor must keep on hand at the Site, for reference, a complete set of documents pertaining to the Construction Work on the Project, including the complete Agreement, copies of all approved drawings and plans, all orders issued to the Vendor by the PBC that relate to the Construction Work, and all submittals, including shop drawings and meeting minutes relating to the Construction Work.
8. Surveys, soil borings, geotechnical information, data, plans or other materials generally describing the unimproved land or existing structures at the Site may be provided to the Vendor by the PBC. Such information is not warranted by the PBC to be accurate. The Vendor is not entitled to rely on it. When such information is provided, the Vendor acknowledges that the PBC and its Contractors have not verified such information. Site information does not constitute any representation by the PBC to the Vendor of Site boundaries or characteristics.
9. The Vendor must take field measurements, and verify field conditions. No allowance will be made to the Vendor for any extra labor and/or materials required due to Site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the Site. In the event that land surveying Construction Work is required under this Agreement, Vendor must have such Construction Work performed by a Surveyor as described in Section 48 of this Schedule 4.1 (Surveyor).
10. If conditions are encountered at the Site which are pre-existing subsurface or otherwise unknown or concealed physical conditions of an unusual nature given the characteristics of the area where a particular Site is located and which cannot be reasonably anticipated and which differ materially from those that ordinarily may be found to exist, including the presence of unanticipated Hazardous Materials, then the Vendor must provide immediate written notice to the PBC before proceeding with such Construction Work or disturbing such areas.
11. If such unanticipated conditions cause a material increase or decrease in the Vendor's cost or time required for the performance of any of the Construction Work, an equitable adjustment in the prices or time, or both, will be made pursuant to Section 9.4 (Change Control) in the Master Agreement.

Section 6. Vendor's Warranties and Representations.

Vendor warrants and represents that:

1. With respect to each approved Task Order, Vendor has carefully examined and analyzed the provisions and requirements regarding the Construction Work, and it has inspected the Site to the extent made available by the PBC; Vendor has satisfied itself as to the nature and scope of Construction Work, all conditions, any obstructions, and requirements needed for the preparation of its Construction Work Costs estimates and execution and performance of the Construction Work, the general and local conditions, and all other matters which in any way may affect the Construction Work or its performance; and the time available for such examination, analysis, inspection, and investigation was adequate.
2. Except for the contents of the Agreement, no representation, statement or promise, oral or written, or of any kind whatsoever, by the PBC, its officials, agents, representatives or employees, has induced the Vendor to submit a proposal or has been relied upon by the Vendor, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at or on the Site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of the Agreement; or (vi) any other matter. Notwithstanding the foregoing, the Parties acknowledge that Vendor has not had the opportunity to verify Site conditions. Accordingly, the Vendor acknowledges and agrees to expressly provide in the applicable Task Orders for any and all assumptions made by Vendor relating to the Construction Work to be performed under such Task Order.

Section 7. Construction Work Completion.

1. Substantial Completion of the Construction Work
 - a) Substantial Completion of the Construction Work will be determined after inspection by the PBC. **"Substantial Completion of the Construction Work"** or **"Substantial Completion"** means a determination by the PBC that Construction Work with respect to a Deliverable, a Milestone Deliverable or the System has been "essentially completed," except for Punch List Construction Work, as evidenced by a letter of acceptance issued by the PBC. "Essential completion" means the Construction Work with respect to a Deliverable, Milestone Deliverable or the System, as the case may be, has been completed in accordance with the applicable

Construction Work Design Documents and Submittals and in accordance with the Agreement, except for Punch List Construction Work, and the Construction Work supports and provides for the use of the related Deliverables, Milestone Deliverables and the System so that each such Deliverable, Milestone Deliverable and/or the System meets its applicable Acceptance Criteria.

2. Punch List

a) Punch List Completion

- (1) Upon Substantial Completion of the Construction Work, the Punch List will be transmitted to the Vendor from the PBC. The Vendor must begin performance of Punch List Work immediately after receipt of the Punch List.
- (2) Failure of the Vendor or its Subcontractors to begin the Punch List Work within three (3) days after receipt of the Punch List is an Event of Default.
- (3) Punch List Construction Work must be continuously prosecuted once begun and for the Site within the CBD completed within fourteen (14) days from the receipt of the Punch List and for Site outside of the CBD, completion within twenty-eight (28) days from receipt of the Punch List. "Site" means the location or locations within which, or where, the Construction Work will be performed, Goods and other technology will be installed or implemented, and/or fiber will be placed or pulled in connection with the Project under the Agreement.
- (4) **"Punch List" or "Punch List Construction Work"** means minor adjustments, repairs or deficiencies in the Construction Work as determined at the sole discretion of the PBC. Items of incomplete Construction Work that preclude full or beneficial use of any portion of the Construction Work or that preclude the PBC from full operation, maintenance, or security of the Project are not considered Punch List items.

- b) When the Vendor deems the Punch List Construction Work to be complete, the Vendor must notify the PBC in writing that the Construction Work will be ready for an inspection and/or testing for Final Completion on a date specified by the Vendor. Such notice shall be given at least five (5) days in advance of said date. If the PBC concurs that the Punch List Construction Work will be ready for inspection or testing on the date

given, the PBC will make such inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Punch List Construction Work is complete does not relieve the Vendor of its responsibilities under the Agreement. The Vendor must cooperate in all respects in the scheduling and performance of the inspection. Upon inspection, the PBC will determine if Final Completion of the Construction Work has been achieved in accordance with the Construction Work Design Documents and Submittals. **"Final Completion"** with respect to Construction Work in connection with a Milestone Deliverable means that Substantial Completion has been issued with respect to such Construction Work, the Punch List items relating to such Construction Work have been resolved, Acceptance of such Milestone Deliverable has been issued and a letter of acceptance has been issued by the PBC indicating that the applicable Construction Work has received final acceptance.

- c) No action of the PBC, the User Agency, their successors and assigns or their respective Commissioners, board members, officers, employees, or agents shall be construed as accepting Construction Work performed, which Construction Work are not in accordance with the applicable Construction Work Design Documents and Submittals specified and required by the Agreement. The issuance of the final payment shall in no way affect the rights of the PBC against the Vendor (and the surety or sureties on the Bond given by the Vendor) to enforce the complete performance of the Construction Work or to sue for the recovery of damages for failure to do so, nor shall it affect the terms of Vendor's guarantee (under the Bond) in connection therewith. **"User Agency"** means the City or the Sister Agency, as the case may be, for which or on whose behalf the PBC has undertaken to cause the Construction Work to be performed
- d) Substantial Completion of Construction Work and Punch List and issuance of Final Completion does not relieve Vendor of its obligations to have the Construction Work meet the requirements of the Construction Work Design Documents and the Submittals, and the Deliverables, Milestone Deliverables or System meet the requirements of the applicable Acceptance Criteria. If any of the Construction Work, Deliverables, Milestone Deliverables or System fails to do so as a result of defective Construction Work Design Services or Construction Work, Vendor must replace or re-perform such Construction Work Design Services or Construction Work at its own expense.

Section 8. Performance and Labor & Material Payment Bonds.

1. Contemporaneously with execution of a Notice to Proceed, the Vendor will deliver to the PBC a Performance and Payment Bond in the amount of the value of the Construction Work and Goods set forth in such Notice to Proceed ("**Bond**"). The surety for the Bond must appear on the listing of sureties approved by the U.S. Department of Treasury in its Circular 570 and must have a Best's Key Rating Guide of "A", Class A or better. The surety must have bonding capacity per Circular 570 equal to or in excess of the Bond amount without need for reinsurance. The Bond shall remain in effect for the Warranty Period.
2. If at any time the surety or sureties, or any one of them, upon such Bond become insolvent, or are in the opinion of the PBC unsatisfactory or unable to respond in damages in case of liability on such Bond, the PBC will notify the Vendor and direct that a satisfactory surety or sureties be provided forthwith.
3. Upon approval of any Task Order subsequent to execution of the Agreement, Vendor must cause the amount of the Bond to be increased in the amount required by the Task Order and to amend the Bond in order to have the Construction Work required by the Task Order covered by the Bond. The Bond shall be in the form attached to this Schedule 4.1 as Attachment 1.
4. No payment shall be made on account of Construction Work done by the Vendor until satisfactory sureties have or additional bonding has been provided as directed or required. Neglect, failure, or refusal of the Vendor to provide satisfactory sureties or to increase the amount of the Bond when so directed within ten (10) days after such notification is an Event of Default.

Section 9. Other Contractors.

1. The PBC and any other party having an interest over the Site may enter into agreements with other contractors in connection with the Site ("**Contractors**"). The Vendor shall afford other Contractors working at the Site reasonable opportunity for the introduction and storage of their materials and for the performance of their work. Vendor shall coordinate and tie-in, where appropriate, its Construction Work with construction work of others in a reasonably acceptable manner and perform the Construction Work in proper sequence to the work of others. The Vendor must conduct the Construction Work so as not to interfere with or hinder the progress or completion of the construction work being performed by other Contractors within or adjacent to the Site.
2. If any part of the Vendor's Construction Work depends, for proper performance or result, upon the construction work of any other Contractor, the Vendor shall

inspect and measure that dependent construction work of the other Contractor and promptly report to the PBC any defects or discrepancies in such construction work. The Vendor's failure to inspect and make such report shall constitute an acceptance of the other vendor's construction work as fit and proper for the proper performance of the Construction Work, except as to latent defects.

3. Wherever Construction Work being done by any such other Contractors or their subcontractors is contiguous to Construction Work, the respective rights of the Parties will be established by the PBC to secure the completion of the various portions of the Construction Work in general harmony.

Section 10. Mutual Responsibility of Vendor and other Contractors.

1. Subject to Subsection 3 below, the Vendor must assume all responsibility for Construction Work not completed or accepted due to the presence and operations of other Contractors.
2. Subject to Subsection 3 below, the Vendor must assume all liability, financial or otherwise that may arise because of inconvenience, delay, or loss experienced due to the presence and operations of other Contractors working within the Site.
3. Vendor must make commercially reasonable efforts to cooperate with other Contractors to mitigate any impact and inform the PBC of any anticipated impact to Construction Work completion or acceptance due to other contractors, in which case Vendor is not liable for lack of completion or acceptance due to such other Contractors.
4. The Vendor, where separate Contractors or their subcontractors are employed or present on the Site, will not hold the PBC responsible for loss or damage or injury caused by any fault or negligence of such other Contractor or subcontractor and the Vendor shall look to such contractor or subcontractor for recovery from them for any such damage or injury.
5. If any Contractor or subcontractor shall suffer loss or damage caused by any acts or omission on the part of the Vendor, or any of its Subcontractors, the Vendor shall reimburse such other contractor or subcontractor by agreement if they will so settle. If any such Contractor or subcontractor shall assert any claim against the PBC on account of any damage or loss alleged to have been so sustained, the PBC shall notify the Vendor, and the Vendor shall save the PBC harmless against such claims as provided in Article XVII (Indemnification) of the Master Agreement.
6. When any damage is caused by other Contractors to the Construction Work performed by the Vendor, the Vendor must file claims with such other

Contractors, not against the PBC, and must obtain compensation for damage directly from such other Contractors.

Section 11. Competency of Construction Workers.

The Vendor must employ only competent and efficient laborers, mechanics or artisans and whenever, in the opinion of the PBC or its representatives, any construction worker is careless, incompetent, violates safety or security rules, obstructs the progress of the Construction Work, acts contrary to instructions, acts improperly, or fails to follow the safety requirements of this Agreement, the Vendor must, upon request by the PBC or its representatives, remove such construction worker from the Construction Work. The Vendor must not permit any person or Vendor Personnel to perform any part of the Construction Work or enter any Sites connected therewith who reasonably appears to be under the influence of, or is imbibing in, intoxicating liquors or controlled substances.

Section 12. Administration and Supervision of the Construction Work.

1. The Vendor shall furnish a competent and adequate staff as necessary for the proper administration, coordination, and supervision of the Construction Work; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Construction Work; and keep an adequate force of skilled construction workers on the Site to complete the Construction Work in accordance with all requirements of the Agreement.
2. The Vendor has selected one of the Vendor Personnel to serve as the superintendent of the Construction Work ("CWS") and will have full responsibility for the prosecution of the Construction Work with full authority to act in all matters as necessary for the proper coordination, direction, commitment of resources, and technical administration of the Construction Work. The CWS will be one of the Key Employees. The CWS shall attend meetings at such places and times as are decided by the PBC so as to render reports on the progress of the Construction Work. The CWS shall be committed to this Project on a full-time basis and shall be stationed at the Site, unless otherwise agreed to by the PBC in writing. The Vendor shall not change the CWS without the consent of the PBC, unless such staff member proves to be unsatisfactory to the Vendor and/or ceases to be in its employ.
3. The CWS shall represent the Vendor in the absence of the Vendor and all directions given to the CWS with respect to Construction Work will be as binding as if given to the Vendor.

Section 13. Prevailing Wage.

1. In the performance of the Construction Work, and as may be required otherwise the Vendor must comply with 820 ILCS 130/0.01 et seq., as it may be amended

(the "Act"), so long as the Act is in effect, in order to ensure that such persons covered by the Act are paid the prevailing wage rate as ascertained by the Illinois Department of Labor. The specified rates to be paid to all laborers, workers performing Construction Work, and mechanics for such craft or type of Construction Worker or mechanic as of the date of execution of this Agreement are included as Attachment 2, Table of Prevailing Wages. If the Illinois Department of Labor revises such prevailing wage rates, the revised rates will apply to this Agreement, and Vendor will not be entitled to additional compensation therefore.

2. The term "**general prevailing hourly rate**," means the hourly cash wages plus fringe benefits for health and welfare, insurance, vacations and pensions paid generally, in the locality in which the Construction Work is being performed, to employees engaged in Construction Work of a similar character on public Construction Work.
3. When performing Construction Work with respect to which the Construction Price is paid using funds requiring such compliance, Vendor must comply with the Davis-Bacon Act (40 U.S.C. §§ 27 6a to a-7), as supplemented by the Department of Labor regulations (29 CFR Part 5).

Section 14. Vendor's Construction Schedule

1. General
 - a) The Vendor must furnish the PBC a preliminary baseline critical path Schedule for the Construction Work by Phase and by Task Order in the Project Plan (and incorporated in the Project Timetable) relating to such Task Order, and a detailed cost loaded, baseline critical path Schedule with respect to the Construction Work that is subject to a Notice to Proceed within a period not to exceed fifteen (15) days following the effective date of such Notice to Proceed. The Vendor must begin actual Construction Work covered by this Agreement in conformity with the provisions of the Agreement and prosecute the same with all due diligence, so as to complete the entire Construction Work under this Agreement in a manner consistent with the approved Project Plan and Project Timetable after the date for commencement of Construction Work as specified in the first written Notice to Proceed to the Vendor from the PBC. The Vendor shall, when necessary, use overtime, multiple shifts, weekend, and/or holiday Construction Work to maintain the approved schedule without additional compensation. "**Schedule**" means the Critical Path Method (CPM) schedule submitted by the Vendor establishing time frames for the performance of components of the Construction Work. The

Schedule shall be part of the Implementation Plan and shall incorporate applicable elements of the Project Timetable.

- b) The progress schedule for the Construction Work covered by each Task Order and combination thereof will use the Critical Path Method (CPM). The Vendor shall utilize Microsoft Project and/or Microsoft Excel as a scheduling software package.
- c) The Vendor's CPM Schedule shall, as a minimum, indicate the dates for the starting and completion of the various stages of the Construction Work, including, without limitation the placing of material orders, delivery of materials and equipment, preparation, submittal, and approval of all required Submittals; preparation and procurement of material and equipment furnished by the Vendor; interface activities performed by others upon which the Vendor's schedule depends; all Construction Work activities and field construction operations, equipment installation, testing, and balancing. The Vendor shall provide estimates of craft hours and /or crew sizes for Construction Work under each Notice to Proceed.
- d) Review and approval of the CPM Schedule by the PBC does not relieve the Vendor of its sole responsibility for the means, methods, procedures, sequence and duration, of the Construction Work nor does it provide any entitlement to additional funds for Project completion in a period that is less than required by the Agreement.

2. CPM Schedule

- a) The Vendor shall prepare a detailed Construction Work progress schedule consisting of all Critical Path Method (CPM) diagrams as specified below. The format of the Construction Work diagram will utilize the Precedence Diagramming Method (PDM) showing the proposed starting and completion date for the various stages of the Project including any float time, and must be prepared such that it can be used to plot actual progress against proposed progress. Unless otherwise expressly approved by the PBC, the Vendor's schedule must be prepared using Microsoft Project and/or Microsoft Excel software as a schedule software package. The Vendor's schedule must be updated and submitted no less than monthly, or more frequently as directed by the PBC, or monthly payment will be withheld.
- b) Specifications applicable to Vendor's CPM Schedule and Construction Diagrams:

- (1) Each separate sheet shall include the Project name, Agreement number, Vendor's name, Project file, data date, and plot date. If multiple diagrams are prepared, each must, in addition to the above, include a descriptive title of that portion of the Construction Work included therein.
 - (2) The Vendor's schedule shall show the order and interdependency of activities, indicating the sequence in which the Construction Work is to be performed as planned by the Vendor. The schedule shall describe and indicate the critical path. Activities with total float less than ten (10) days are defined as near critical.
 - (3) The Vendor's schedule must be submitted to the PBC; six (6) color copies of the schedule are required, one of which must be reproducible. A copy of the Vendor's schedule must be submitted on a CD Rom acceptable to the PBC in Microsoft Project and/or Microsoft Excel format.
 - (4) The Vendor's revised and/or updated schedules, including the CD Rom, must be submitted when the Vendor's planned sequence is changed, when Agreement changes are made which affect the schedule, or when the Vendor prepares its monthly schedule update.
 - (5) The "**Construction Diagrams**" shall include, at a minimum, diagrams of (i) field construction operations, submittal and approval of all Submittals, (ii) procurement of material and equipment furnished by the Vendor or PBC in connection with the Construction Work, (iii) interface activities performed by others upon which the Vendor's schedule may depend, and (iv) equipment installation and testing.
- c) The following items define the term "**activities**" as it pertains to the CPM Schedule:
- (1) Each activity must be a unit of Construction Work, which requires an amount of time for its performance.
 - (2) Each activity must be a logically separate part of the Construction Work, defined by an observable start and an observable finish.
 - (3) To establish the scope of an activity for CPM purposes, the Vendor shall form a single activity from the largest grouping of related operations, which permit a continuous and measurable flow of Construction Work.

- (4) The scope of an activity must be small enough to permit a reasonable appraisal of its status or as directed by the PBC.
 - (5) Each activity on the Vendor's schedule must be cost and craft hour loaded.
 - (6) The activities that comprise the Construction Work under a Notice to Proceed will be broken out in such detail as to reflect the scope of Construction Work and the value of the respective Construction Work Deliverables under such Notice to Proceed, with no activity exceeding \$200,000 without the consent of the PBC.
 - (7) Vendor must include in the Schedule as milestones, and identify with a designation approved by the PBC, activities of Vendor's Subcontractors and of other contractors or companies of which Vendor has knowledge that must be completed before the start of the Vendor's Construction Work or portion of Construction Work.
- d) The following information must be furnished on the Construction Diagram for each activity in the Schedule:
- (1) Activity Number: The Vendor will utilize the drawings division and section numbers in assigning activity numbers to the related portions of Construction Work.
 - (2) Description of the activity.
 - (3) Duration of the activity in days, unless otherwise noted.
 - (4) Cost Loading: The cost estimate/budget to perform the Construction Work in connection with each Deliverable under the applicable Notice to Proceed.
 - (5) Craft Hour Loading: The estimated craft hours to perform the Construction Work in connection with each Deliverable under the applicable Notice to Proceed.
 - (6) Each activity, including any Construction Work activity, that is not performed by the Vendor must be assigned a responsibility code as required indicating which Subcontractor, supplier, fabricator, etc., is to perform such activity.
 - (7) Each activity, including Construction Work activities, must be identified with early/late start, early/late finish, and total float.

- (8) Calendar I.D. In addition to the above, any activity, including Construction Work activity, whose start or finish date has been specified elsewhere in the Agreement shall reflect such specified date in the progress Schedule.

3. Completion Requirements

- a) Upon receipt of the CPM Schedule, the PBC will review the Schedule for conformance with the Agreement and degree of detail. The PBC within fourteen (14) days after receipt of the detailed CPM Schedule and supporting documents will either (1) approve the Schedule, (2) approve the Schedule as noted, or (3) disapprove the Schedule with the reasons set forth. If the CPM either is given a qualified approval or is disapproved, the Vendor must submit a revised CPM Schedule within seven (7) days.
- b) The baseline CPM Schedule must be a firm schedule for the entire Construction Work duration.
- c) Failure by the Vendor to provide the baseline CPM Schedule within the required time period is grounds for the PBC to withhold payments relating to acceptance of the applicable Milestone Deliverable.

4. Submittal, Acceptance, and Vendor's Responsibility for the Schedule

- a) Before submitting the baseline CPM schedule to the PBC, the Vendor shall review and verify the procurement lead time for the fabrication and delivery of all construction materials and Project equipment along with the erection and/or installation duration for all the Construction Work that make up the critical path of the Project.
- b) The Vendor shall coordinate its letting of Subcontracts, material purchases, shop drawing submissions, delivery of material and sequence of operations to conform to the baseline CPM schedule and shall furnish proof of same as may be required by written notification from the PBC.
- c) In the event the Vendor fails to provide or update the required CPM scheduling documents as outlined in this section within the time prescribed, the Vendor will be in default of the Agreement requirements, and the PBC may, in addition to any other remedies available to the PBC, withhold the applicable payments until the Vendor submits the required information.

5. Updating

- a) The Vendor shall not make any changes to the original duration, activity relationships, constraints, costs, add or delete activities, or alter the Schedule's logic when updating the Schedule.
- b) The originally approved baseline CPM schedule will be designated as the "**Target Schedule**" and shall only be changed based on a Change Order that extends the Agreement duration or a written temporary suspension of the Project by the PBC. All updates will be plotted against the "Target Schedule."
- c) The Vendor shall update the CPM Schedule on a monthly basis. The updated information will include the original schedule detail and the following additional information:
 - (1) Actual start dates
 - (2) Actual finish dates
 - (3) Construction Work activity percent completion
 - (4) Remaining duration of Construction Work activities in progress
 - (5) Identified or highlighted critical activities
- d) The Vendor shall submit scheduling documents in the same formats and number as indicated in this section.
- e) The PBC may withhold applicable payments if the Vendor does not submit updates as required.
- f) Upon receipt of the CPM Schedule update, the PBC will review the Schedule for conformity with the Project Plan and the rest of the Agreement and degree of detail. The PBC, within fourteen (14) days after receipt of the Updated CPM Schedule and supporting documents, will either (1) approve the schedule, (2) approve the schedule as noted, or (3) disapprove the schedule with the reasons set forth. If the CPM either is given a qualified approval or is disapproved, the Vendor must submit a Revised Updated CPM Schedule within 7 days after the date of such qualified approval or rejection.
- g) As part of the normal CPM Schedule update, the Vendor shall prepare a written narrative report, highlighting the progress during the past update period. The written narrative report shall include but not be limited to the following information:

- (1) Summary of Construction Work accomplished during the past update period
 - (2) Agreement Milestone comparison Chart
 - (3) Analysis of Critical Path(s)
 - (4) Analysis of time lost/gained during the update period
 - (5) Identification of problem areas
 - (6) Recommended solutions to current problems
- h) The Vendor is required to attend a monthly CPM Schedule update review meeting with the PBC. The purpose of this meeting is to review past progress, current status, problem areas and future progress. The Vendor's narrative report will be reviewed at this meeting. The Vendor's representatives attending this meeting will have the authority to commit manpower and/or other resources to correct any negative impact to the schedule.
 - i) Any possible means of shortening the Schedule at no additional cost must be brought to the attention of the PBC.
 - j) The updated progress Schedule will be used as a guide for verifying estimates of Construction Work completed and must accurately represent the Project's current status with respect to Construction Work.

6. Vendor Changes to the Schedule

The Vendor shall comply with the following requirements regarding proposed changes to the approved baseline CPM schedule:

- a) If the Vendor proposes to make any changes in the approved baseline CPM Schedule, Vendor shall notify the PBC in writing, stating the reasons for the change, identifying each changed activity (including duration and interrelationships between activities) and providing a diskette of the proposed changed schedule.
- b) The PBC has the authority to approve or disapprove the proposed change in the baseline CPM Schedule and shall do so in writing within ten (10) days after receipt to the Vendor's submission. If the PBC approves the change in the baseline CPM Schedule that changed schedule will be designated the new "Target Schedule." All monthly updates will be plotted against the new "Target Schedule."

- c) If the PBC approves a portion of the change to the baseline CPM Schedule, the Vendor shall submit a revised CPM schedule incorporating such change(s) within ten (10) days after approval along with a written description of the changes(s) to the Schedule.

7. Recovery Schedule

- a) The Vendor shall maintain an adequate Construction Work force and the necessary materials, supplies and equipment to meet the current approved baseline CPM Schedule. In the event that the Vendor, in the judgment of the PBC, is failing to meet approved CPM Schedule, including any milestones, the Vendor shall submit a recovery schedule (a "Recovery Schedule").
- b) The Recovery Schedule shall set forth a plan to eliminate the Schedule slippage (negative float). The plan must be specific to show the methods to achieve the recovery of time, e.g. increasing manpower, working overtime, weekend work, employing multiple shifts. All costs associated with implementing the Recovery Schedule must be borne by the Vendor.
- c) Upon receipt of the CPM Recovery Schedule, the PBC will review the Recovery Schedule for conformance with the Agreement and degree of detail. The PBC will either (1) approve the Recovery Schedule, (2) approve the Recovery Schedule as noted, or (3) disapprove the Recovery Schedule with the reasons set forth. If the Recovery CPM Schedule either is given a qualified approval or is disapproved, the Vendor must submit a revised CPM Recovery Schedule within seven (7) days of the date of such qualified approval or rejection.
- d) The Vendor must implement the Recovery Schedule approved by the PBC. In the event the Vendor fails to follow the direction of the PBC or timely cure such default in seven (7) days from receipt of notice of such default, the PBC reserves the right, with written notice to the Vendor, to procure the materials, equipment and labor to proceed with or to complete the Construction Work or any portion of it and charge the cost to the Vendor. The PBC's rights under this provision are cumulative to rights under any other provisions of the Agreement including the PBC's rights to terminate for default or otherwise.

8. Revised Schedule

- a) The PBC Project Manager may direct the Vendor to revise the approved CPM Schedule. Reasons for such direction may include the following: (1) changes in the Construction Work, (2) re-phasing of the Project or any

phase, (3) a change in the duration of the Project or phase, and (4) acceleration of the Project or phase.

- b) The PBC Project Manager will direct the Vendor to provide a revised CPM schedule in writing.
- c) The Vendor will provide the revised CPM schedule with ten (10) days of receipt of the PBC's written direction.
- d) The PBC has the authority, in its sole discretion, to approve or reject the revised CPM schedule and will do so in writing within ten (10) days after receipt of the Vendor's submission. If the PBC approves the revised schedule, such schedule will be designated the new Target Schedule.

9. Winter Suspension

- a) When the PBC implements a Winter Suspension Period in writing, the Vendor will incorporate the Winter Suspension Period into the CPM Schedule. The Winter Suspension Period will begin and end on the dates specified by the PBC.
- b) The Vendor will prepare for the Winter Suspension Period by removing or relocating any equipment, materials, stockpiles, or items that may interfere with or impair Site operations. The Vendor will participate in a Site inspection with the PBC on or before any Winter Suspension Period commencement date. All costs associated with Site preparation for the Winter Suspension Period are incidental to the Project and are included in the Fees.

10. Construction Work During the Winter Suspension Period

- a) If the Vendor requests permission to perform the Construction Work during the specified Winter Suspension Period, and such request is approved by the PBC, then the following rules will apply. "**Winter Suspension Period**" means a period of time occurring during the period from December 1 through March 1 during which the Parties mutually agreed to suspend the Construction Work. Services suspended during a Winter Suspension Period shall not be subject to Section 7.7 of the Master Agreement.):
 - (1) The Vendor will submit a Winter Suspension Period CPM schedule for the Construction Work activities that it proposes to complete during the Winter Suspension Period. The schedule will be in the same format as the approved CPM Schedule. The Winter

Suspension Period schedule will be submitted one month before the commencement date of the Winter Suspension Period.

- (2) It is understood that no extension of time, regardless of the cause, or damages of whatever character, will be allowed for any Construction Work that may be delayed, hampered, disrupted, re-sequenced, changed, or stopped by the PBC or adverse weather during the Winter Suspension Period.
- (3) The Vendor will immediately remove and/or relocate any equipment, material, items, barricades, or stop Construction Work, if directed by the PBC.
- (4) Payment for Construction Work completed, inspected, and accepted during the Winter Suspension Period will be in accordance with the procedures established in Article VII (Payment and Funding) of the Master Agreement.
- (5) It is understood that any increase in costs associated with the Construction Work done during the Winter Suspension Period is the Vendor's responsibility and the Vendor is not entitled to any additional compensation. Such costs include loss of productivity, winter heat, winter protection, snow removal, frost protection, disruptions to the Construction Work, Construction Work stoppages, temporary power, de-watering, winterized material (including concrete, water, aggregate, and bituminous mixtures).
- (6) Agreement milestones and Substantial Completion date of the approved CPM schedule will not be altered, changed, or adjusted in any way based upon the Construction Work accomplished during the Winter Suspension Period.
- (7) Any float the Vendor gains by doing Construction Work during Winter Suspension Period on the approved CPM Schedule for individual Construction Work activities must be used by the Vendor before it seeks a time extension for the Construction Work activity.
- (8) All provisions of the Agreement apply to the Construction Work being completed during the Winter Suspension Period.

Section 15. No Damages for Delay and Extensions of Time.

1. Should the Vendor be delayed in the commencement, prosecution, or completion of the Construction Work by any act of the PBC, including a delay, change,

addition, deletion, or modification in the Construction Work; any omission, neglect, or default of the PBC; by order of the PBC, or anyone employed by or acting on behalf of the PBC; or by any cause beyond the Vendor's control, none of which are due to any fault, neglect, act or omission on Vendor's part, Vendor's relief shall be subject to Section 20.15 (Savings Clause) of the Master Agreement. Such extension of time releases and discharges the PBC, its employees, agents, and representatives from any and all claims for damages of whatever character, including disruption, changes in sequence, interference, inefficiency, direct or indirect costs claimed by the Vendor on account of the aforesaid, or any other causes of delay. In the event the Vendor is unreasonably and unforeseeably delayed in the commencement, prosecution, or completion of the Construction Work by the causes enumerated above, the Vendor is permitted to make a claim pursuant Section 25 (Changes in Construction Work) of this Schedule 4.1 for the actual, demonstrable incremental costs incurred.

2. The Vendor must give the PBC written notice of any such delay within five (5) days of the commencement of such delay. The Vendor must also report to the PBC Representative the cessation of the cause for the delay within ten (10) days after it ceases.
3. Unless otherwise provided in the Agreement, the time allocated for Construction Work is based on normal weather conditions and an extension will be granted for weather significantly more severe than the norm only if the Vendor demonstrates to the satisfaction of the PBC that any delay in the progress of the Construction Work was due to such weather. The basis used to define normal weather will be the "normal" data as compiled by the United States Department of Commerce, National Oceanic and Atmospheric Administration in their most current report entitled "Local Climatological Data, Annual Summary with Comparative Data" for the month for which the time extension is sought. The effects of weather less severe than the norm may be taken into account in considering the Vendor's requests for time extensions for the effects of more severe weather. Should Vendor's schedule exhibit delays, premium time, as well as additional protection and systems must be provided to recover such lost time at no cost to the PBC.
4. No extension of time will be granted for any delay caused by the action or inaction of the Vendor, including the fault or negligence of the Vendor or its Subcontractors, or for which any remedies are provided for by any other provision of the Agreement.
5. Any claim for an extension of time will be considered pursuant to this Section and the terms of the Agreement.

Section 16. Notice of Labor Disputes.

1. Whenever the Vendor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Construction Work, the Vendor must immediately give notice to the PBC Project Manager in accordance with the Notice provision in Section 20.13 of the Master Agreement, and must include all available information with respect thereto to the PBC.

Section 17. Construction Work Meetings.

1. Pre-Construction Work Meetings. Before beginning Construction Work, the PBC will conduct a pre-construction meeting. Representatives of the Vendor and relevant Subcontractors must attend. The purpose of the meeting is to establish lines of authority and communications and to identify duties and responsibilities of the organizations. Discussion will cover specific Construction Work Design Documents, Specifications, unusual conditions, schedules of completion, and other features of the Construction Work. The PBC may conduct additional coordination meetings at its discretion.
2. Review Meetings. The PBC may conduct weekly coordination meetings at the Site or at a mutually agreed upon location, but is required to hold meetings bi-monthly. At a minimum, the Vendor's CWS will attend. However, the Vendor shall arrange for the appropriate Subcontractors to attend the meetings. Before each meeting, the Vendor must submit to the PBC its agenda in the format set forth in the Procedures Manual. The meetings may include the following:
 - a) Review of Construction Work progress since the previous review meeting.
 - b) Discussion of field observations, problems and decisions.
 - c) Review of off-Site fabrication problems and other problems affecting the Schedule.
 - d) Review of Goods and other equipment deliveries.
 - e) Discussion of corrective measures and procedures to achieve the Schedule.
 - f) Review of the Submittals process and the effect of such process on the Schedule.
 - g) Review of proposed Agreement changes and effect on the Schedule.
 - h) Coordination requirements.
 - i) Clarification and decisions required of the PBC.

- j) Review of Vendor's forces on the Construction Work.
- k) Review of Construction Work Record Drawings status and content.

Section 18. Use of Completed Portions of the Construction Work.

1. After Substantial Completion of the Construction Work on any part of the System, the PBC (and the User Agency) have the right to use the Construction Work in advance of Final Completion, provided that the PBC's use of such work shall not unduly interfere with the Vendor's operations nor delay completion of the Construction Work or the Project. Use of any Construction Work by the PBC or User Agency does not constitute Substantial Completion in the absence of written notification of Substantial Completion of the affected portion of the Construction Work from the PBC.
2. The PBC's use of such components of the Project do not constitute the PBC's acceptance of any Construction Work, materials, or equipment which are not in accordance with the requirements of the Agreement, nor relieve the Vendor from its obligations or responsibilities under the Agreement.
3. In any case, when the PBC takes over a Project component for use, the PBC shall give the Vendor notice in writing of its take over of the component involved.

Section 19. Correction of Construction Work.

1. The Vendor shall promptly remove from the Site all Construction Work materials, whether incorporated in the Construction Work or not, rejected by the PBC as failing to conform to the Construction Work Design Documents and Submittals. The Vendor shall promptly replace and re-execute defective Construction Work in accordance with the Agreement and without expense to the PBC and must bear the expense of making good all Construction Work of other contractors destroyed or damaged by such removal or replacement.
2. If the Vendor does not remove such rejected Construction Work materials within a reasonable time, as determined by written notice of the PBC, the PBC may, at the expense of the Vendor, remove and dispose of the same as the PBC sees fit. If the Vendor does not pay the cost and expenses of such removal within ten (10) days thereafter, the PBC may deduct all such costs and expenses from any monies due the Vendor under the Agreement.
3. If the Construction Work deviates from the requirements of the Agreement, the Vendor is responsible for all resulting damages, subject to the limitations in the Agreement. A claim by the Vendor that performing the Construction Work without deviation from what is required by the Agreement would also have caused or resulted in damages is not available to the Vendor as a defense or a

claim to reduce the Vendor's liability. This provision does not limit the other rights of the PBC or the other obligations of the Vendor.

4. When additional professional services are required by the PBC because of defective Construction Work, neglect, failure, deficiencies, or default by the Vendor relative to the Construction Work, compensation paid by the PBC for such services may be payable by the Vendor based on the invoice sent to the PBC. Deficiencies are defined to include more than two (2) reviews of the same submittal of shop drawings and associated data due to incomplete, uncoordinated, or otherwise defective submissions. The invoice, when approved by the PBC, along with other costs, damages, and liabilities incurred by the PBC and the Engineer, at the option of the PBC, will be the basis for decreasing the amount due to Vendor under the Agreement to compensate the PBC for the additional expenses.

Section 20. Inspection of Construction Work

1. The PBC, and its designees shall at all times have access to the Construction Work wherever it is in process. The Vendor shall provide proper and safe facilities for access and inspection.
2. The Vendor shall also cooperate with other inspecting agencies and provide appropriate access. If the inspection is made by an authority other than the PBC, the Vendor shall inform the PBC in writing of the date fixed for such inspection not less than three (3) days before such date.
3. If Applicable Law or any public authority require any Construction Work to be specifically tested or approved, the Vendor shall give the PBC not less than three (3) days written notice of the work's readiness for inspection. Required certificates of inspection must be secured by the Vendor. Inspections by the PBC will be promptly made, and where practicable, at the source of supply. When such tests and inspections indicate noncompliance of the Construction Work with requirements of the Construction Design Documents and Submittals, and the PBC requires services for additional reviews or inspections of the Construction Work, amounts due to Vendor under the Agreement may be decreased by a Change Order in the amount of the costs to the PBC as compensation for the additional services rendered to the PBC.
4. Any Construction Work covered up without approval, inspection, or consent of the PBC where required by the Agreement or in the applicable Task Order must be uncovered for examination if required by the PBC and shall be replaced and/or re-covered all at the Vendor's expense. Examination of Construction Work previously covered up with the approval or consent of the PBC may be ordered by the PBC to be uncovered, and if so ordered, such Construction Work must be

uncovered by the Vendor. If such Construction Work is found to be in accordance with the Construction Work Design Documents and Submittals, the PBC shall reimburse the Vendor for such uncovering and re-covering. Such reimbursement will be for actual cost incurred plus the percentages allowed by Section 25(3) (Payment for Changes). If such Construction Work is found to be not in accordance with the Construction Work Design Documents and Submittals, the Vendor shall pay all costs of uncovering, replacement, and re-covering. Notwithstanding anything in the Agreement, Vendor shall have all responsibility for managing, and shall manage, the means and methods by which it corrects Nonconformities pursuant to the Acceptance Process. Therefore, Vendor shall pay all costs of uncovering, replacement, and re-covering Construction Work in connection with Vendor's correction of Nonconformities pursuant to the Acceptance Process.

5. The Vendor shall place its field engineering force at the PBC disposal for field checking during any inspection period. When layouts of the Construction Work are to be made, the Vendor shall notify the PBC in sufficient time that the inspector may be present.
6. Neither the presence nor the absence of the PBC representatives at the Site shall relieve the Vendor from responsibility for compliance with the provisions of the Agreement, or from responsibility for the removal and replacement of Construction Work not in accordance therewith.
7. Except as otherwise provided in the Agreement, no officer, agent or employee of PBC is authorized to make any changes or modifications in the Agreement, to direct additional Construction Work not required thereby, or to waive the performance by the Vendor of any requirements of the Agreement.

Section 21. ASTM Standards and Testing Laboratory Labels.

1. ASTM Standards. Unless otherwise provided, all materials will be sampled and tested in accordance with the latest published standards and methods of the American Society for Testing and Materials (ASTM) and any revisions thereof. In the event that there are no ASTM standards that apply, applicable standard methods of other recognized standardizing agencies will be used. Vendor must provide the name and qualifications of any such standardizing agency to the PBC or its authorized representative for review and approval.
2. Testing Laboratory Labels. A list of all equipment containing electrical wiring must be submitted to the PBC for acceptance before installation; Vendor must submit samples if so requested. Unless otherwise specified, all electrical components furnished and installed or assembled by the Vendor under this

Agreement must be approved and so labeled by one of the following Testing Laboratories:

- a) Underwriters' Laboratories (UL)
 - b) Canadian Standards Association (CSA)
 - c) Electrical Testing Laboratory of New York (ETL)
 - d) Illinois Institute of Technology Research Institute (IITRI)
 - e) American Gas Association (AGA)
 - f) Factory Mutual Research Corporation (FMRC)
 - g) Maintenance and Electrical Testing (MET)
 - h) American Research Lab (ARL)
3. Any electrical unit comprised of a number of components, assembled at the factory, and considered custom made, must bear one of the above labels for the entire unit as well as for each component.
4. All costs in obtaining a testing laboratory label must be paid by the Vendor at no additional cost to the PBC. Any delays in the completion of the Construction Work caused by the manufacturer of equipment in obtaining the required testing laboratory labels and the PBC approval are not grounds for an extension of time beyond the time of completion indicated in the Agreement.

Section 22. Construction Work Materials.

- 1. Spares. Vendor will provide a list of component spare parts for all products, machinery, parts, supplies, tools and other such materials used to perform the Construction Work that are not commercial off-the-shelf ("**Construction Materials**"), if any. The recommended spare parts list must provide historical data documenting failure of similar materials during testing and implementation of the System.
- 2. Construction Work Labor, Materials and Equipment.
 - a) Vendor shall keep proper inventories, provide adequate protection against the weather, and maintain security measures against theft and vandalism with respect to all stored Construction Work materials, fixtures, and equipment for items stored on-Site and not yet incorporated into the Construction Work.

- b) The Site shall not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for this Project.
- c) The Vendor shall review any specified construction or installation procedures (including those recommended by any product manufacturer). The Vendor shall advise the PBC Project Manager in writing seven (7) days before commencing Construction Work, on items affected:
 - (1) if any specified procedure deviates from good practice relating to Construction Work;
 - (2) if following any specified procedure will affect any warranties; or
 - (3) of any objections which the Vendor may have to any specified procedure.

3. Source of Unspecified Materials. Vendor shall notify the PBC Project Manager in writing as soon as possible after the Effective Date, but not less than three (3) weeks before the need for inspection and testing of the source (or sources) from which Vendor expects to obtain the various Construction Materials for performance of the Construction Work and not otherwise specified in the Agreement. The source of supply of the respective Construction Materials used must be approved by the PBC before delivery is commenced. If sources previously approved are found to be unacceptable at any time and fail to produce materials satisfactory to the PBC, the Vendor shall furnish Construction Materials from other approved sources.

4. Substitution of Construction Materials or Processes.

- a) The Agreement requires the use of the Construction Materials and processes that are in accordance with the Construction Work Design Documents and Submittals. The word "processes" as used herein includes methods or systems of performing the Construction Work.
- b) For products specified only by references, e.g., ASTM standards and ANSI standards, the Vendor may select any product by any manufacturer that meets the referenced standards and the specifications, subject to PBC's prior written acceptance.

5. Manufacturer and Products.

- a) Construction Materials, including materials and equipment of the same general type must be of the same manufacturer throughout the Project to provide uniform operation and maintenance.

- b) Construction Materials must be of the current production and product of a manufacturer regularly engaged in the manufacture of such products, for which replacement parts are available.
- c) Construction Materials must be new, Underwriters' Laboratories labeled where applicable, and must bear the manufacturer's name, model number, and ratings of equipment.
- d) Manufacturers of equipment assemblies that are Construction Materials, which include components made by others, shall assume complete responsibility for the final assembled unit.

6. Product Selection and Options.

- a) Product Specifications. The Construction Materials that are products and materials to be provided shall conform to the Construction Work Design Documents and Submittals. If the Vendor submits a product that the Vendor believes is an equivalent or equal, but does not conform with the Construction Work Design Documents and Submittals, Vendor shall describe, in writing, the exceptions. The written description shall clearly indicate where the manufacturer or the Vendor cannot meet the standards set forth in the Construction Work Design Documents and Submittals or take exceptions and how the alternate product shall perform as an equivalent. Exceptions to specified requirements are subject to acceptance by the PBC. Such submittals shall comply with requirements for substitutions as described in this section. Should the PBC reject such Vendor proposed equivalent or equal, the Vendor shall provide products in full conformance with the Construction Work Design Documents and Submittals at no cost to the PBC or extension of the time of performance.
- b) Manufacturer's Name Listed. Where the manufacturer's name is listed, the manufacturer shall furnish a product that is a Construction Material, such product shall conform to the Construction Work Design Documents and Submittals. Listing the manufacturer's name does not relieve the Vendor from providing such products that comply with such requirements.
- c) Manufacturer's Name and Model Number Listed. Where the manufacturer's name and model number is listed, the manufacturer shall furnish the product that is a Construction Material, modified as required to conform to the Construction Work Design Documents and Submittals. Listing the model number does not relieve the Vendor from providing such product that conforms to the Construction Work Design Documents and Submittals. Other Construction Materials products submitted shall also have similar features.

- d) Performance of Technical Specifications. Where a Construction Material product is specified by performance requirements and the manufacturer's name or model number is not specified, the Vendor may select any manufacturer or product which conforms to the Construction Work Design Documents and Submittals.
 - e) When only one Construction Material manufacturer or product is specified or when the term "or approved equal" is used in connection with specified products, the Vendor may offer for approval a substitute product which will completely accomplish the purpose of the Agreement.
7. Substitutions after Approval of Construction Work Design Documents and Submittals.
- a) Following approval of Construction Work Design Documents and Submittals, the PBC will consider formal requests from the Vendor for substitution of Construction Materials in lieu of those specified only under one or more of the following circumstances:
 - (1) When the Vendor demonstrates that the specified Construction Material or Construction Work process is not available, proof must be submitted that firm orders were placed in a timely manner or that the unavailability is due to strike, lockout, bankruptcy, discontinuance of manufacture, an act of God, or for other reasons acceptable to the PBC.
 - (2) When, in the opinion of the Vendor, the specified Construction Material or Construction Work process will not fulfill the design intent.
 - b) Substitutions shall not be considered if, in the opinion of the PBC:
 - (1) The proposed substitution is indicated or implied on shop drawings or Product Data Submittals without prior formal written request and acceptance, or
 - (2) Acceptance would require substantial revision of the Construction Work Design Documents or Submittals, or
 - (3) There is no benefit to the PBC.
 - c) The Vendor shall present all substitutions so as not to delay the schedule for required reviews and approvals by the PBC. The PBC is not responsible for delays arising from submittal, acceptance, or rejection of a substitution.

- d) Notification of acceptance of substitutions not affecting cost or time of performance will be made to the Vendor in writing by the PBC and requires the approval of the PBC. Notification of acceptance of substitutions involving changes in cost or time of performance will be made to the Vendor in the form of an approved Change Order.

Section 23. Prompt Payment to Construction Work Subcontractors.

1. Vendor must state the requirements of this provision in all subcontracts and purchase orders for Construction Work. If Vendor fails to incorporate these provisions in all subcontracts and purchase orders, the provisions of this Section are deemed to be incorporated in all subcontracts and purchase orders. Vendor and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of Vendor's participation and that of its Subcontractors on the Project.
2. The Vendor must make payment to its Subcontractors within fourteen (14) days of receipt by Vendor of payment from the PBC for the Milestone Deliverables with respect to which such Subcontractor provided Construction Work Services, but only if the Subcontractor has satisfactorily completed such Construction Work in accordance with the Schedule, and the Construction Work Design Documents and Submittals and provided the Vendor with all of the Construction Work Record Drawings and information related to that Subcontractor's work required of the Vendor by the Agreement. The Vendor may delay or postpone such payment when the Subcontractor's Construction Work or materials do not comply with the requirements of the Construction Work Design Documents and Submittals, or when the Subcontractor has not performed the Construction Work in accordance with the Schedule, and the Vendor is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.
3. The Vendor must make final payment to its respective Subcontractors performing Construction Work within fourteen (14) days of receipt of payment by Vendor from the PBC for Final Completion of Construction Work performed by such Subcontractors, including completion of Punch List Construction Work, the provision of final lien waivers, and all of the Construction Work Record Drawings to be delivered by such Subcontractors under the Agreement. Retainage must be paid to Subcontractors as required by Schedule 7.1. The Vendor may delay or postpone payment of Retainage applicable to a Subcontractor if the Subcontractor's Construction Work or materials do not comply with the Construction Work Design Documents and Submittals, the Vendor has substantial grounds for and has acted reasonably in making such determination, and the Vendor is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.

4. Payment to a Subcontractor under this Section is deemed received by such Subcontractor at the time of hand delivery by the Vendor, or three (3) calendar days after mailing by the Vendor.
5. To the extent feasible, to facilitate the flow of information to Subcontractors, the PBC will post at a central site a list of Vendor pay estimates, including the Subcontractors identified in them submitted by Vendor for payment and the date of payment to Vendor.
6. Vendor must not delay or refuse to timely submit pay requests for Construction Work performed by or materials supplied by a Subcontractor. The PBC may construe such delay or refusal as Vendor's failure to act in good faith. "**timely**", in this context, means within thirty (30) days after the Construction Work performed by, or the materials furnished by, such Subcontractor is properly in place in and/or is compliant (or off-site if the Agreement permits payments for off-site delivery) with the Construction Work Design Documents and Submittals. In addition, Vendor must not delay or postpone payment for an undisputed portion of a Subcontractor's invoice or in connection with claims or disputes involving different pay requests on the same project or different projects.
7. The PBC may withhold payment from the Vendor when the PBC determines that the Vendor has not complied with this Section.
8. These provisions do not confer any rights to Subcontractors against the PBC. Nothing in this section is to be construed to limit the rights of and remedies available to the PBC, including various rights under the Agreement.

Section 24. Payments Subject to Review.

The PBC is not precluded or estopped by any measurement, estimate, or certificate made by Vendor or a Subcontractor either before or after the completion and Acceptance of a Deliverable, Milestone Deliverable or Phase, or Final Acceptance of the System and payment therefore, from showing the true amount and character of the Construction Work performed and materials furnished by the Vendor, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the Construction Work or materials do not conform in fact to the Agreement. The PBC will not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Vendor and its sureties such damages as the PBC may sustain by reason of the Vendor's failure to comply with the terms of the Agreement.

Section 25. Changes In The Construction Work

This Section 25 is applicable only to changes in the Construction Work.

1. **PBC's Right to Change Construction Work.** The PBC reserves the right to direct, by written field order (a "**Field Order**"), changes in the Construction Work or Agreement time without prior notice to the Vendor's surety, and the Vendor is obligated to perform in accordance with the Field Order. These changes may consist of additions, deletions, or other revisions to the Construction Work and/or changes in the Agreement time, at the discretion of the PBC, with the Construction Prices and/or the Agreement time being adjusted as appropriate. The Vendor will begin the changed Construction Work upon receipt of a duly executed Charge Order approved by the PBC unilaterally directing changes in the Construction Work.
2. **Vendor's Request for Adjustment.** The Vendor, within five (5) days of receipt of the written notice from the PBC (or the time otherwise agreed upon by the parties), must submit to the PBC a written request for adjustment to the Contract Price and/or Contract Time for such revised work. The Vendor's failure to submit such request within the specified time will result in the issuance of a formal Change Order by the Commission for the adjustment to the Contract Price and/or Contract Time that the Commission deems appropriate for such revised Construction Work and additional Construction Work Design Services, if any.
3. **Payment For Changes.** The adjustment in the Construction Price, if any, for changes (either additions, deletions or revisions) in the Construction Work Design Services, Construction Work or Agreement time, will be made in accordance with Subsections a) through g) below. Where changes in the Construction Work involve both additions and deletions, any percentage mark-ups applicable to labor and materials as set forth below will be applied to the net difference. An adjustment in Construction Prices and/or Agreement time requires a Change Order.
 - a) **Unit Price Basis:** To the extent that changes in Work result in an increase or decrease in the quantities of unit-priced Work to be performed, the adjustment in Construction Price will be as follows:
 - (1) All increases or decreases in such Construction Work of the type that appears in the Agreement as unit price items shall, except as provided in Subsection (2) below, be paid for or deducted at the Agreement unit prices or as established by an approved lump sum breakdown.
 - (2) For line items that represent ten percent (10%) or more of the Construction Price, if actual quantities represent a twenty-five percent (25%) or more variance (plus or minus) from the estimated quantities, the Construction Price adjustment will be based on a negotiated unit price based on costs which are demonstrated by the

Vendor and agreed to by the PBC, in a method consistent with Subsection b) below (Proposal Basis). The negotiated price may be higher, lower or equal to the unit price under the Agreement. If the PBC and Vendor are unable to agree on a negotiated unit price for the changed Construction Work, the PBC shall determine a reasonable unit price, in which event a Change Order, with the Construction Work priced at the unit price determined by the PBC, will be prepared by the PBC and signed by the Vendor for submission to the PBC for execution. However, the Vendor may dispute the amount of the unit price determined by the PBC in a claim pursuant to Section 9.5 of the Master Agreement.

- b) Proposal Basis: To the extent that there are no unit prices for the changed Construction Work, either as contracted or as identified in an approved breakdown of a lump sum, the Construction Price adjustment for the changed Construction Work may be based upon a price agreed to by the PBC and Vendor. If the changed Construction Work is to be completed on a proposal basis, a proposal for the changed Construction Work must be provided by the Vendor to the PBC and accepted by the PBC before the date on which the changed Construction Work is fifty percent (50%) complete. In addition, if the PBC has not accepted the proposal for the changed Construction Work before the commencement of the changed Construction Work, time and material Construction Work reports must be maintained by the Vendor, until a proposal is agreed to by the Vendor and PBC through the execution of a Change Order. If there is no agreement between the Vendor and PBC as to the Fee adjustment and/or Agreement time adjustment for the changed Construction Work on a proposal basis before the completion of fifty percent (50%) of the changed Construction Work, the changed Construction Work will be paid for on a time and material basis.

Proposal Pricing: The proposal submitted by the Vendor will be a starting point for negotiation between the PBC and Vendor. Any proposal submitted in writing by the Vendor for consideration for changed Construction Work must be broken down into segments of cost as follows:

- (1) Labor: Number of proposed labor hours multiplied by the base wage plus an amount not to exceed thirty percent (30%) to cover jobsite general conditions, overhead, and profit. All indirect costs must be part of the overhead, including supervision, engineering, and other technical personnel. Fringe benefits, as allowed by the applicable labor union, multiplied by the proposed number of labor hours, plus an amount up to ten percent (10%) of the total fringe benefit may be allowed.

- (2) Insurance and Payroll Taxes: Cost for unemployment insurance contributions and social security taxes on the extra Construction Work and for other insurance coverage on the extra Construction Work required of the Vendor by the Agreement, to which an amount not to exceed ten percent (10%) of the cost of these items will be added. The Vendor must furnish satisfactory evidence of the rate or rates paid for such insurance and taxes.
- (3) Material: Cost of materials (accepted by the PBC and incorporated into the work) plus an amount not to exceed fifteen percent (15%) of the cost of material to cover profit and handling charges of Vendor performing the work. Material cost must be supported by quotations and invoices from the suppliers and must be net of any discounts or rebates offered by the suppliers.
- (4) Equipment: Number of proposed equipment hours multiplied by the rate as allowed by the latest revision of "Schedule of Average Annual Equipment Ownership Expense With Operating Cost" as issued by the Illinois Department of Transportation (IDOT) or in the Associated Equipment Distributors' Compilation Of Rental Rates (AED Green Book) if equipment is to be rented, for the period that said machinery and equipment are to be used on such Construction Work, to which no percent will be added. Where machinery and equipment are not listed in these schedules, then the rates will be determined by the PBC after reviewing all available records of the Vendor or other information concerning the expense of operating that type of equipment.
- (5) Cost for Increase in Performance Bond: The Vendor must furnish pursuant to notice, the PBC written documentation from the bonding company of the rate or rates applicable for additional bonding for this Agreement. These rate/rates will be applied to all the changes increasing or decreasing the Construction Price to which no percent will be added. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the bonding company, a percentage of the total change will be added or subtracted, as determined by the PBC and PBC, to cover the increase or decrease of the cost of the Bond.
- (6) When Construction Work is to be performed by a Subcontractor, the proposal may include as administrative costs an amount not to exceed ten percent (10%) of the first ten thousand dollars (\$10,000.00) and five percent (5%) of any amount over ten thousand dollars (\$10,000.00) of the total approved costs of such

Construction Work. The Subcontractor, however, is not allowed any additional markup if it Subcontracts its Construction Work to a third party. The use of a Subcontractor will require the approval of the PBC. All subcontractor costs must be supported by proposals from the Subcontractor(s) performing the Construction Work. The Subcontractor's proposal must be broken down into its various parts of Construction Work as described in items (1) through (4) above, or as required by the PBC.

- c) Time and Material Basis: If the changed Construction Work is not subject to unit pricing and the PBC and Vendor cannot agree on a price based on a proposal before the time the Construction Work is fifty percent (50%) complete, the Construction Work will be paid for on a time and material basis. All invoices for changed Construction Work must be submitted by Vendor within fifteen (15) days after completion of the changed Construction Work. If Vendor is not able to submit such invoices during such period, Vendor shall promptly give PBC notice and the PBC shall reasonably consider the request and may agree to extend such time period. Vendor's failure to provide a complete invoice for the changed work within such period (or the extended period, if any) will authorize the PBC to determine the final amount for the Change Order which may be awarded without the signature of the Vendor. The following shall apply to time and material billing:
- (1) Labor: For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, the Vendor shall receive the prevailing rate of wage for every hour that said labor and foremen are actually engaged in such Construction Work. No additional allowance or payment will be made for general superintendence.
 - (2) The Vendor shall receive the actual costs paid to, or in behalf of, construction workers for health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment agreement generally applicable to the classes of labor employed on the Construction Work.
 - (3) An amount equal to thirty percent (30%) of above c)(1) and an amount equal to ten percent (10%) of above c)(2) will also be paid to the Vendor to cover general conditions, overhead and profit.

- (4) No payment will be made for labor performed on a time and material basis until the Vendor has furnished the PBC with itemized statements of the labor cost as follows:
- (i) Name, classification, date, daily hours, total hours, rate and extension for each journey construction worker, apprentice and foreman.
 - (ii) Certified payrolls or certified copies thereof, pertinent to the Construction Work for which payment is requested. The payroll records will contain the name, address and social security number of each employee, each such employee's correct classification, rate of pay, daily and weekly number of hours construction worked, itemized deductions made and actual wages paid. The labor rates will be audited and corrected against the certified payrolls. Falsification of the certified payroll is an offense punishable by law.
- (5) Insurance and Payroll Tax: Cost for unemployment insurance contributions and social security taxes on the extra Construction Work and for other insurance coverage on the extra Construction Work required of the Vendor by the Agreement and not included in or provided under the OCIP, to which an amount not to exceed ten percent (10%) of the cost of these items will be added. The Vendor must furnish satisfactory evidence of the rate or rates paid for such insurance and taxes.
- (6) Materials: For Construction Work materials accepted by the PBC and used as an integral part of finished Construction Work (but not the Goods), the Vendor shall receive the actual costs of such materials delivered on the job site, including transportation charges paid by him (exclusive of machinery rentals as hereinafter set forth), as shown by original receipted bills or a reasonable copy thereof, to which fifteen percent (15%) will be added to the first ten thousand dollars (\$10,000.00) and ten percent (10%) for any amounts over ten thousand dollars (\$10,000.00).
- (7) The Vendor will be reimbursed for any materials used in the construction of the Construction Work, such as sheeting, false Construction Work, form lumber, burlap, or other materials for curing, etc., which are not an integral part of the finished Construction Work. The amount of reimbursement must be reasonable and supported by invoices. No percent will be added.

The salvage value of such materials will be taken into consideration in the reimbursement amount.

- (8) No payment will be made for material costs until the Vendor has furnished itemized statements of the material costs, which must include: (i) quantities of materials, prices, and extension; (ii) material transportation costs supported by receipted invoices, and (iii) receipted invoices for all materials used. However, if materials used on the time and material Construction Work are not specifically purchased for such Construction Work but are taken from the Vendor's stock, then in lieu of the invoices, the Vendor must furnish an affidavit certifying that such materials were from its stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Vendor. The price quoted for such material must be reasonable and acceptable as per the normal industry practice.
- (9) Equipment: The Vendor will be paid for all machinery and equipment (other than small tools as currently defined by the Illinois Department of Transportation) used on the Construction Work in accordance with the latest revision of "SCHEDULE OF AVERAGE ANNUAL EQUIPMENT OWNERSHIP EXPENSE WITH OPERATING COST" as issued by the Illinois Department of Transportation, for the period that said machinery and equipment are in use on such Construction Work, to which no percent will be added. Where machinery and equipment are not listed in this schedule, the rates will be determined by the PBC after reviewing all available records of the Vendor or other information concerning the expense of operating that type of equipment. Where idle time for equipment is authorized by the PBC and approved by the PBC, it will be paid at a rate not to exceed fifty percent (50%) of the rates described above.
- (10) When equipment is rented, the Vendor shall receive actual rental cost as shown by original receipted bills to which five percent (5%) will be added.
- (11) No payment will be made for equipment unless designations, dates, daily hours, rental rates, and extensions for each unit of machinery and equipment are shown on the itemized statement of time and material Construction Work.
- (12) Bond: The PBC will pay the Vendor the actual increase in cost of its performance Bond. The Vendor must furnish from the bonding

company written documentation of the rate or rates applicable for additional bonding for this Agreement. These rate/rates will be applied to all the changes increasing or decreasing the Construction Price under the applicable Notice to Proceed to which no percent will be added. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the bonding company, a percentage of the total change will be added or subtracted, as determined by the PBC, to cover the increase or decrease of the cost of the Bond.

- (13) When Construction Work is performed by a single Subcontractor or multiple Subcontractors, the Vendor shall receive as administrative costs an amount equal to ten percent (10%) of the first ten thousand dollars (\$10,000.00) and five percent (5%) of any amount over ten thousand dollars (\$10,000.00) of the total approved costs of such Construction Work. The Subcontractor or Subcontractors are not allowed any additional markup. All subcontracted costs must be supported by invoices from the Subcontractors performing the Construction Work. The Subcontractors' invoices must be submitted in the form required by the PBC
 - (14) Documentation: For additional Construction Work performed on a time and material basis the Vendor must each day submit to the PBC detailed and complete records of the labor, material, equipment, and other costs relating to any force account Construction Work performed on the previous day. These daily extra Construction Work reports must be signed by the Vendor and the PBC.
- d) Construction Work On a Premium Time Basis:
- (1) Premium Time Costs will be paid, for Construction Work performed outside of regularly scheduled Construction Working hours as defined by the Agreement, only if expressly directed in writing by the PBC before the Vendor commences such Construction Work. Compensation, when authorized, shall cover only the direct cost of the premium portion of the time involved and must be without any charge for insurance. No payment will be made for union fringe benefits on the premium portion of the time unless expressly required by union agreement. Taxes, which are attributed to the premium portion of the time, will be paid. If taxes are charged by the Vendor, the PBC may require the Vendor to supply verification that the employees' Social Security Tax,

Federal Unemployment Tax, and State Unemployment Tax limits have not been exceeded.

- (2) An amount equal to seven percent (7%) of the sum of the premium portion of the Construction Work plus taxes will also be paid to the Vendor or Subcontractor performing the Construction Work to cover jobsite general conditions, overhead, and profit. All indirect costs are part of the overhead, including supervision, engineering, and other technical personnel.
 - (3) If the Vendor enters into a subcontract, the Vendor will be allowed an additional two percent (2%) of the Subcontractor's premium time billing to cover the Vendor's supervisory and related expense on subcontracts operations. The Subcontractor is not allowed the additional two percent (2%) if it sublets its Construction Work.
 - (4) Daily Construction Work reports for the premium time hours must be kept and signed daily. The reports must indicate the time of day when the Construction Work was performed and wage rate differential that will be charged. Billings must reflect hours reported on daily Construction Work reports.
- e) Changes on Lump Sum or Lump Sum Items: All increases or decreases in elements of the Construction Work that are listed as unit prices or that can otherwise be assigned a value will be compensated, for the purpose of any change, based on those prices.
- f) Miscellaneous:
- (1) For the purpose of this section, any business entity, which employs field labor and performs Construction Work on the job site, is defined as a Subcontractor. (Suppliers/deliverers of materials are not considered as field labor).
 - (2) When the extra Construction Work involves only supply of material without any field labor at the job site, the supplier, for the purposes of this section, will be considered as a Subcontractor and the mark up as specified in c)(6) above, will apply.
 - (3) Expenses incurred by the PBC: Upon written request of the PBC, the Vendor will pay bills relating to the Project that are the responsibility of the PBC. The Vendor will be reimbursed for the actual amount paid out to which will be added a mark-up as specified in Subsection d)(3) applicable to Subcontractor, above.

- (4) Any adjustment in Agreement time due to changed Construction Work will be based on the impact that the changed Construction Work has on critical path items in the Project CPM Schedule.
- g) Construction Work Design Services: Payment for additional Construction Work Design Services will be made in accordance with a negotiated proposal or at the hourly rates set forth in the Fee Schedule.
- 4. Change Order. The final terms of any adjustment in Construction Price and/or Agreement time relating to changed Construction Work must be incorporated into a Change Order executed by the Vendor and the PBC. Payment for a Change Order and/or an adjustment in Agreement time will be made after the Change Order is executed by the PBC.
- 5. Vendor's Release. Except as otherwise agreed by the PBC, each Change Order shall constitute a full release to the PBC from granting any additional compensation or extension of time arising or resulting from the Change Order. The release that the Vendor must sign will state, "By executing this Change Order, Vendor certifies that it has reviewed and accepts the compensation and/or time extension provided in full accord and satisfaction for this Change Order and that it expressly waives and releases any and all additional claims and demands relating to, or arising out of, the matters covered by this Change Order as more fully described in the exhibit attached hereto including direct, indirect, overhead, home or field office costs; profits; damages; disruptions and impact."
- 6. Failure to Comply with Order. The Vendor must promptly proceed with any changes in the Construction Work or the Schedule as directed by the PBC in writing, with or without the Change Order. The Vendor's refusal or failure to proceed promptly with the changed Construction Work as directed will constitute an Event of Default under the Agreement.
- 7. Change Claims.
 - a) If the Vendor and the PBC are unable to agree upon an adjustment in the Construction Price for the Construction Work and/or Schedule for changed Construction Work in accordance with Section 25(3), which is also approved by the PBC under Section 25(4), the Vendor may make a claim for the changed Construction Work under this Section 25(7) ("Change Claim"). "Construction Price" means that portion of the Fees for the performance of the Construction Work. The Vendor expressly consents to both the time requirements and notice content requirements for making a Change Claim under this Section. The Vendor acknowledges that the notice requirements set forth in this Section will be strictly enforced and agrees that any failure on the part of the Vendor to provide

notice strictly in accordance with the requirements of this Section 25(7) constitutes a waiver of the Vendor's right to make a Change Claim or to file a dispute under Section 9.5 and Section 9.6 of the Master Agreement. The Vendor further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section 25(7) are not subject to or diminished by any claim on the part of the Vendor that the PBC or any person acting on behalf of the PBC directed the Vendor to make changes in the Construction Work or had actual or constructive knowledge of any changes in the Construction Work. The Vendor further acknowledges that the time requirements and notice content requirements of this Section have the purpose, among others, of allowing the PBC to evaluate Change Claims contemporaneously with the Construction Work that is the subject of the Change Claim.

- b) If the Vendor and PBC are unable to agree upon an adjustment in the Construction Price and/or the Schedule for changed Construction Work in accordance with Section 25, the Vendor must, within fifteen (15) days of completing the changed Construction Work, provide written notice to the PBC, of the amount of money and/or time adjustment sought by the Vendor and the contractual and factual basis for each. The Vendor must designate the document "**Notice of Construction Claim**".
- c) The PBC shall, within thirty (30) days from receipt of the Notice of Construction Claim, respond by: requesting a meeting with the Vendor; making a written request for additional information from the Vendor, including a general statement of the basis for the Change Claim, the facts underlying the Change Claim, the notice to the PBC of the changed Construction Work that gave rise to the Change Claim, reference to the applicable Agreement provisions, and all documentation that describes, relates to and supports the Change Claim; taking other action to attempt to resolve the Notice of Construction Claim, and/or advising the Vendor in writing that it should file a Claim under Section 9.5 (Claims) of the Master Agreement. Any steps taken by the PBC to resolve the Notice of Construction Claim shall not exceed sixty (60) days from receipt of the Notice of Construction Claim unless the Vendor agrees to an additional amount of time in writing. The Vendor and the PBC may agree on a proposed adjustment of Construction Price and/or Schedule in resolution of a Notice of Construction Claim.
- d) If the Notice of Construction Claim cannot be resolved the Vendor must follow the requirements of Article IX (Governance) of the Master Agreement.

- e) If the Vendor does not follow the procedures set in the Agreement to file a Claim and/or Dispute, the failure to do so constitutes a waiver of the right to make a Claim or file a Dispute. In the event of Vendor's waiver, the PBC may file a Dispute pursuant to Section 9.6 (Disputes) of the Master Agreement seeking final decision of the PBC regarding adjustment in the Construction Price and/or Agreement time for the changed Construction Work.

- 8. PBC Audit. All documents, records, books, and accounts, relating to changes in the Construction Work Design Services and Construction Work are subject to the audit provisions of the Agreement.

Section 26. Shop Drawings, Product Data and Samples

1. Definitions

"Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Construction Work by the Vendor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Construction Work. The term "Shop Drawings" as used herein includes: fabrication, erection, layout and setting drawings; manufacturers' standard drawings; schedules; wiring and control diagrams; and other drawings pertaining to materials, equipment and piping; duct and conduit systems; and methods of construction as may be required to show that the materials, equipment or systems and the position thereof conform to the Agreement's requirements. Shop Drawings will establish the actual detail of all manufactured and fabricated items and indicate the proper relation of such items and of the Goods to adjoining Construction Work.

"Product Data" are illustrations, standard schedules, performance charts, instructions, descriptive literature, catalogs and brochures, performance and test data, diagrams and other information furnished by the Vendor to illustrate a material, product, or system for some portion of the Construction Work and to illustrate the Goods.

"Samples" are physical examples, which illustrate Construction Work materials, equipment or workmanship, and the Goods that will be installed pursuant to the Construction Work, and establish standards and measures by which the Construction Work will be accepted (in a size that reasonably represents such Construction Work materials, equipment or workmanship). The term Samples as used herein includes Construction Work materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Construction Work Design Documents and/or Submittals and any other samples as may be required by the PBC, including the Goods that will be installed pursuant to the Construction Work to determine whether the kind, quality, workmanship, finish, color and other characteristics of the Construction Work or Good proposed by the Vendor conform to the required Specifications and/or Acceptance Criteria. The various parts of the Construction Work

and the Goods that will be installed pursuant to the Construction Work will be in accordance with the reviewed Samples.

2. Vendor's Responsibilities and Submittal Procedures:

- a) Providing Shop Drawings, Product Data, and Samples is part of the scope of Construction Work under this Agreement and will be done at the expense of the Vendor and to the satisfaction of the PBC.
- b) The Number of Shop Drawings, Product Data, and Samples to be submitted will be determined by the PBC and indicated below.
- c) The Vendor must submit to the PBC such Shop Drawings, Product Data, Samples, and other data required for the Construction Work involved under this Agreement in accordance with the approved Target Schedule and the form designated by the PBC entitled "Index and Schedule for Submission of Shop Drawings and Samples" (hereafter "**Index and Schedule**").
- d) The Vendor's submission of all Shop Drawings, Samples and Product Data to the PBC for review shall not relieve the Vendor from its responsibility in preparing and submitting proper Shop Drawings, Samples and Product Data in accordance with the Agreement. By submitting Shop Drawings, Product Data, and Samples, the Vendor represents that it has determined and verified all materials, field measurements, field conditions and verified quantities related thereto, or will do so, and that it has checked and coordinated the information contained within such submittal with the requirements of the Construction Work and of the Agreement
- e) Any Submittal, which in the PBC's opinion is not complete and in proper form, will be returned to the Vendor without review. Submittals that are not complete or not in proper form include, but are not limited to, those which are not: clear and legible; collated into sets; complete; free of errors; checked by the Vendor; representative of the actual material or assembly and bearing the Vendor's approval stamp or other mark showing review and approval by the Vendor. The Vendor must not submit as Shop Drawings, duplicates or reproductions of any Agreement issued by the PBC.
- f) All Shop Drawings, Product Data, and Samples must be examined and coordinated by the Vendor and will be dated and stamped by the Vendor, using the language designated by the PBC, indicating that the Submittal has been reviewed and checked before submittal and found to be in conformance with the Agreement.

- g) No extensions of time will be allowed because of the Vendor's failure to submit Shop Drawings and other Submittals in ample time to allow review, possible rejection, and resubmittal and final review.
 - h) The Vendor must furnish Shop Drawings, Samples, Product Data and information which permit the PBC to identify and review the Construction Work and to determine whether the Construction Work complies with the requirements of the Agreement.
 - i) The Vendor must submit not less than the following quantities unless a greater number is specified herein or is required in the Construction Work Design Documents and/or Submittals or is required by the PBC:
 - (1) Shop Drawings: Submit one (1) reproducible transparency and six (6) opaque copies of Shop Drawings.
 - (2) Product Data: Submit six (6) copies of Product Data.
 - (3) Samples: Submit four (4) Samples.
 - (4) Video on dvd/cd format: Submit one (1) Video dvd/cd.
 - j) Before submitting Shop Drawings, Product Data, or Samples, the Vendor must notify the PBC in writing if there are any deviations in the Submittals from the requirements of the Agreement. If either deviations from the Agreement requirements are rejected by the PBC or if evaluation of the deviations delays the progress of Construction Work, any delay caused will not be compensable by a time extension.
3. Review of Shop Drawings. When reviewed by the PBC, Shop Drawings, Samples and Product Data will allow the Vendor to continue or proceed with Construction Work, and the materials and equipment furnished will be in conformity with the same, provided that the review of such Submittal will in no way relieve the Vendor from its responsibility for the proper installation and performance of the Project as required by the Agreement or from its liability to replace any material or equipment should it prove defective.

Section 27. Construction Work Record Drawings, Project Data and Project Account Records

- 1. Construction Work Record Drawings :
 - a) As the Construction Work progresses, the Vendor and the Subcontractor for each trade or division of Construction Work, under the direction of

Construction Work Design Services Subcontractor, must keep a complete and accurate record of the following:

- (1) Changes and deviations between the Construction Work as actually installed and the Construction Work as shown on the Construction Work Design Documents and the Shop Drawings.
 - (2) The specific locations of piping, valves, duct work, equipment, and other such Construction Work which were not located or changed location from that shown on Construction Work Design Documents and Submittals.
 - (3) Equipment schedules indicating manufacturers' names and model numbers installed.
- b) Changes, deviations, and other information must be neatly and correctly recorded on a full sized set of drawings. This record set of drawings must be kept at the principle Project management office for inspection by the PBC. Upon completion of the Construction Work, the Vendor must submit to the PBC for approval and acceptance by the PBC a final set of Construction Work Record Drawings marked to show the as-built conditions of the Project. Construction Work Record Drawings must be submitted for all items reviewed as Shop Drawings. Construction Work Record Drawings must be legibly drawn on sheets of Mylar or such other medium as directed by the PBC. Unless otherwise specified, Construction Work Record Drawings must be submitted on the same size sheets as the Construction Work Design Documents and include an index of all items.
- c) At the time Construction Work Record Drawings are delivered to the PBC, the Vendor and each Subcontractor must certify, in writing, that the Construction Work Record Drawings are complete and accurate.
- d) Upon Acceptance of each Milestone Deliverable, the Vendor must deliver to the PBC and the User Agency, in suitable transfer cases clearly marked "Construction Work Record Drawings," all as-built drawings, record shop drawings, video tape, Product Data, instructions, parts list, and operations and maintenance manuals applicable to such Milestone Deliverable, arranged in proper order and indexed. **"Construction Work Record Drawings"** are all documents required under the terms of the Agreement to be provided to the PBC by the Vendor in connection with Construction Work, including shop drawings, as-built drawings, copies on cd rom of the as-built drawings, parts manuals, operation and maintenance manuals, and Project manuals or Specifications.

2. Project Account Records.

a) Project Data and Records:

- (1) All books and accounts kept by the Vendor in connection with the Construction Work must be open to the inspection of the PBC or the PBC's authorized representative and all City authorized agencies and their representatives. Promptly following the preparation of periodic payrolls of the Vendor and of each of its Subcontractors, the Vendor must furnish the PBC with such number as may be required of certified copies of such payrolls.
- (2) The Vendor and each Subcontractor must also keep an accurate record showing the names and occupation of all laborers, construction workers and mechanics employed by them in the performance of the Construction Work and showing also the actual hourly wages paid to each of such construction workers, which record will be open at all reasonable hours to the inspection of the PBC and to the Dept. of Labor (State of Illinois).
- (3) The Vendor must at any time, when required by the PBC, furnish to the PBC a written statement, verified by affidavit, giving the names and addresses of all persons, firms, and corporations who have up to the date thereof provided Construction Work in the performance of the Agreement and the amounts due or to become due to said parties.
- (4) The Vendor and any Subcontractor must furnish the PBC with such information as the PBC may require relating to the Construction Work materials including all information necessary to determine the Construction Price, such as the number of workers performing the Construction Work employed, their pay, the distribution of labor into Construction Work item, equipment time distribution and any other information which the PBC may require. The Vendor must, on request, furnish the PBC with copies of delivery tickets and invoices, in triplicate, covering all expenditures on the Agreement.
- (5) Unless otherwise specified, Vendor must furnish ten (10) record copies of Product Data loose-leaf binders. Loose-leaf binders must be subdivided by Submittal numbers and must contain an index of all items unless otherwise specified.

Section 28. Review of Submittals.

1. Submittals will be reviewed by the PBC for compliance with the Agreement. In reviewing the Submittals, the PBC will not verify dimensions and field conditions, or compliance with the Agreement. Any such review does not relieve the Vendor, Subcontractor, manufacturer, fabricator or supplier from responsibility for any deviation from the Construction Work Design Documents and/or the applicable Specifications or Acceptance Criteria, or from any departures or deviations from the requirements of the Agreement, nor does it relieve them from responsibility for (i) errors of any sort in Shop Drawings, Samples and Product Data, (ii) responsibility for proper fitting of the Construction Work, or (iii) the necessity of furnishing any Construction Work required by the Agreement which may not be indicated on shop drawings when reviewed. The Vendor is solely responsible for any quantities that may be shown on the Shop Drawings. PBC's review of a specific item does not indicate approval of an assembly of which the item is a component.
2. The Vendor must not fabricate products, begin Construction Work, order or have delivered any Construction Work material, equipment or system, or Goods, that requires a reviewed Submittal until return of the Submittal from the PBC authorizing such Construction Work and/or delivery and installation to be performed, as described in Subsection 3 immediately below.
3. The PBC will return Submittals marked as follows:
 - a) **"No Exceptions"** means no changes are necessary on the reviewed Submittal. The Vendor may proceed with the Construction Work for that Submittal. Re-submittal is not required.
 - b) **"Exceptions as Noted"** indicates that the Submittal is accepted subject to the corrections and/or comments noted. The Vendor may proceed with the Construction Work for that Submittal if the Vendor incorporates the PBC's comments, and/or corrections. Re-submittal is not required.
 - c) **"Revise and Resubmit"** means that the Submittal does not meet all the requirements necessary to proceed with the Construction Work associated with the Submittal. The Vendor must resubmit in accordance with the reviewer's comments and/or corrections. Submittal marked in this manner must not be released for fabrication, delivery, or construction.
4. If the Submittal requires revision, the Vendor must notify the PBC Project Manager and all pertinent Subcontractors in writing that the reviewed set has been withdrawn.

5. Submittals that require revisions must be corrected and resubmitted to the PBC for the review of the Engineer to maintain the approved CPM schedule, but in no event more than five (5) days after receipt of the PBC's comments.
6. Shop Drawings: After review by the PBC, one reproducible stamped by the Engineer as described in paragraph 3 above will be returned to the Vendor.
7. Product Data: After review by the Engineer, two (2) sets of product data stamped by the Engineer as previously described will be returned to the Vendor.

Section 29. Liens.

1. Whenever the PBC shall receive notice in writing of a lien or claim of money due from the Vendor to any Subcontractor, construction worker, or employee for Construction Work performed or for materials or equipment furnished and used in or about the Construction Work, the PBC may direct that the amount of such claim be deducted from payments due or to become due to Vendor under the Agreement and withheld by the PBC until such claim has been paid or otherwise discharged. This provision shall be construed as being solely for the benefit of the PBC, and will not require the PBC to determine or adjust any claims or disputes between the Vendor and its Subcontractors, Construction workers, or employees, or to withhold any money for their protection, unless the PBC elects to do so. This provision shall not be construed as conferring any rights hereunder for the benefit of Subcontractors, construction workers or employees, or as enlarging or altering the application or effect of existing lien laws.
2. Neither the final payment nor any part of the retained percentage shall become due until the Vendor has delivered to the PBC complete release of all liens, financial obligations or claims from the Vendor, Subcontractors, and other agents acting on its behalf in connection with the Construction Work, arising out of the Construction Work, and an affidavit that so far as it has knowledge or information, the releases include all the labor and material for which a claim could be made or a lien could be filed. If any lien remains unsatisfied after all payments have been made, the Vendor shall refund to the PBC all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Section 30. Environmental Control.

In performing the Construction Work, the Vendor must become thoroughly familiar with all Federal, State, and local statutes, ordinances, and directives with respect to the elimination of excessive noise and pollution of air, water, and soil due to activities related to such Construction Work. Attention must be given to reduce the noise of heavy construction equipment and to the control of dust, smoke, and fumes from construction equipment and other operations on the Site,

and the dirt and noise created by heavy truck operations over City streets in accordance with Local Law. The discharge of Hazardous Materials into waterways and City sewers will not be permitted.

1. Waste. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Vendor and its Subcontractors shall not violate the following sections of the Code (collectively, the "**Waste Sections**"):

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid waste;
- 11-4-1530 Compliance with rules and regulations required;
- 11-4-1550 Operational requirements; and
- 11-4-1560 Screening requirements.

During the period while this Agreement is executory, Vendor's or any Subcontractor's violation of the Waste Sections, whether or not relating to the performance of the Agreement, constitutes a breach of and an event of default under the Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Director of Procurement. Such breach and default entitles the PBC to all remedies under the Agreement, at law or in equity. This section does not limit the Vendor's and its Subcontractors' duty to comply with Applicable Law. Non-compliance with these terms and conditions may be used by the PBC as grounds for the termination of the Agreement.

2. Compliance with Environmental Laws. In performing the Services, Vendor shall comply with all applicable environmental laws, including those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the release or threatened release of Hazardous Materials, special wastes or other contaminants into the environment and to the generation, use, storage, contaminants into the environment and to the generation, use, storage, transportation, or illegal disposal of solid wastes, Hazardous Materials, special wastes or other contaminants including the Comprehensive Environmental Response and Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), the Department of Transportation regulations, the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), the Clean Water Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. §§ 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f), the Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 et seq.), the Illinois Environmental Protection Act

(Ill. Rev. Stat. Ch. 415 ILCS 5/1 through 5/56.6), and the Municipal Code of Chicago, each as amended or supplemented, and any analogous future or present local, state or Federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials or by Federal government, any state or any political subdivision thereof, or any agency, court or body of the Federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions ("**Environmental Laws**"). "**Hazardous Materials**" means asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 U.S.C. Sec. 2014, et seq.), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec. 136, et seq.) and any hazardous waste, toxic substance or related material, including any substance defined or treated as "**hazardous waste**," "**special waste**," "**toxic substance**," or a comparable term in any Environmental Law. "**Special Waste**" means those substances as defined in the Illinois Environmental Protection Act, 415 ILCS 5/3.45, and further defined in Section 809.103 or 35 Illinois Administrative Code, Subtitle G, Ch. 1.

If any Environmental Laws require the Vendor to file any notice or report of a release or threatened release of Hazardous Materials or Special Wastes on, under or about any premises in order for the Vendor to perform the Services required hereunder, the Vendor must provide a copy of such report or notice to the PBC. In the event of a release or threatened release of Hazardous Materials, Special Waste or other contaminants into the environment or in the event any claim, demand, action or notice is made against the Vendor regarding the Vendor's failure or alleged failure to comply with any Environmental Laws, the Vendor will promptly notify the PBC, in writing and will provide them with copies of any written claims, demands, notices or actions so made. If the Vendor fails to comply with any Environmental Laws applicable to the Services, the PBC may terminate this Agreement pursuant to Article IXX (Term and Termination).

3. Environmental Permits. The Vendor must possess, show evidence of, and keep current throughout the term of this Agreement, all waste hauling, special waste hauling, disposal permits and insurance certificates issued by the applicable federal, state, City and other local governmental body and agency's Environmental Laws, including the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Department of Transportation Regulations, the Hazardous Materials Transportation Act, the Clean Air Act, and the Clean Water Act, the Illinois Environmental Protection Act, the Municipal Code of the City, currently in effect, and as amended during the course of this Agreement period, as required to perform the Services ("**Permits**"). When requested by the PBC, the Vendor must

submit, copies of all Permits as required by applicable Environmental Law. Copies of all Permits and insurance certificates that require periodic renewal must be forwarded to the PBC throughout the Term of this Agreement and any Termination Assistance Period. Non-compliance with this requirement may be cause for termination of this Agreement pursuant to Article IXX (Term and Termination).

4. Disposal Sites. The Vendor will, upon request by the PBC, identify disposal site(s) or privately owned transfer station(s) to which Vendor has contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained. Disposal sites submitted must be sufficient to allow for acceptance of the volume of Goods discarded by Vendor and/or Construction Work materials, debris, soil, and other wastes received. Such disposal site(s) must meet all applicable permitting, licensing and zoning requirements. When requested by the PBC, the Vendor must submit copies of all contractual agreements, sanitary landfill permits and/or licenses for the disposal site(s) proposed by the Vendor.

Section 31. Equipment and Environmental Control During Transport.

The Vendor must haul Construction Work materials, construction debris, soil, and other wastes in vehicles and/or containers complying with all applicable Environmental Laws. All equipment used to transfer Construction Work materials, construction debris, soil and other wastes must be designed to prevent spillage during the hauling operation. The Vendor's equipment must fully comply with all City, State, and Federal regulations, laws, and ordinances pertaining to size, load, weight, safety, and any Environmental Law.

Section 32. Open Dumping Prohibited.

1. The removal of all recyclable Construction Work materials and garbage, refuse, or other waste material, including broken concrete, bricks, rocks, paving asphalt, and incidental debris generated from all Construction Work performed under this Agreement, must be transported to a facility that is zoned and permitted to accept such Construction Work material pursuant to Section 11-4 of the City Municipal Code and all applicable local, state, and federal regulations.
2. Bills of Lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material must be retained by the Vendor and made available to the PBC upon request.

Section 33. Compliance with Codes.

1. In performing the Construction Work Design Services and Construction Work, the Vendor must follow the most stringent of the applicable agency and code requirements. The Vendor is fully responsible for ascertaining and complying

with all agency and code requirements applicable to the Construction Work Design Services and Construction Work.

Section 34. Employment of Illinois Laborers.

Vendor will use only Illinois Laborers in the performance of this Construction Work, to the extent (i) required by the Employment of Illinois Laborers on Public Construction Works Projects Act 30 ILCS 570/0.01 et seq., as amended from time to time; and (ii) otherwise permitted by law.

Section 35. Steel Products.

This Agreement is subject to all provisions of the "Steel Products Procurement Act," 30 ILCS 565/1 et seq. (the "Steel Act") as it may be amended from time to time. Pursuant to 30 ILCS 565/4 of the Steel Act, the Steel Act, the PBC has determined that its application is not in the public interest in connection with this Agreement.

Section 36. Licensing of Vendor.

The Vendor in its role as general contractor must comply with all applicable requirements of Chapter 4-36, Licensing of General Contractors, of the Chicago Municipal Code.

Section 37. Equal Employment Opportunity.

1. Employment.

Vendor must achieve the following percentages of Construction Work aggregated work hours in each of the categories of Construction Work journeyworker and apprentice:

- a) At least 25 percent by minorities.
- b) At least seven percent by women.

Vendor also must achieve the following percentages of Construction Work aggregated work hours in the category of Construction Work laborer:

- c) At least 40 percent (40%) by minorities.
- d) At least 10 percent (10%) by women.

The Vendor is obligated to meet these percentages in each category.

2. Reporting.

- a) Vendor must submit to the PBC on a timely basis a completed weekly certified payroll (U.S. Department of Labor Form WH-347, Illinois Department of Transportation Form RE-48, or equivalent), with race and gender of employees clearly named or coded each week. The Vendor is responsible for forwarding every worksite Subcontractor's weekly certified payroll. Supportive information regarding an employee's race, gender or work classification of such is required by the PBC.
 - b) Included as "**Journeyworkers**" are the construction-site Construction Work journeyworkers from the major trades including, without limitation, truck drivers, electrical groundsmen, and elevator construction helpers. Other "**Helpers**," such as Construction Work watchmen, custodial workers, clerical workers, and salaried superintendents are not creditable toward this requirement. Hourly wage "**Foremen**" and "**General Foremen**" will be counted as Journeyworkers.
 - c) Included as "**Apprentices**" are only bona fide Construction Work apprentices currently in a training program certified by the U.S. Department of Labor--Bureau of Apprenticeship and Training, and for the hours employed at the Site. Other categories of trainees are not creditable. Individual workers who are both minority and female will have their hours counted toward both a minority goal and any female goal.
3. Other Regulations. The adherence to this section does not abrogate other responsibilities of the Vendor to comply with equal employment opportunity requirements under Federal or State law, municipal ordinance, prevailing government regulations or terms contained elsewhere in this Agreement.

Section 38. Trade Regulations.

Wherever any portion of drawings conflicts with any agreements or regulations of any kind at any time in force among members of any trade associations, unions, or councils which regulate or distinguish what Construction Work will or will not be included in the Construction Work of any particular trade, the Vendor shall make all necessary arrangements to reconcile any such conflict without delay, damage or cost to the PBC and without recourse to the PBC. In case the progress of the Construction Work is affected by any undue delay in furnishing or installing any items of Construction Work material or equipment required under the Agreement because of a conflict involving any such agreement or regulation, the PBC may require that other Construction Work material or equipment of equal kind and quality be provided at no additional cost to the PBC.

Section 39. Adjoining Property.

1. The Vendor must familiarize itself with the requirements of local and state laws applicable to underpinning, shoring and other such Construction Work affecting adjoining property and wherever required by law the Vendor will shore-up, brace, underpin, secure, and protect as may be necessary all foundations and other parts of existing structures adjacent to, adjoining and in the vicinity of the Site, which may be in any way affected by the excavations or other operations connected with the Construction Work.
 - a) The Vendor is responsible for the giving of any and all required notices to any adjacent or adjoining property owner or other party and such notice or notices must be served in sufficient time as not to delay the progress of the Construction Work.
 - b) The Vendor must indemnify, save and keep the PBC harmless from any damages on account of settlements or the loss of lateral support of adjacent or adjoining property and from all loss or expense and all damages for which the PBC and/or any User Agency may become liable in consequence of such injury or damage to adjacent and adjoining structures and their premises. The provisions of the foregoing paragraph will include also and apply to any liabilities and duties placed upon the City or any User Agency as owner or occupant of the property on which the improvements provided for herein are to be constructed, by the provisions of an Act entitled "An Act to prescribe the duty of an owner or occupant of lands upon which excavations are made in reference to the furnishing of lateral and subjacent support to adjoining lands and structures thereon". See 765 ILCS 140/1 et seq.

Section 40. Protection of Utilities.

1. The Vendor must determine the locations of all utilities in the vicinity of the Site and will take suitable care to protect and prevent damage to such utilities from its Construction Work performance.
2. When performing Construction Work adjacent to existing sewers, drains, water and gas lines, electric or telephone or telegraph conduits or cables, poles lines or poles, or other utility equipment or structures, which are located outside of the neat lines of the excavations to be made or of the structures to be constructed under this Agreement and which are to remain in operation, the Vendor must maintain such utility equipment and structures in place at its own expense and will co-operate with the PBC department, utility company or other party owning or operating such utility equipment or structures in the maintenance thereof.

3. The Vendor is responsible for and must repair all damage to any such utility, equipment or structures caused by its acts, whether negligent or otherwise, or its omission to act, whether negligent or otherwise and will leave such utility, equipment or structures in as good condition as they were in before the commencement of its Construction Work performance. However, it is hereby agreed that any such utility equipment or structures damaged as a result of any act, or omission to act, of the Vendor may, at the option of the PBC, User Agency department, utility company, or other party owning or operating such utility, equipment or structures damaged, be repaired by the PBC or such User Agency department, utility company, or other party and in such event the cost of such repairs will be borne by the Vendor.
4. Protection of Streets, Alleys, and Public Grounds:
 - a) If in the prosecution of the Construction Work it is necessary to excavate, use or occupy any street, alley, or public grounds of the City or other User Agency, the Vendor must erect and maintain such barriers and, during the night time, such lights as will effectually prevent the happening of any accidents or damage to life, limb or property in consequence of such excavation, use or occupation of such street, alley, or public grounds.
 - b) The Vendor will be liable for all damages occasioned by the excavation, use or occupation of any street, alley, or public grounds, or by the carelessness of the Vendor, its agents, employees, or construction workers and will indemnify the PBC against all judgments rendered against it by reason thereof.
 - c) If the PBC is sued solely for such neglect, a judgment rendered against it will be conclusive evidence (1) of the negligence of the Vendor as aforesaid and (2) the amount of such damages recoverable from the Vendor by reason thereof. In the defense of such action, the Vendor, upon notice, must agree to cooperate with the PBC to the fullest extent in furnishing evidence bearing on the charges therein made.
5. Protection of Existing Trees in the Right of Way:
 - a) It is the responsibility of the Vendor to protect all trees from damage at the Site. Any damage to trees resulting from a Construction Work, as determined by the PBC, will be repaired or replaced at the Vendor's expense.
 - b) The Vendor will be required to replace any permanently damaged tree with a new tree of the same type and said new tree will have a trunk with a minimum one and one-half (1-1/2) inch diameter.

- c) The protection of trees will include bridging, tunneling, drawing, drilling or boring underneath existing trees. The surface area directly adjacent to the tree trunk will not be disturbed under the following guidelines:
 - (1) Less than 5 inches DBH trees - 2-foot radius of the tree trunk with a minimum of 3-foot depth.
 - (2) 5 inches to 20 inches DBH trees - 5-foot radius of the tree trunk with a minimum of 3-foot depth.
 - (3) Over 20 inches DBH trees - 7-foot radius of the tree trunk with a minimum of 3-foot depth.
 - (4) When bridging, tunneling, drawings, drilling or boring underneath existing trees said Construction Work will be accomplished directly beneath the center of the tree trunk.

Section 41. Health and Safety.

1. Health and Safety:

- a) Vendor has sole and complete responsibility for development and implementation of a Site specific safety program. The Vendor must develop a Site-specific safety program that must include the Construction Work of all the Vendor's Subcontractors. The Vendor's safety program must be submitted to the PBC for review and approval at least thirty (30) days before the start of the Construction Work.
- b) The Vendor shall designate an experienced safety representative for the Construction Work. This person must be present whenever Construction Work is being performed at the site or at any staging area on the Site property. The safety representative must have the project safety responsibilities as his or her exclusive responsibility and not have any other responsibilities regarding this project.
- c) Although the PBC may observe the Construction Work and give the Vendor opinions and suggestions about safety defects and deficiencies, the PBC, will not be responsible for any unsafe construction working conditions. The PBC's suggestions on safety will in no way relieve the Vendor of its responsibility for safety on the Project. The Vendor has sole responsibility for safety.
- d) The Vendor must comply with the requirements of Regulations 29 CFR Part 1926 (Originally CFR Part 1518) - Safety and Health Regulations for Construction of the Williams-Steiger Occupational Safety and Health Act

of 1970 (Federal, OSHA). Copies may be obtained from the Regional Administrator of the Department of Labor, Federal Office Building, and Chicago, Illinois. The Vendor's attention is directed to the "Health and Safety Act" of the State of Illinois. The rules pursuant to this Act are on file with the Secretary of State of Illinois and are identical in every respect with the standards in effect under the Federal, OSHA, and law, pursuant to orders of the Illinois Industrial PBC. The Federal and State standards require that the Vendor provide reasonable protection to the lives, health, and safety of all persons employed under the Agreement. Such act and rules and the applicable parts thereof will be considered as part of these specifications.

- e) The Vendor must comply with all local safety laws including blasting or use of explosives, and those set forth in Title 15 of the Municipal Code of Chicago, Ch. 15-4, Art.5, and Ch. 15-20, Art.1.
- f) The Vendor must take any precautions that may be necessary to render all portions of the Construction Work secure in every respect or to decrease the liability of accidents, or to avoid contingencies which are liable to delay the completion of the Construction Work. The Vendor will furnish and install, subject to the approval of the PBC, all necessary facilities to provide safe means of access to all points where Construction Work is being performed and make all necessary provisions to facilitate the safety of Construction Work workers and of engineers and inspectors during the performance of said Construction Work.
- g) The Vendor must keep on the site of the Construction Work, completely equipped first aid kits readily accessible at all times. The Vendor will designate a person on each shift, acceptable to the PBC, to be in charge of first aid and will cause such person to receive proper instructions therein.
- h) The Vendor must furnish and place, in all buildings connected with the Construction Work, a sufficient number of fire extinguishers, of a type and capacity approved by the Illinois Inspection and Rating Bureau.
- i) Only such Construction Work materials and equipment as are necessary for the Construction Work under this Agreement (but not the Goods), as determined by the PBC, will be placed, stored or allowed to occupy any such space at the Site. If gasoline, flammable oils, or other highly combustible materials must be stored at the site, they will be stored in approved safety containers and placed where directed by the PBC.

2. Fire Protection: Fire protection must comply with all fire regulations and with all specific regulations of the City, and other officials who have jurisdiction, and will include the following:
- a) An ample number of suitable, fully charged fire extinguishers will be provided as approved. Also provide water type fire extinguishers for combustible materials in case of fire before daily removal of debris from the site.
 - b) All tarpaulins or other protective coverings will be of approved flame retardant material.
 - c) Not more than one (1) day's supply of flammable liquid including oil, gasoline, paint or solvent will be brought to the site at any one time. All 110 degree F., or below, flash point liquids will be confined to "U.L." approved safety cans. No open fires of any type will be permitted.
 - d) The Vendor must prohibit all lighting of fires about the premises and all smoking in restricted areas where posted with "NO SMOKING" signs and must use due diligence to see that such prohibition is enforced. "NO SMOKING" signs must be furnished and posted by the Vendor. Smoking is prohibited everywhere on the AOA.
 - e) No debris or waste materials, including hazardous materials, will be burned at the Site.
 - f) During performance of the Construction Work, all cutting or welding operations will be carried out with all precautions taken to prevent fires resulting from sparks or hot slag. Extreme care will be exercised to determine that such sparks or embers do not fall into any combustible materials, even if such material is stored on lower floors. Sheet metal windscreens will be provided around the lead-melting furnaces whether building is enclosed or not. Portable fire extinguishers will be provided at and below all locations where cutting or welding or melting operations are being performed or, if such operations are extensive, a hose from the stand pipe system or fire hydrant will be placed nearby.
 - g) All combustible material, including wood, crates, excelsior paper, rags or flammable solvents will not be allowed to accumulate, but will be removed to a safe location and disposed of immediately after they have served their purpose.
 - h) If there is a concentration of gas vapors suspected at the Site, the Vendor will be responsible for clearing the area and notifying, in the following order, 911 (leave the area), then call the gas utility company and then the

PBC. All operations in the area will be suspended until the source of such vapors has been located and corrected.

- i) The Vendor will cooperate with the PBC in connection with arrangements for the installation of necessary fire protection lines and equipment as required by the Chicago Fire Department and as necessary to properly protect building where Construction Work is performed. Permanent fire protection facilities may be used for this purpose as soon as they are installed, tested, and approved for use by the PBC in writing for temporary use.
- j) Salamander heaters or similar forms of uncontrolled heaters will not be used except with the special written permission of the PBC and PBC fire marshal and then only when each salamander is maintained under constant supervision.

3. Clean Up:

- a) During the performance of the Construction Work, the Vendor must keep the Site and adjacent premises as free from material, debris, and rubbish as is practicable and when directed, will immediately remove same entirely when, in the opinion of the PBC, such material, debris, or rubbish constitutes a nuisance, a safety hazard, or is objectionable in any way to the public. Haul roads, streets, and public areas will be swept daily, unless otherwise provided in the Procedures Manual.
- b) Vendor is solely responsible for and will assume all liability associated with off-site disposal at a properly permitted disposal facility of Hazardous Materials generated as a result of Vendor's Construction Work.
- c) Before Final Completion of the Construction Work, the Vendor must remove from the site of the Construction Work and adjacent premises all Construction Work machinery, equipment, surplus materials, excavated and useless materials, rubbish, temporary materials, buildings, barricades and signs and will restore the Site to the same general conditions that existed before the commencement of its Construction Work. The cost of final cleaning up will not be charged as a separate line item, but will be included in the Fees.
- d) The Vendor must clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt and any other foreign materials deposited or accumulated on any portion of its Construction Work, or as a result of its Construction Work.

4. Snow and Ice Removal: Vendor must remove snow and ice which may impair progress of Construction Work, be detrimental to Construction workers, or impair trucking to and from point of delivery at job site, all subject to no interference whatsoever to aircraft, to other operations at the Site and subject to whatever directions the PBC may give to the Vendor.
5. Glass and Plastic Breakage: All glass or plastic broken or damaged during performance of the Construction Work will be replaced by the Vendor or Subcontractor responsible for the breakage or damage. In the event responsibility cannot be determined, the Vendor will make all such replacements without additional cost to the PBC.
6. Sanitation:
 - a) The Vendor must enforce among its employees such regulations in regard to cleanliness and the disposal of garbage and wastes including Hazardous Materials as will conduce to their health and tend to prevent the inception and spread of contagious and infectious disease among them and will provide an ample supply of suitable, pure drinking water and will take such means as the PBC may direct to effectively prevent the creation of a nuisance on any part of the Site or adjacent streets or property.
 - b) Necessary sanitary conveniences for the use of the laborers on the Construction Work, properly secluded from public observation, will be constructed and maintained by the Vendor in such manner and at such points as will be approved and their use will be strictly enforced. Whenever manholes have been used for sanitary purposes, they will be thoroughly flushed and cleaned when no longer needed.
 - c) The manner of disposing of waste will be such that all waste is legally disposed of at properly permitted facilities without creating a public nuisance or health hazard and in accordance with EPA, Illinois EPA and Illinois Department of Public Health Circular No. 815 or Educational Health Circular No. 4.001 and the City Municipal Code.
 - d) The Vendor also must comply with all applicable rules and regulations of the Federal and State Governments and Chicago Health Department.
7. Public Convenience: The Vendor will be held responsible for all damage or injury, even though barricades, signs, lights, reflectors and flagmen are furnished as herein specified:
 - a) All Construction Work hauling and operations of equipment and all other necessary Construction Work under this Agreement must be so conducted as to cause a minimum of noise, vibration and inconvenience to the

normal activities of the occupants of property and buildings in the vicinity of such Construction Work. Whenever the PBC determines that any type of Construction Work constitutes a nuisance, the Vendor must, immediately, proceed to conduct such Construction Work in an approved manner.

- b) The Vendor must, at all times, conduct the Construction Work in a manner that minimizes obstruction to vehicular and pedestrian traffic. Normal vehicular and pedestrian traffic on all adjacent streets, bridges, overpass structures and ramps will be maintained at all times during the performance of the Construction Work. Whenever such obstruction or interference is unavoidable, attention is called to the necessity of obtaining permits from the appropriate municipal or public agency before proceeding with the Construction Work. Wherever necessary, the Vendor, at its expense, must provide all temporary facilities that may be required to maintain vehicular and pedestrian traffic and access to all property.
- c) Whenever, as a result of the Construction Work or performance thereof, any part of a street is obstructed or closed to traffic, the Vendor must provide, erect, and maintain at its own cost and expense all of the approved barricades, signs, lights and reflectors necessary to provide safe and convenient public travel. The Vendor also must provide, at its expense, any flagmen that may be required for warning and directing traffic.
- d) The PBC may at any time require additional provisions if such are deemed necessary for public safety or convenience.

Section 42. Disposal of Construction Work Materials, Construction Debris, Soil and Waste.

- 1. The Vendor is responsible for the legal disposal of all Construction Work materials, construction debris, soil and other waste items. Hauling and disposal by a Subcontractor does not relieve the Vendor from the responsibility of legal disposal. Disposal of all Construction Work materials, construction debris, soil, and other wastes will be at a disposal site that is properly licensed and permitted to accept such Construction Work materials, debris, soil and other wastes delivered to it in accordance with all applicable Environmental Laws. The Vendor shall identify the disposal site(s) or transfer station(s) to which it has contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained.
- 2. The Vendor must provide the PBC or his designated representative with copies of all dump tickets, manifests, bills of lading, scale tickets, etc. When requested by

the PBC, the Vendor will provide copies of all permits and/or licenses for the transfer station and/or landfill they are proposing. In the event the transfer station and/or landfill proposed for use by the Vendor does not possess the necessary permits and/or licenses to accept the Construction Work materials, construction debris, soil, or other wastes, the Vendor will replace the transfer station and/or landfill submitted as part of their bid proposal at no additional cost to the PBC. If the Vendor is found disposing of Construction Work materials, debris, soil or other wastes at a site which is not in compliance with all applicable laws, including proper permits, the Vendor will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site at no additional cost to the PBC.

3. The Vendor accepts responsibility for being in compliance with all applicable Environmental Laws and other applicable Federal, State, PBC and other local governmental and agency's laws, ordinances, rules, regulations and codes currently in effect and as amended during the course of this Agreement.
4. The Vendor must notify the PBC within twenty-four (24) hours of receipt, of any environmental problems, complaints, fines, citations, violations or issues, by any governmental body or regulatory agency against the Vendor relating to the loading, hauling or disposal of Construction Work materials, debris, soil and other wastes. The Vendor will provide evidence to the PBC that these problems and issues have been satisfactorily addressed to satisfaction of the issuer or initiator of such Claim.
5. The Vendor must supply to the PBC written notice of any community meetings, media involvement or media coverage related to the loading, hauling or disposal of Construction Work materials, debris, soil and other wastes in which Vendor is asked to participate.
6. The Vendor must provide periodic verification as requested by the PBC that all Construction Work materials, debris, and other waste accepted by the Vendor, from the City, has been disposed of in compliance with all applicable Environmental Laws.
7. The form for identifying the Vendor's debris disposal/hauling site(s) and acknowledging terms and conditions relating thereto which has been executed by the Vendor may be attached to this Agreement and incorporated by reference, as appropriate. In addition to the representations and requirements contained in the form, the Vendor understands and agrees that the Vendor, unless otherwise authorized in writing by the PBC, must not continue to use a disposal/hauling site identified in the form that (i) has been cited as being in violation of any Environmental Law, regulation, or any City ordinance; or (ii) does not have a necessary permit. If only one site was identified in the form, the Vendor must

arrange for a substitute disposal/hauling site that meets the requirements specified in the form and provide a revised form to the PBC. The Vendor further understands and agrees that any such substitution is at no additional cost to the PBC, regardless of the reason necessitating such substitution.

Section 43. Equipment and Environmental Control During Transport.

1. The Vendor must haul Construction Work materials, debris, soil and other wastes in vehicles and/or containers complying with all applicable Environmental Laws. All equipment used to transfer Construction Work materials; debris, soil and other wastes will be designed to prevent spillage during the hauling operation. Vendor's equipment used in connection with the Construction Work will fully comply with all City, State and Federal regulations, laws and ordinances pertaining to size, load weight, and safety. The PBC will not be liable for any violation committed on the part of the Vendor in the handling, hauling, disposal or transportation (by any method) of Construction Work materials, debris, soil and other waste.

Section 44. Environmental Records and Reports.

1. The Vendor must prepare and maintain proper, accurate and complete records of accounts of all transactions related to the Construction Work and performance thereof, including the following:
 - a) Vehicle maintenance records on vehicles used in connection with the Construction Work.
 - b) Safety and accident reports regarding the Construction Work.
 - c) IEPA manifests regarding the Construction Work.
 - d) Disposal records relating to the Construction Work, including disposal site used, date, truck number, and disposal weight.
 - e) Construction Work permit documentation and all other documentation and transactions pertaining to all environmental rules and regulations.

Section 45. Ultimate Disposal Site.

1. The Vendor will, upon request by the PBC, identify disposal site(s) or privately owned transfer station(s) to which he has contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained.
2. Disposal sites submitted must be sufficient to allow for acceptance of the volume of Construction Work materials, debris, soil, and other wastes received for the

period of this Agreement. The disposal site(s) must meet all applicable permitting, licensing and zoning requirements.

3. When requested by the PBC, the Vendor must submit copies of all contractual agreements, sanitary landfill permits and/or licenses for those disposal site(s) proposed by the Vendor.
4. Open Dumping Prohibited: The removal of all recyclable materials and garbage, refuse or other waste material relating to the Construction Work, including broken concrete, bricks, rock, paving asphalt and incidental debris generated from all construction or demolition activities performed in connection with the Construction Work, must be transported to a facility that is zoned and permitted to accept such material pursuant to Section 11-4 of the City Municipal Code and all other applicable Environmental Laws.

Section 46. Temporary Services and Utilities.

a) General:

- (1) The Vendor is responsible for arranging for and providing all general services and temporary facilities as required for prosecution of the Construction Work in accordance with the Agreement. The Vendor must pay all costs for such general services and temporary facilities.
- (2) Temporary connections for water, electricity, and heat (including installation, maintenance and removal of such facilities) will be at the Vendor's expense.
- (3) The Vendor must pay the cost of all temporary utilities including, electricity, gas, water, and telephone in connection with the Construction Work.

b) Water:

- (1) The Vendor must provide temporary water connections as required for drinking and Construction Work purposes.
- (2) The Vendor will note that the PBC reserves the right to regulate the use of water, and may impose restriction on the use in the event water is being used carelessly by the Vendor.
- (3) Water and facilities for obtaining water for sanitary purposes, drinking, mixing concrete and for all other purposes will be provided by and at the expense of the Vendor. The water must be

obtained from the mains of the Chicago Water System, except as may be provided for in the Construction Work Design Documents. Except with special permission from the PBC and the Department of Water, connections for water will not be made to the City's fire hydrants.

- c) **Light and Power:** The Vendor must furnish the electrical energy and must furnish and install all wiring, electrical services, lighting units, insulated supports for wiring and all other electrical equipment together with all other incidental and collateral Construction Work necessary for the furnishing of the temporary power and lighting facilities for the Construction Work to be done under this Agreement, all at no additional cost to the PBC.

Section 47. Project Sign.

Project signage is to be erected by the Vendor, when required and at each location designated by the PBC. Upon Project completion the sign(s) must be removed by the Vendor. The Project sign will be constructed of treated exterior grade plywood; painted, installed and placed as directed by the PBC.

Section 48. Surveyor.

Whenever required, Vendor shall engage and pay for the services of a surveyor ("Surveyor") subject to the approval of the PBC. The Surveyor must be located in the State of Illinois, not be an employee of the Vendor or any Subcontractor, and must not have an interest in the Agreement.

Section 49. Admiralty.

Vendor waives the right to receive the benefits of or to invoke the protection afforded by all maritime statutory limitations of liability, including the Limitation of Vessel Owner's Liability Act, 48 U.S.C. § 183 et seq., that could act to diminish Vendor's liability for any harm or damage arising from Vendor's performance of its obligations under the Agreement in any manner or for all claims or other costs arising from or occasioned by Vendor's operations on any waterways, including Lake Michigan and the Chicago River. This provision is not intended to avoid or waive federal jurisdiction under the applicable admiralty laws. This waiver does not extend to third parties seeking recovery for claims solely against Vendor.

Without limiting such waiver, Vendor specifically consents to pay all sums in respect of any claims against the PBC, the City of the Sister Agencies and other costs suffered by the PBC, the City and the Sister Agencies arising from or occasioned by Vendor's operations in or on waterways, including the following:

1. Loss or damage to any other ship, vessel or boat caused proximately or otherwise by Vendor's vessel, or loss of the cargo or the other ship, vessel or boat;
2. Loss of life or personal injury, or for any cost of life salvage;
3. Loss or damage to any harbor, dock, building, graving or otherwise, slipway, pontoon, pier, quay, tunnel, jetty, stage, buoy, cables of any kind, or other fixed or movable object or property whatsoever;
4. The cost of the removal, raising or destruction of the wreck of any vessel Vendor employs in performing its obligations under the Agreement;
5. If a vessel is disabled or otherwise, the cost of towage or other salvage of any vessel Vendor employs in performing its obligations under the Agreement; and/or
6. Loss or damage to the bottom, banks, or shoreline of the waterway.

TABLE OF CONTENTS

	<u>Page No.</u>
Section 1. General.	1
Section 2. Definitions.....	1
Section 3. Construction Work Design Documents.	1
Section 4. Construction Work Design Services.	3
Section 5. Construction Obligations.	5
Section 6. Vendor's Warranties and Representations.....	7
Section 7. Construction Work Completion.....	7
Section 8. Performance and Labor & Material Payment Bonds.....	10
Section 9. Other Contractors.	10
Section 10. Mutual Responsibility of Vendor and other Contractors.....	11
Section 11. Competency of Construction Workers.....	12
Section 12. Administration and Supervision of the Construction Work.	12
Section 13. Prevailing Wage.....	12
Section 14. Vendor's Construction Schedule.....	13
Section 15. No Damages for Delay and Extensions of Time.....	22
Section 16. Notice of Labor Disputes.....	24
Section 17. Construction Work Meetings.	24
Section 18. Use of Completed Portions of the Construction Work.	25
Section 19. Correction of Construction Work.....	25
Section 20. Inspection of Construction Work.....	26
Section 21. ASTM Standards and Testing Laboratory Labels.....	27
Section 22. Construction Work Materials.	28
Section 23. Prompt Payment to Construction Work Subcontractors.....	32
Section 24. Payments Subject to Review.....	33
Section 25. Changes In The Construction Work.....	33
Section 26. Shop Drawings, Product Data and Samples	44
Section 27. Construction Work Record Drawings, Project Data and Project Account Records	46
Section 28. Review of Submittals	49
Section 29. Liens.....	50
Section 30. Environmental Control.....	50
Section 31. Equipment and Environmental Control During Transport.....	53
Section 32. Open Dumping Prohibited.....	53
Section 33. Compliance with Codes.....	53
Section 34. Employment of Illinois Laborers.	54
Section 35. Steel Products.....	54
Section 36. Licensing of Vendor.....	54
Section 37. Equal Employment Opportunity.	54
Section 38. Trade Regulations.....	55
Section 39. Adjoining Property.....	56
Section 40. Protection of Utilities.....	56
Section 41. Health and Safety.....	58
Section 42. Disposal of Construction Work Materials, Construction Debris, Soil and Waste.....	63

Section 43.	Equipment and Environmental Control During Transport.....	65
Section 44.	Environmental Records and Reports.	65
Section 45.	Ultimate Disposal Site.	65
Section 46.	Temporary Services and Utilities.....	66
Section 47.	Project Sign.	67
Section 48.	Surveyor.	67
Section 49.	Admiralty.	67

ATTACHMENT 1 - Defined Terms	A1-1

ATTACHMENT 2 - Cook County Prevailing Wage for December 2005	A2-1

Execution Copy

ATTACHMENT 1

Defined Terms

<u>Defined Term:</u>	<u>Defined In:</u>
Activities	Section 14
Act	Section 13
Acts	Section 4
Apprentices	Section 37
As-Built Drawings	Section 27
Bond	Section 8
Change Claim	Section 25
Claim	Section 34
Construction Diagrams	Section 14
Construction Materials	Section 21
Construction Price	Section 25
Construction Work	Section 1
Construction Work Design Documents	Section 3
Construction Work Design Services	Section 4
Construction Work Design Services Subcontractor	Section 4
Construction Work Record Drawing	Section 27
Contractors	Section 9
CWS	Section 12
Engineer	Section 4
Environmental Laws	Section 30
Exceptions as Noted	Section 28
Field Order	Section 25
Final Completion	Section 7
Foreman	Section 37
General Foreman	Section 37
general prevailing hourly rate	Section 13

Defined Term:

Hazardous Materials

hazardous waste

Helpers

Index and Schedule

Journeyworkers

No Exceptions

Notice of Construction Claim

Permits

Product Data

Punch List

Punch List Construction Work

Revise and Resubmit

Samples

Schedule

Shop Drawings

Site

Special Waste

Steel Act

Steel Products Procurement Act

Subcontractor

Submittal

Substantial Completion (of the Construction Work)

Surveyor

Target Schedule

Timely

tonic substance

TSA

United States

User Agency

Defined In:

Section 30

Section 30

Section 37

Section 26

Section 37

Section 28

Section 25

Section 30

Section 26

Section 7

Section 7

Section 28

Section 26

Section 14

Section 26

Section 7

Section 30

Section 35

Section 35

Section 4

Section 4

Sections 7

Section 48

Section 14

Section 23

Section 30

Section 42

Section 38

Section 7

Defined Term:

Waste Sections

Winter Suspension

Defined In:

Section 30

Section 9

ATTACHMENT 2

Cook County Prevailing Wage for December 2005

Trade Name	RG	TYP	C	Base	FRMAN	*M-F>8	OSA	OSH	H/W	Pensn	Vac	Trng
=====	==	===	=	=====	=====	=====	===	===	=====	=====	=====	=====
ASBESTOS ABT-GEN		ALL		30.150	30.900	1.5	1.5	2.0	6.860	3.940	0.000	0.170
ASBESTOS ABT-MEC		BLD		23.300	24.800	1.5	1.5	2.0	7.860	4.910	0.000	0.000
BOILERMAKER		BLD		36.820	40.140	2.0	2.0	2.0	6.920	6.260	0.000	0.210
BRICK MASON		BLD		33.250	36.580	1.5	1.5	2.0	6.450	7.020	0.000	0.440
CARPENTER		ALL		35.320	37.320	1.5	1.5	2.0	6.760	5.310	0.000	0.490
CEMENT MASON		ALL		36.600	37.850	2.0	1.5	2.0	6.110	4.920	0.000	0.150
CERAMIC TILE FNSHER		BLD		27.200	0.000	2.0	1.5	2.0	5.400	5.200	0.000	0.100
COMM. ELECT.		BLD		31.440	33.940	1.5	1.5	2.0	6.300	5.290	0.000	0.700
ELECTRIC PWR EQMT OP		ALL		34.950	40.720	1.5	1.5	2.0	7.420	8.730	0.000	0.260
ELECTRIC PWR GRNDMAN		ALL		27.260	40.720	1.5	1.5	2.0	5.790	6.820	0.000	0.210
ELECTRIC PWR LINEMAN		ALL		34.950	40.720	1.5	1.5	2.0	7.420	8.730	0.000	0.260
ELECTRICIAN		ALL		35.150	37.750	1.5	1.5	2.0	8.680	6.850	0.000	0.750
ELEVATOR CONSTRUCTOR		BLD		38.995	43.870	2.0	2.0	2.0	7.275	3.420	2.340	0.370
FENCE ERECTOR		ALL		24.840	26.090	1.5	1.5	2.0	6.650	6.740	0.000	0.000
GLAZIER		BLD		31.400	32.400	1.5	2.0	2.0	6.490	9.050	0.000	0.500
HT/FROST INSULATOR		BLD		32.800	34.550	1.5	1.5	2.0	7.860	8.610	0.000	0.310
IRON WORKER		ALL		36.250	37.750	2.0	2.0	2.0	8.970	10.77	0.000	0.300
LABORER		ALL		30.150	30.900	1.5	1.5	2.0	6.860	3.940	0.000	0.170
LATHER		BLD		35.320	37.320	1.5	1.5	2.0	6.760	5.310	0.000	0.490
MACHINIST		BLD		35.630	37.630	2.0	2.0	2.0	3.880	4.750	2.460	0.000
MARBLE FINISHERS		ALL		25.750	0.000	1.5	1.5	2.0	6.070	7.020	0.000	0.580
MARBLE MASON		BLD		33.250	36.580	1.5	1.5	2.0	6.450	7.020	0.000	0.580
MILLWRIGHT		ALL		35.320	37.320	1.5	1.5	2.0	6.760	5.310	0.000	0.490
OPERATING ENGINEER		BLD 1		39.550	43.550	2.0	2.0	2.0	6.450	5.150	1.800	0.650
OPERATING ENGINEER		BLD 2		38.250	43.550	2.0	2.0	2.0	6.450	5.150	1.800	0.650
OPERATING ENGINEER		BLD 3		35.700	43.550	2.0	2.0	2.0	6.450	5.150	1.800	0.650
OPERATING ENGINEER		BLD 4		33.950	43.550	2.0	2.0	2.0	6.450	5.150	1.800	0.650
OPERATING ENGINEER		FLT 1		42.700	42.700	1.5	1.5	2.0	6.050	4.850	1.800	0.000
OPERATING ENGINEER		FLT 2		41.200	42.700	1.5	1.5	2.0	6.050	4.850	1.800	0.000
OPERATING ENGINEER		FLT 3		36.650	42.700	1.5	1.5	2.0	6.050	4.850	1.800	0.000
OPERATING ENGINEER		FLT 4		30.500	42.700	1.5	1.5	2.0	6.050	4.850	1.800	0.000
OPERATING ENGINEER		HWY 1		37.750	41.750	1.5	1.5	2.0	6.450	5.150	1.800	0.650
OPERATING ENGINEER		HWY 2		37.200	41.750	1.5	1.5	2.0	6.450	5.150	1.800	0.650
OPERATING ENGINEER		HWY 3		35.150	41.750	1.5	1.5	2.0	6.450	5.150	1.800	0.650
OPERATING ENGINEER		HWY 4		33.750	41.750	1.5	1.5	2.0	6.450	5.150	1.800	0.650
OPERATING ENGINEER		HWY 5		32.550	41.750	1.5	1.5	2.0	6.450	5.150	1.800	0.650
ORNAMNTL IRON WORKER		ALL		33.600	35.350	2.0	2.0	2.0	7.250	10.09	0.000	0.750
PAINTER		ALL		33.550	37.560	1.5	1.5	1.5	5.800	5.400	0.000	0.340
PAINTER SIGNS		BLD		25.530	28.660	1.5	1.5	1.5	2.600	2.040	0.000	0.000
PILEDRIIVER		ALL		35.320	37.320	1.5	1.5	2.0	6.760	5.310	0.000	0.490
PIPEFITTER		BLD		36.100	38.100	1.5	1.5	2.0	7.910	6.100	0.000	0.800
PLASTERER		BLD		32.100	33.600	1.5	1.5	2.0	6.240	6.600	0.000	0.400
PLUMBER		BLD		38.400	40.400	1.5	1.5	2.0	7.170	3.940	0.000	0.790
ROOFER		BLD		32.800	34.800	1.5	1.5	2.0	5.570	3.000	0.000	0.330
SHEETMETAL WORKER		BLD		33.400	36.070	1.5	1.5	2.0	6.460	7.850	0.000	0.590
SIGN HANGER		BLD		23.750	24.600	1.5	1.5	2.0	3.880	2.000	0.000	0.000

A2-1

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SPRINKLER FITTER		BLD		34.500	36.500	1.5	1.5	2.0	7.000	5.550	0.000	0.500
STEEL ERECTOR		ALL		36.250	37.750	2.0	2.0	2.0	8.970	10.77	0.000	0.300
STONE MASON		BLD		33.250	36.580	1.5	1.5	2.0	6.450	7.020	0.000	0.440
TERRAZZO FINISHER		BLD		27.950	0.000	1.5	1.5	2.0	6.150	5.560	0.000	0.220
TERRAZZO MASON		BLD		32.050	35.050	1.5	1.5	2.0	6.150	7.140	0.000	0.120
TILE MASON		BLD		33.000	37.000	2.0	1.5	2.0	5.400	6.400	0.000	0.180
TRAFFIC SAFETY WRKR		HWY		22.800	24.400	1.5	1.5	2.0	3.078	1.875	0.000	0.000
TRUCK DRIVER	E	ALL	1	28.700	29.350	1.5	1.5	2.0	5.000	3.700	0.000	0.000
TRUCK DRIVER	E	ALL	2	28.950	29.350	1.5	1.5	2.0	5.000	3.700	0.000	0.000
TRUCK DRIVER	E	ALL	3	29.150	29.350	1.5	1.5	2.0	5.000	3.700	0.000	0.000
TRUCK DRIVER	E	ALL	4	29.350	29.350	1.5	1.5	2.0	5.000	3.700	0.000	0.000
TRUCK DRIVER	W	ALL	1	28.700	29.250	1.5	1.5	2.0	5.900	3.300	0.000	0.000
TRUCK DRIVER	W	ALL	2	28.850	29.250	1.5	1.5	2.0	5.900	3.300	0.000	0.000
TRUCK DRIVER	W	ALL	3	29.050	29.250	1.5	1.5	2.0	5.900	3.300	0.000	0.000
TRUCK DRIVER	W	ALL	4	29.250	29.250	1.5	1.5	2.0	5.900	3.300	0.000	0.000
TUCKPOINTER		BLD		34.500	35.500	1.5	1.5	2.0	4.710	6.340	0.000	0.400

Legend:

M-F>8 (Overtime is required for any hour greater than 8 worked each day, Monday through Friday.

OSA (Overtime is required for every hour worked on Saturday)

OSH (Overtime is required for every hour worked on Sunday and Holidays)

H/W (Health & Welfare Insurance)

Pensn (Pension)

Vac (Vacation)

Trng (Training)

SCHEDULE 4.2
Terms and Conditions Related to Goods

1. General.

(a) As part of the Services, Vendor shall procure, install and store the Goods as described in this Schedule 4.2 and in compliance with the Agreement.

(b) All Goods are subject to the provisions of this Schedule 4.2. Any term and condition not otherwise defined herein shall have the meaning set forth in the Agreement including any Schedule.

2. Design Documents.

(a) In carrying out its Services, Vendor must prepare or provide to the PBC for review and approval various design documents related to Goods, which shall be Deliverables pursuant to the Agreement and shall include work product, such as written plans, designs, reports, analyses and drawings related to the Specifications for the Goods ("**IT Design Documents**"). The Construction Work Design Documents shall take into account the IT Design Documents. The Goods shall be procured, installed, stored and maintained in accordance with all applicable IT Design Documents. Notwithstanding the foregoing, this Section 2(a) shall not be deemed to, and does not, obligate Vendor to alter the off-the-shelf Goods procured by Vendor as directed by the PBC for Phase 1, Phase 2 and Phase 3 (provided that, with the exception of Phase 1, Phase 2 and Phase 3, the PBC does have the right to direct alteration of off-the-shelf Goods and then, this Section 2(a) shall be deemed to obligate Vendor to alter such off-the-shelf Goods).

(b) The PBC may reject IT Design Documents that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or which are reasonably necessary for the implementation of the System or a User Project in accordance with the Agreement, including the applicable Specifications. If the PBC determines that Vendor has failed to comply with the foregoing standards, it will notify Vendor of its failure with such notice to include details regarding such failure. If Section 2(c) is not applicable, Vendor shall correct the failure, if it is possible to do so, within fifteen (15) days after receipt of notice from the PBC specifying such failure, or the longer period approved in writing by the PBC, or the PBC may by written notice treat the failure as a default under the Agreement.

(c) If Vendor disagrees with any of the PBC's comments with respect to the IT Design Documents, Vendor will promptly notify the PBC in writing and include in such notice a detailed summary of adverse effects that the PBC's directives or comments may have on the functionality of the System or the User Project (as the case may be), and the manner in which such adverse effect is reasonably likely to cause Vendor to be in breach under this Agreement. If the PBC then directs Vendor to proceed in writing ("**Directive**"), Vendor will not be in breach of the Agreement if and to the extent that Vendor can reasonably demonstrate that the Vendor advised the PBC in writing of such adverse effects and the PBC's Directive to proceed was the cause of Vendor's non-compliance with the Agreement. If Vendor believes that the PBC's Directive will cause increases in System or User Project costs or delays in completion of the System or a User Project, and the PBC disagrees, Vendor may file a claim under Section 9.5

(Claims) of the Master Agreement, but only to the extent that, before proceeding with the PBC's directive, Vendor advised the PBC in writing of such incremental increase in costs and/or time delays. If Section 2(c) is applicable, Vendor shall correct the IT Design Documents within fifteen (15) days after receipt of the Directive, or the longer period approved in writing by the PBC, or the PBC may by written notice treat Vendor's failure as a default under the Agreement.

(d) The PBC may reasonably request Vendor to deliver the in-process IT Design Documents for a preliminary review by the PBC for the benefit of the PBC (and/or the City or applicable Sister Agency). Any PBC feedback to Vendor in connection with such a preliminary review shall not be deemed to be Acceptance of such IT Design Documents or satisfaction by Vendor of the requirements of this Agreement, and Vendor shall in no way be relieved of its obligations under this Agreement. If, however, Vendor reasonably believes that incorporation of such feedback or direction will have an adverse material effect on the Services, Vendor will inform the PBC of such concerns and the Parties may agree upon use of such feedback in writing.

(e) Vendor will provide hard copies and/or electronic copies (as requested by the PBC) of incremental IT Design Documents, and will also make such incremental IT Design Documents available on the Intranet Site.

(f) PBC and Vendor agree that the IT Design Documents are Developed Materials and are subject to Section 11.6 of the Master Agreement (Rights in Developed Materials).

3. Procuring the Goods.

(a) If sources from which Vendor expects to obtain the various Goods under such Notice to Proceed are found by the PBC to be unacceptable at any time and fail to produce materials satisfactory to the PBC, the Vendor shall furnish Goods from other approved sources; provided that Vendor shall be given a reasonable time to procure such Goods from other approved sources so long as Vendor's acts or omissions hereunder did not cause the source to become unacceptable.

(b) Vendor shall notify the PBC Project Manager in writing as soon as possible after the effective date of the applicable Notice to Proceed, but not less than three (3) weeks, unless otherwise agreed, before procurement of the Goods in question of the source (or sources) from which Vendor expects to obtain the various Goods under such Notice to Proceed. If such sources are found to be unacceptable at any time and fail to produce materials satisfactory to the PBC, the Vendor shall furnish Goods from other sources provided that Vendor shall be given a reasonable time to procure such Goods from other sources so long as Vendor's acts or omissions hereunder did not cause the previous source to become unacceptable.

(c) Vendor must comply with the following requirements regarding the manufacturer and product selection when procuring the Goods:

(i) Manufacturer and Goods. Subject to the ability to make substitutions as set forth in Section 3(c) of this Schedule 4.2:

- (1) Goods, including materials and equipment, of the same general type must be of the same manufacturer throughout the Project to provide uniform operation and maintenance.
- (2) Goods, including materials and equipment, furnished must be of the current production and product of a manufacturer regularly engaged in the manufacture of such products, for which replacement parts are available.
- (3) Goods, including materials and equipment, must be newly manufactured, provided that such materials and equipment are not obsolete, unless otherwise required by the PBC. Underwriters' Laboratories labeled where applicable, and must bear the manufacturer's name, model number, and ratings of equipment, where applicable.
- (4) Manufacturers of equipment assemblies, which include components made by others, shall assume complete responsibility for the final assembled unit.

(ii) Goods Specifications. The Goods shall meet the applicable Acceptance Criteria for such Goods, including the applicable Specifications, respectively, and perform as part of the System or User Project in accordance with the applicable Acceptance Criteria.

(d) Substitutions.

(i) Following approval of Design Documents and Submittals, the PBC will consider formal requests from the Vendor for substitution of Goods and processes in lieu of those specified only under one or more of the following circumstances:

- (1) When the Vendor demonstrates that the specified Good is not available, proof must be submitted that firm orders were placed in a timely manner or that the unavailability is due to strike, lockout, bankruptcy, discontinuance of manufacture, an act of God, or for other reasons acceptable to the PBC.
- (2) When, in the opinion of the Vendor, the specified Good will not fulfill the applicable Specifications; provided that Vendor shall bear the costs of such substitution.
- (3) Substitutions shall not be considered if, in the reasonable opinion of the PBC:
 - (a) The proposed substitution is indicated or implied on shop drawings or product data submittals without prior formal written request and acceptance (meaning for purposes of clarification, that the Shop Drawings cannot be the mechanism for making a substitution), or

(b) Acceptance would require substantial revision of the IT Design Documents or Submittals, or

(c) There is no benefit to the PBC.

(4) If a source must be replaced under Section 3(a) of this Schedule 4.2.

(ii) The Vendor shall present all substitutions so as not to delay the Project Timetable for required reviews and approvals by the PBC. If the Vendor submits a Good as a substitution that the Vendor believes is an equivalent or equal, but cannot meet the applicable Specifications, the Vendor shall describe, in writing, the exceptions to such Specifications. The written description shall clearly indicate where the manufacturer or the Vendor cannot meet the applicable Specifications, or take exceptions and detail how the alternate good shall perform as an equivalent. Exceptions to the applicable Specifications are subject to acceptance by the PBC. Such substitutions shall comply with this Section. Should the PBC reasonably reject such Vendor proposed equivalent or equal, the Vendor shall provide Goods in full conformance with the Agreement at no additional cost to the PBC or extension of the time of performance if Vendor's acts or omissions hereunder caused the need for the substitution.

(iii) Notification of acceptance of substitutions not affecting cost or time of performance will be made to the Vendor in writing by the PBC and requires the approval of the PBC. Notification of acceptance of substitutions involving Changes in cost or time of performance will be made to the Vendor in the form of an approved Change Order.

4. Delivery and Title.

Unless otherwise specified in the Agreement, (i) title to Goods passes from IBM to the PBC upon delivery and (ii) risk of loss or damage to Goods passes to the PBC upon receipt of notification to the PBC of completion of installation.

5. Storing the Goods.

(a) Vendor shall keep inventories at levels that are appropriate in IBM's reasonable discretion to meet the Project Timetable, provide climate and environmental control and protection against the weather adequate to prevent damage to the Goods and so that the Goods continue to meet their standard published technical specifications, and maintain security measures against theft and vandalism with respect to all Goods in Vendor's (or its Subcontractors') custody or control.

(b) Within Vendor's storage facility, the materials, equipment, or fixtures intended for this Project or the User Project, as the case may be, will be in a discrete secure location.

(c) Goods relating to the Camera System and Network Edge Kit, Network Hardware and components may be stored or warehoused in preparation for installation (kitting), or as inventory for replacement of damaged or failed modules. Software and firmware revisions

implemented in installed (operational) camera, Network and back-office equipment must also be applied to any stored or warehoused equipment when it is incorporated into the System.

6. Design Services.

(a) Vendor must install the Goods in accordance with the IT Design Documents and the Construction Work Design Documents and Submittals.

(b) Vendor shall review any specified installation procedures (including those recommended by any product manufacturer). The Vendor shall advise the PBC Project Manager in writing seven (7) days before commencing Services, on Goods affected:

- (i) if any manufacturer specified procedure deviates from good practice;
- (ii) if following any specified procedure will affect any warranties; or
- (iii) of any objections which the Vendor may have to any specified procedure.

7. Acceptance Process.

(a) The Goods shall be subject to the applicable Acceptance Process, including the terms and conditions set forth in Schedule 5.2 (Common Elements of Acceptance Criteria and Acceptance Testing).

(b) No action of the PBC, the User Agency, their successors and assigns or their respective Commissioners, board members, officers, employees, or agents other than Acceptance shall be construed as accepting Goods furnished in the performance of this Agreement, which Goods are not in accordance with those specified and required by the Agreement, including the applicable specifications. The issuance of the final payment shall in no way affect the rights of the PBC against the Vendor (and the surety or sureties on the Performance and Payment Bond given by the Vendor) to enforce the complete performance of this Agreement or to sue for the recovery of damages for failure to do so, nor shall it affect the terms of Vendor's warranties under the Agreement.

8. Spare Goods.

Vendor shall provide, where specified and in accordance with a Task Order and Notice to Proceed, component spare parts for Goods as specified in such Task Order.

9. Bonds.

(a) The terms and conditions set forth in Section 8 of Schedule 4.1 (Terms and Conditions for Construction) apply to the Goods.

(b) Upon execution of any Notice to Proceed, Vendor must cause Bond coverage in the amount required pursuant to the Agreement in connection with such Notice to Proceed, and so that the Bond covers the Goods required by such Notice to Proceed.

(c) No payment shall be made on account of any Goods provided by the Vendor until satisfactory sureties have or additional bonding has been provided as directed or required.

10. Project Timetable with Respect to the Goods.

Vendor shall provide the Goods in accordance with the Project Timetable.

11. Work Meetings.

The Parties will review the status of the Goods at the Review Meetings conducted in accordance with Section 17(2) of Schedule 4.1 (Terms and Conditions for Construction).

12. Testing Laboratory Labels.

(a) A list of all Goods containing electrical wiring must be submitted to the PBC for acceptance upon request; Vendor must submit samples if so requested. Unless otherwise specified, all electrical components furnished and installed or assembled by the Vendor under this Agreement must be approved and so labeled by one of the following Testing Laboratories:

- (i) Underwriters' Laboratories (UL)
- (ii) Canadian Standards Association (CSA)
- (iii) Electrical Testing Laboratory of New York (ETL)
- (iv) Illinois Institute of Technology Research Institute (IITRI)
- (v) American Gas Association (AGA)
- (vi) Factory Mutual Research Corporation (FMRC)
- (vii) Maintenance and Electrical Testing (MET)
- (viii) American Research Lab (ARL)

(b) Any electrical unit comprised of a number of components, assembled at the factory, and considered custom made, must bear one of the above labels for the entire unit as well as for each component.

(c) All costs in obtaining a testing laboratory label if not priced in a Task Order shall be paid by the PBC as a Reimbursable Expense.

(d) Vendor must provide the name and qualifications of any standardizing agency, other than those set out above, to the PBC or its authorized representative for review and approval.

13. Shop Drawings, Product Data and Samples Related to Goods.

(a) The terms and conditions set forth in Section 26 of Schedule 4.1 (Terms and Conditions for Construction) shall apply to those Goods that will be installed for the Project.

(b) In addition to the terms set forth in the Agreement related to Samples, upon request by the PBC Vendor shall furnish a reasonable number of Samples of Goods when reasonably appropriate. When reasonably acceptable to the PBC, the Sample may be delivered in an alternate form, i.e, taking the PBC to a Site to review the Sample or view illustrations. Any Goods delivered or erected without submittal and review of Samples are subject to rejection. Each tag or sticker must have clear space for the stamps of the Vendor, the Engineer and the Sample provider. Rejected samples will be returned. Accepted samples can be deployed in the field at the direction of the PBC. Where color samples are required to be submitted, color samples must be submitted on the actual Good which will finally be installed for the Project.

14. Review of Submittals.

The PBC will review any Submittals which relate to Goods as set forth in Section 28 of Schedule 4.1 (Terms and Conditions for Construction).

15. Product Data Related to Goods.

(a) No later than upon submission of IT Design Documents, Vendor will provide four copies of the relevant specifications (e.g. cut sheet) commercially available.

(b) Upon Acceptance of each Milestone Deliverable, as relevant to a particular Task Order and as provided by the original equipment manufacturer, the Vendor must deliver to the PBC and the User Agency, in suitable transfer cases clearly marked "Record Documents Relating to Goods," all generally commercially available record shop drawings, video tape, product data, instructions, parts lists, and operations and maintenance manuals applicable to such Good related Milestone Deliverable, arranged in proper order and indexed.

16. Liens.

(a) Whenever the PBC shall receive notice in writing of a lien or claim of money due from the Vendor to any Subcontractor, construction worker, or employee related to any Goods furnished and used, the PBC may direct that the amount of such claim be deducted from payments due or to become due to Vendor under the Agreement and withheld by the PBC until such claim has been paid or otherwise discharged. This provision shall be construed as being solely for the benefit of the PBC, and will not require the PBC to determine or adjust any claims or disputes between the Vendor and its Subcontractors, construction workers, or employees, or to withhold any money for their protection, unless the PBC elects to do so. This provision shall not be construed as conferring any rights hereunder for the benefit of Subcontractors, construction workers or employees, or as enlarging or altering the application or effect of existing lien laws.

(b) Neither the final payment nor any part of the retained percentage shall become due until the Vendor has delivered to the PBC complete release of all liens, financial obligations or claims from the Vendor, Subcontractors, and other agents acting on its behalf in connection with the Goods and an affidavit that so far as it has knowledge or information, the releases include all the Goods which a claim could be made or a lien could be filed. If any lien remains unsatisfied after all payments have been made, the Vendor shall refund to the PBC all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

17. Compliance with Codes.

Regarding custom-designed and developed Goods in providing the Goods, Vendor must follow the most stringent of the applicable agency and code requirements. Vendor is fully responsible for ascertaining and complying with all agency and code requirements applicable to the Goods.

In providing third-party commercially available Goods, Vendor must use reasonable care to ensure that such third-party manufacturer has complied with applicable agency and code requirements. In the event that a Good does not comply with applicable agency and code requirements, the Parties will mutually agree on an appropriate substitution or remedy. Notwithstanding the foregoing, this paragraph shall by no means diminish any Vendor responsibility or obligation with respect to installing the Goods.

TABLE OF CONTENTS

Page No.

1.	General	1
2.	Design Documents.....	1
3.	Procuring the Goods.....	2
4.	Delivery and Title.	4
5.	Storing the Goods.	4
6.	Design Services.....	5
7.	Acceptance Process.....	5
8.	Spare Goods.	5
9.	Bonds.....	5
10.	Project Timetable with Respect to the Goods.....	6
11.	Work Meetings.....	6
12.	Testing Laboratory Labels.	6
13.	Shop Drawings, Product Data and Samples Related to Goods.	7
14.	Review of Submittals.	7
15.	Product Data Related to Goods.....	7
16.	Liens.....	7
17.	Compliance with Codes.....	8

SCHEDULE 5.2

Common Elements of Acceptance Criteria and Acceptance Testing

Acceptance Criteria

Prior to being placed into production, each Deliverable will be subject to an acceptance process to verify that it satisfies the applicable Acceptance Criteria. The Acceptance Criteria for each Deliverable will include the following elements:

- Vendor shall prepare for each Deliverable the Acceptance Criteria for such Deliverable. Acceptance Criteria shall be subject to the PBC's approval. The Acceptance Criteria shall be objective and measurable.
- Vendor and PBC acknowledge that it is in their mutual best interest to develop Acceptance Criteria for a Deliverable, as early in the development process relating to such Deliverable as is practicable.
- The Acceptance Criteria for each Deliverable shall include the Standards applicable to such Deliverable.
- The Acceptance Criteria for each Deliverable shall include criteria governing the scope, form and difficulty level of the Documentation related to each such Deliverable.
- Vendor shall identify (and notify the PBC of) the appropriate Vendor Personnel who shall have responsibility for establishing the Acceptance Criteria for each Deliverable and obtaining sign-off from PBC.

Acceptance Process

- Vendor shall deliver to the PBC Project Manager, within the time frame established in the Project Plan, each Deliverable accompanied by a written certificate from Vendor that such Deliverable has met its Acceptance Criteria (the "**Completion Certificate**"). The Parties shall perform Acceptance Testing and the PBC shall have a reasonable period of time not to exceed ten (10) days or the period of time mutually agreed upon by the Parties to Accept or reject such Deliverable ("**Acceptance Period**"). Vendor will confirm receipt by PBC within five (5) days of submission. If Vendor still receives no response, the Deliverable will be deemed accepted.
- During the Acceptance Period, Acceptance Testing will be conducted in a manner designed to identify all instances in which the Deliverable does not conform to the applicable Acceptance Criteria.
- Acceptance of any Deliverable shall not constitute acceptance of any subsequent Deliverable and each Deliverable shall be subject to independent acceptance by the PBC, in accordance with the applicable Acceptance Criteria, without regard to any prior Deliverable Acceptances.
- Notwithstanding anything in this Agreement to the contrary, the Acceptance of any or all Deliverables shall in no way prejudice the ability of the PBC to reject the Services or the Milestone Deliverables in the applicable Notice To Proceed upon Vendor's submission of such Services and Milestone Deliverables for Acceptance if such Services or Milestone Deliverables fail to conform to the applicable Acceptance Criteria.
- If the PBC determines during the Acceptance Period that a Deliverable conforms to the applicable Acceptance Criteria, then the PBC shall submit a written certificate stating the same ("**Acceptance Certificate**").

- “**Acceptance**” and any like word such as “**accept**”, with respect to a Deliverable, means that such Deliverable conforms to the applicable Acceptance Criteria and the PBC has submitted an Acceptance Certificate.
- If, after Acceptance Testing, the PBC determines that any submitted Deliverable does not conform to the applicable Acceptance Criteria, the PBC shall provide Vendor with notice specifying the identified failures and deficiencies that cause such Deliverable not to conform with the applicable Acceptance Criteria (“**Nonconformities**”). Vendor shall cure as promptly as possible any such Nonconformities (but in any event within the Deliverable Cure Period).
- “**Deliverable Cure Period**” shall mean with respect to any Deliverable, a period of time commencing on the date that Vendor receives the notice of Nonconformities regarding such Deliverable and ending in a reasonable number of days not to exceed ten (10) days after such date, unless otherwise agreed by the PBC with respect to such Deliverable.
- After completing any such cure, Vendor shall resubmit the Deliverable, with a Completion Certificate, for Acceptance Testing. If the PBC determines in good faith that the resubmitted Deliverable does not conform to the applicable Acceptance Criteria, the PBC may continue to request that Vendor cure the Nonconformities and/or the PBC may exercise its rights pursuant to this Schedule 5.2 and the Agreement.

Acceptance Testing

- As soon as practicable, but in no event later than required under Schedule 9.3 (Reports), Vendor will complete and deliver a test plan for approval by PBC, which sets forth, with respect to each Deliverable, the tests and test procedures to verify that such Deliverable conforms to the applicable Acceptance Criteria (“**Acceptance Test Plan**”).
- The PBC shall review the Acceptance Test Plan and will notify Vendor whether or not it accepts or rejects the Test Plan. If PBC rejects the Acceptance Test Plan, it will provide Vendor with detailed information as to why the Acceptance Test Plan is rejected. Vendor shall have an additional fifteen (15) days to revise the Acceptance Test Plan based on the information received from the PBC. The process set forth in this paragraph shall repeat until PBC has accepted the Acceptance Test Plan.
- The Test Plan shall include system, function, integration, regression and user Acceptance testing, as applicable.
- Vendor will demonstrate to the PBC that a Deliverable conforms with the applicable Acceptance Criteria using the test procedures agreed upon by the Parties with respect to such Deliverable (“**Acceptance Testing**”). The PBC may, at its expense, conduct any additional review and/or testing of a Deliverable that the PBC desires in order to verify that the Deliverable conforms with the applicable Acceptance Criteria.
- The PBC shall have the right to test the Services and Deliverables prior to Acceptance, respectively (“**System Acceptance**”).
- Vendor and PBC shall, whenever practicable, test and issue acceptance for the material components of a Deliverable as such components are completed, with the objective of identifying and addressing any Acceptance issues early and assisting in the timely completion of all Deliverables in order to achieve Acceptance or Final Acceptance.

Remedies

If after three (3) attempts, a Deliverable fails to conform to the applicable Acceptance Criteria, the PBC shall give notice to Vendor that it is submitting the applicable issues to the escalation process. If the

Parties are not able to resolve such issues pursuant to the escalation Process, the PBC may withhold payment of the fees related to such Deliverable.

Miscellaneous

As part of the Project, Vendor shall work with any PBC third-party vendors to perform applicable standard diagnostic tests for all equipment and software relating to a Deliverable.

SCHEDULE 7.1

Fee Schedule

1. Fees

- 1.1 Fees for each Task Order are assigned to specific Sections within that Task Order.
- 1.2 Fees will be paid to Vendor subject to the Acceptance process for Goods, Services, Software and related Milestone Deliverables.
- 1.3 Vendor may submit a monthly invoice that identifies progress toward completion of the established Milestone Deliverable(s) within a Task Order or a Notice to Proceed (NTP). The progress is documented in appropriate detail in the Monthly Status Report and related documentation.
- 1.4 This methodology is applied to every monthly invoice.
- 1.5 All payments are subject to the applicable Retainage except for Phase 4.
- 1.6 Fees for the Project are \$41,200,000.00
 - 1.6.1 Fees include Phase 1, Phase 2, Phase 3 and Phase 4
- 1.7 Fees for Phase 1, 2, 4 are \$39,855,000 (Task Order #1)
- 1.8 Fees for Phase 3 are \$1,345,000 (Future Task Order)

2. Task Order #1

- 2.1 \$ 4,975,000 Central Business District
- 2.2 \$ 2,848,500 Unified CityWide Fiber Network
- 2.3 \$ 4,631,500 Warranty and Maintenance
- 2.4 \$11,400,000 Goods and Services, Project Management Office, Fiber optic cable, duct and installation in the CBD (based on 44 miles of required cable and with the assumption that 25% of the installation will require trenching); Splicing, termination and testing of 2 pairs of dark fiber in each E-box in the CBD; Ethernet switch (8 copper +1 fiber ports) in each E-box in the CBD.
- 2.5 \$16,000,000 Goods and Services, Project Management Office, Fiber optic cable, duct and installation outside of the CBD (based on 20 miles of required cable and with the assumption that 75% of the installation will require trenching).

3. Future Task Order

- 3.1 Fees for Phase 3 are \$1,345,000 comprised of
 - 3.1.1 \$1,000,000 for fiber optic cable, duct and installation of two short lateral fiber builds required to connect the lakefront and the Unified Citywide Fiber Network

- 3.1.2 \$ 345,000 for Goods, Services and software for the implementation of the lakefront cameras.

4. Retainage

4.1 Retainage Amount

4.1.1 With respect to each NTP, (i) with respect to the first fifty percent (50%) of the Fees for that NTP, the PBC will retain ten percent (10%) from the invoice sums approved and due the Vendor including Fees arising under any approved Change Orders and (ii) with respect to the balance of the Fees for such NTP, the PBC may, in its sole discretion, reduce the percentage of such Fees retained.

4.1.2 The Vendor must not withhold Retainage from its Subcontractors in excess of the percentage Retainage withheld by the PBC from payments to the Vendor and must release Retainage to its Subcontractors at least as frequently as the PBC's release of Retainage to Vendor.

4.1.3 Retainage shall not be withheld from payment(s) for Phase 4 Services

4.2 Payment of Remaining Retainage

4.2.1 All payments are subject to the applicable Retainage. Retainage will be released to Vendor when the NTP is complete. The NTP is complete when all Deliverables within the NTP have been accepted. In addition, Vendor must comply with those requirements forth in Sections 4.2.1 through 4.2.9 below, prior to the remaining Retainage being released.

- 4.2.1.1 All Punch List Construction Work is complete and accepted
- 4.2.1.2 All Milestone Deliverables are complete and accepted
- 4.2.1.3 All payments due and payable to Vendor's Subcontractors have been paid.
- 4.2.1.4 Completed "Final Waiver of Lien" forms for all Subcontractors of any tier have been provided to the PBC.
- 4.2.1.5 All applicable warranties are in full force and effect and provided to the PBC
- 4.2.1.6 All Vendor and Subcontractor certified payrolls have been provided.

5. Purchased Equipment

5.1 Vendor reserves a purchase money security interest in the Goods and software until Vendor receives payment of the amounts due. PBC authorizes IBM to prepare and file a financing statement to perfect its purchase money security interest in all Goods and software PBC order and Vendor delivers under any Task Order.

- 5.2 Returns of Goods and Software – PBC will work with IBM for returns of all Goods and Services procured under each Task Order or NTP.

6. Services Hourly Rates

Skill	Work Hours	Supplier	Hourly Price
Journeyman	Straight Time	Local 134	\$111.82
Journeyman	Time & One Half	Local 134	\$158.92
Journeyman	Double Time	Local 134	\$206.03
Foreman	Straight Time	Local 134	\$117.83
Foreman	Time & One Half	Local 134	\$167.60
Foreman	Double Time	Local 134	\$217.35
General Foreman	Straight Time	Local 134	\$123.84
General Foreman	Time & One Half	Local 134	\$176.26
General Foreman	Double Time	Local 134	\$228.69
Helper/Groundman	Straight Time	Local 9	\$83.03
Helper/Groundman	Time & One Half	Local 9	\$120.97
Helper/Groundman	Double Time	Local 9	\$158.91
Journeyman Line & Oper.	Straight Time	Local 9	\$106.45
Journeyman Line & Oper.	Time & One Half	Local 9	\$155.10
Journeyman Line & Oper.	Double Time	Local 9	\$203.74
Foreman	Straight Time	Local 9	\$119.77
Foreman	Time & One Half	Local 9	\$174.32
Foreman	Double Time	Local 9	\$228.86
General Foreman	Straight Time	Local 9	\$127.82
General Foreman	Time & One Half	Local 9	\$185.94
General Foreman	Double Time	Local 9	\$244.06
Optical Architect	Flat Rate	IBM	\$208.12
Network Architect	Flat Rate	IBM	\$208.12
Video Architect	Flat Rate	IBM	\$208.12
IT Specialist 1	Flat Rate	IBM	\$208.12
IT Specialist 2	Flat Rate	IBM	\$165.46
IT Specialist 3	Flat Rate	IBM	\$142.20
Project Executive	Flat Rate	IBM	\$301.20
Project Manager	Flat Rate	IBM	\$208.12
Administrative	Flat Rate	IBM	\$69.80
Installation Technician	Flat Rate	IBM	\$121.51

7. Unit Pricing Table

Equipment	Recommended Make and Model	Unit Price Estimate	2-50 Units	51-100 Units	101-200 Units	201-300 Units	301 Plus	Estimated Three Year Maintenance Cost
Per lineal foot to run fiber optic cable or innerduct w/o conduit 40 ft minimum	4" PVC Conduit w/ 18" cut restoration Labor only (Cable and innerduct pricing below)	\$165/ft	\$165/ft	\$165/ft	\$165/ft	\$165/ft	\$165/ft	
Per foot to run fiber optic cable or innerduct using existing conduit	Labor only (Cable and innerduct pricing below)	\$4,212+ \$10.60/ft	\$4,212+ \$10.60/ft	\$4,212+ \$10.60/ft	\$4,212+ \$10.60/ft	\$4,212+ \$10.60/ft	\$4,212+ \$10.60/ft	
Per lineal foot to provide and install duct pack;	4x4" PVC Conduit w/ 18" cut restoration Labor only (Cable and innerduct pricing below)	\$195/lf	\$195/lf	\$195/lf	\$195/lf	Add'l discount	Add'l discount	
Per lineal foot to repair existing duct (Does not include repaving street)		\$165/lf	\$165/lf	\$165/lf	\$165/lf	\$165/lf	\$165/lf	
Repave maximum 100 feet (one lane) of street. Repaving includes cap, not asphalt		\$16,500/100 lf						
Fiber Optic Cable – 12 Strand	Corning Part# 012ew4-t4101d20	\$28.50 per 100ft	\$28.50 per 100ft	\$28.50 per 100ft	\$28.50 per 100ft	\$28.50 per 100ft	\$28.50 per 100ft	
Fiber Optic Cable – 24 Strand	Corning Part# 024ew4-t4101d20	\$43.03 per 100ft	\$43.03 per 100ft	\$43.03 per 100ft	\$43.03 per 100ft	\$43.03 per 100ft	\$43.03 per 100ft	
Fiber Optic Cable – 48 Strand	Corning Part# 048ew4-t4101d20	\$72.50 per 100ft	\$72.50 per 100ft	\$72.50 per 100ft	\$72.50 per 100ft	\$72.50 per 100ft	\$72.50 per 100ft	
Fiber Optic Cable – 60 Strand	Corning Part# 060ew4-t4101d20	\$86.25 per 100ft	\$86.25 per 100ft	\$86.25 per 100ft	\$86.25 per 100ft	\$86.25 per 100ft	\$86.25 per 100ft	
Fiber Optic Cable – 72 Strand	Corning Part# 072ew4-t4101d20	\$106 per 100ft	\$106 per 100ft	\$106 per 100ft	\$106 per 100ft	\$106 per 100ft	\$106 per 100ft	
2" outdoor innerduct	4404-08T	\$0.80 per ft	\$0.80 per ft	\$0.80 per ft	\$0.80 per ft	\$0.80 per ft	\$0.80 per ft	
Fiber Cable Whip 100ft	Corning 6fiber pigtail Altos w/SC connector, 2mm lug @ 24"	\$211 each						
Fiber Cable Whip 25ft	Corning 6fiber pigtail Altos w/SC connector, 2mm lug @ 24"	\$208 each						
Splice enclosure	Corning SCF-6C22-01-72 72 fiber ct enclosure	\$311 each						

Equipment	Recommended Make and Model	Unit Price Estimate	2-50 Units	51-100 Units	101-200 Units	201-300 Units	301 Plus	Estimated Three Year Maintenance Cost
Standard Camera – individual pricing, bulk pricing will reflect discounts	PELCO SD53CBW-PG-EO	\$1,946.22						See Phase 4
Standard Camera – individual pricing, bulk pricing will reflect discounts	PELCO SD53CBW-PG-EI	\$2,174.96						See Phase 4
Standard Camera – individual pricing, bulk pricing will reflect discounts	PELCO ES31CBW-5N	\$2,244.34						See Phase 4
Standard Camera – individual pricing, bulk pricing will reflect discounts	PELCO ES31CBW-5N185N	\$2,413.14						See Phase 4
Vehicle attached Traffic Enforcement Cameras (e.g. street sweepers CTA) & Traffic Enforcement Cameras	BOSCH #UNPCH55E	\$554.53						
Mount for spectra camera	swm-gy	\$35.99						
Pole Mount Adaptor	pa402	\$46.05						
Wall Arm Mount	PELCO idm4018	\$60.66						
Keyboard	BOSCH #KBD-UNIVERSAL	\$1,061.77						
Matrix Bay	BOSCH #LTC 8801/60	\$3,166.94						
Video Camera Card	BOSCH #LTC8821/00	\$1,445.17						
Intelligent Joystick Keyboard	BOSCH #LTC 5136/61	\$590.15						
60" plasma screen	MU60PZ95V	\$9,324.06						
Copperline Dual Channel Video Receiver / W AGC 16 Channel	IFS # VTPR2100	\$385.29						
Copperline Video Receiver/Data Transmitter	IFS #VTPR1900	\$227.11						
Fiber Modems (Transmitter FM Video TX SM 1 Fiber)	IFS # VT4025	\$649.20						
Receiver- FM Video TX SM 1 fiber	IFS # VR4030	\$649.20						
Linksys RV042- 4 port vpn router	Linksys RV042	\$197.75						
5 port gigabit switch	eg005w	\$72.77						

Equipment	Recommended Make and Model	Unit Price Estimate	2-50 Units	51-100 Units	101-200 Units	201-300 Units	301 Plus	Estimated Three Year Maintenance Cost
Network Equipment Kit (NEK): Rittal cabinet with cover, outlet filter, thermostat, heater, fan, sides, locking door, drilled holes for installation, encoder, cables, surge protector	Rittal basic config. number: 1097.12	\$1,938.55						
RG6 Coax	9116	\$73.67 per mf						
F connector	GF6AHS/USA	\$0.33						
Milan Ethernet Switch- Single-Mode fiber with gigabit uplink	Mil-SM801GLX-10	\$486.15						
18 AWG 4 conductor- 600V rated cable	27326a	\$189 per mf						
Transition 10/100 base tx managed switch	Mil-SM801GUS	\$444.54						
Cable assembly 3 ft- Cat 5e	cpc6642-05f003	\$2.99						
Tripp lite 6 outlet surge supressor	isobar6	\$54.57						
altronix power supply	t24130	\$28.48						
belden rg59 20 awg solid, waterblocked	5439w5	\$184.10 per mf	\$184.10 per mf	\$184.10 per mf	\$184.10 per mf	\$184.10 per mf	\$184.10 per mf	
belden 18-2c 600v rated	9486	\$354.80 per mf	\$354.80 per mf	\$354.80 per mf	\$354.80 per mf	\$354.80 per mf	\$354.80 per mf	
emerson bnc plug	cp-78-2	\$1.34						
belden- 18-1p 600v blk/red	9341	\$461.85 per mf	\$461.85 per mf	\$461.85 per mf	\$461.85 per mf	\$461.85 per mf	\$461.85 per mf	
insulation 3/8" heat shrink 600V	3/8" 600v	\$0.19 per ft	\$0.19 per ft	\$0.19 per ft	\$0.19 per ft	\$0.19 per ft	\$0.19 per ft	
PE-89 type outdoor cable	09-026-026	\$409.62 per mf	\$409.62 per mf	\$409.62 per mf	\$409.62 per mf	\$409.62 per mf	\$409.62 per mf	
Routers	Cisco (various)	40% off list						21% off list
Switches	Cisco (various)	40% off list						21% off list
Wireless	Cisco (various)	40% off list						21% off list
Optical Networking Solutions (ONS)	Cisco (various)	40% off list						21% off list
Video encoders 1,2, 4 or 8 port	Insight Video Net	15% off list						
Video encoders 1,2, 4 or 8 port with Audio	Insight Video Net	15% off list						
Video Software (all)	Insight Video Net	15% off list						
Video Misc. Hardware	Insight Video Net	15% off list						
xSeries Server Model 8840-11U	IBM	\$8,493.00						\$600.00
xSeries Server Other models	IBM	10% off list						est. \$600.00

Equipment	Recommended Make and Model	Unit Price Estimate	2-50 Units	51-100 Units	101-200 Units	201-300 Units	301 Plus	Estimated Three Year Maintenance Cost
NetBay42 Server Rack Model 930842S	IBM	\$6,564.00						
TotalStorage DS4800 Storage Area Network (SAN)	IBM	20% off list						Config Dependent
Per NEK plus one camera - Maintenance (3 yrs, 9x5, Next Business Day)	IBM	\$4,959.00						
Per NEK - Maintenance (3 yrs, 9x5, Next Business day)	IBM	\$2,499.00						
Per Camera - Maintenance (3 yrs, 9x5, Next Business Day)	IBM	\$2,499.00						
WAN Frame Relay setup fee	IBM	\$3,370 - \$4,370 (est. range)	One time fee					
WAN Frame Relay connectivity for 2 Sites	IBM	\$2,250 - \$3,250 (est. range)	Monthly					
Project Management Office per month	IBM	\$240,000	Monthly					
Severity 1 Camera repair response	IBM	\$1,428	Per request					
Labor - Splice 4 additional fibers @ E-box (no termination)	IBM	\$2,510	Per request					

SCHEDULE 7.5
FUNDING SOURCE TERMS AND CONDITIONS

Homeland Security Requirements

To the extent the following are mandatory requirements applicable to subawardees of federal or state grant funds currently in effect or as amended from time to time and to providers of the types of services being performed by Vendor under this Agreement, such requirements shall apply to Vendor in connection with its performance of the Services:

1. Pursuant to Presidential Homeland Security Directive/HSPD 5: Management of Domestic Incidents, February 28, 2003, Vendor acknowledges that the City and its Office of Emergency Management and Communications has formally recognized the National Incident Management System ("NIMS"), March 1, 2004, and has adopted the policies and procedures of NIMS. By adopting NIMS, the City and the OEMC have adopted and institutionalized the use of the Incident Command System ("ICS") and launched activities that will result in the use of the ICS for all incident response operations.
2. Vendor warrants and agrees both for itself and for all of its Subcontractors that it will comply with the applicable provisions of NIMS; the National Strategy for Homeland Security, July 2002; Homeland Security Presidential Directive/HSPD-5: Management of Domestic Incidents, February 28, 2003; Homeland Security Presidential Directive/HSPD-7: Critical Infrastructure, Identification Prioritization, and Protection, December 17, 2005; Homeland Security Directive/HSPD-8: National Preparedness, December 17, 2003; and any present and future applicable Presidential Directives or federal, state, and local initiatives or programs relating to homeland security so long as Vendor or its Subcontractors supply services under this Agreement that by their nature must comply with NIMS ("NIMS Services").
3. Vendor further agrees to monitor, and be knowledgeable about, all present and future Presidential Directives and related federal, state, and local homeland security initiatives and programs, such as NIMS; the National Response Plan ("NRP"), December 2004; the National Infrastructure Protection Plan ("NIPP"), February 2005, the Interim National Preparedness Goal ("NPG"), March 31, 2005; and the like, to ensure compliance therewith so long as Vendor, or any of its Subcontractors, supplies NIMS Services to the PBC.
4. Vendor acknowledges that the Office of State and Local Government Coordination and Preparedness ("SLGCP"), United States Department of Homeland Security, reserves a royalty-free, nonexclusive, and irrevocable right and license to reproduce, publish, or otherwise use, and authorize for use, for any purpose it deems relevant: (i) the copyright in any work developed under this Agreement and (ii) any rights of copyright which PBC or the City acquires under this Agreement. Vendor agrees to include prominently in all publications created under this Agreement the following statement: "This document was prepared under a grant from the Office of State and Local government Coordination and Preparedness ("SLGCP"), United States Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of SLGCP or the U.S. Department of Homeland Security."

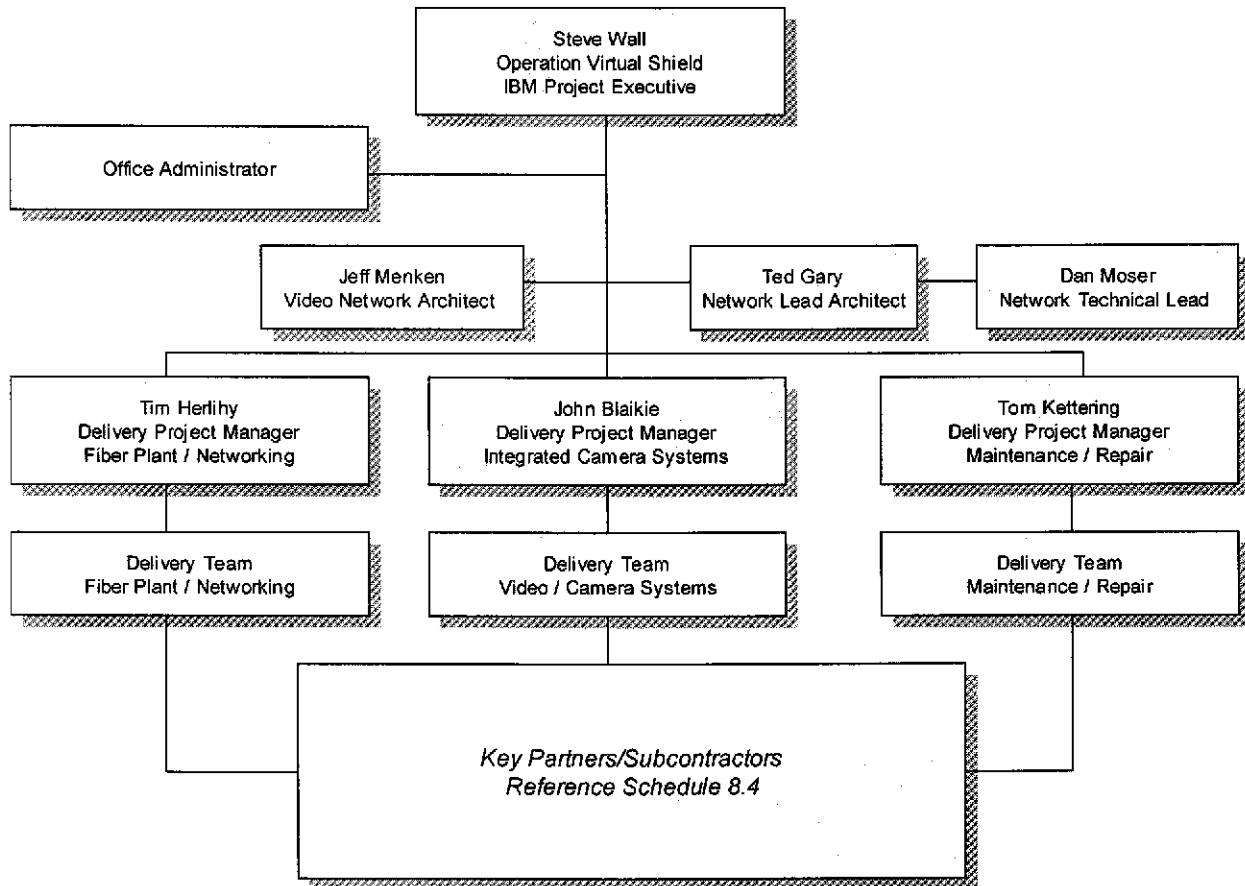
SCHEDULE 8.1(a)
Key Employees

	Name	Title
1.	Stephen Wall	Project Executive/Administrator
2.	John Blaikie	Delivery Project Manager – Integrated Camera Systems
3.	Timothy Herlihy	Delivery Project Manager – Fiber Plant/Networking
4.	Tom Kettering	Delivery Project Manager - Maintenance
5.	Jeffrey Menken	Video Network Architect
6.	Ted Gary	Network Lead Architect
7.	Dan Moser	Network Architect

PMO Structure, Staffing, and Roles:

The information below describes the structure and names of key personnel involved in the approach to the overall management of each Phase of the Project. There are many variables that can affect the achievement of Project goals and milestones, but we believe that one of the keys to success is direct communication between all Parties. Recognizing this, the Vendor will assemble a PMO team from the outset and Vendor direction on Project matters shall come from the PMO. The organization chart below illustrates the relationship between the PMO and the Delivery Teams, which are composed of resources from both Vendor and some of its Subcontractors.

IBM PMO Organizational Structure



In addition, The IBM PMO roles table further below describes certain of the responsibilities for each of the positions in the organization chart.

Role	Responsibility
Project Executive (also "PE")	The Project Executive is responsible for the overall Services performance for the Project, the relationship to Project sponsor, and will act as Vendor's team leader.
Delivery Project Managers (also "DPM")	The Delivery Project Managers are responsible for the day-to-day Services activities for the Project and the relationship to the client Project Manager. In addition, the DPM is responsible for interfacing with our Subcontractors' management contacts and project/Services managers.
Office Administrator (also "OA")	The Office Administrator manages the PMO office and assists in the formulation of reports, processes, equipment ordering, and billing. In addition, the OA is responsible for asset management within the PMO.
Technical Lead	The technology lead is responsible for providing information in respect of discovered advances in applicable surveillance and security technologies.
Delivery Teams	The delivery teams are responsible for the actual implementation of both the Network and surveillance elements of the Services effort. The teams are composed of the following individuals: • Video architects – responsible for the overall Video System architecture • Network Architects - responsible for the overall Network architecture. • Network Optical Specialists - responsible for the overall optical network. • Wireless Specialist - responsible for the overall wireless network. • Field Technicians - responsible for the installation of the fiber, network, and video systems.

SCHEDULE 8.1(c)
Background Checks and Drug Screening

Categories of Vendor Personnel

The Vendor Personnel, as determined by the PBC and in accordance with the background check procedures set forth below, shall be required to successfully complete a background check.

Background Check Procedures

1. Vendor shall provide to the PBC categories of the Vendor Personnel according to the activities to be performed by such Vendor Personnel and the location at which it will be performed, and the identity and approximate numbers of specific individuals if requested, before any such Vendor Personnel will perform Services under the Agreement. PBC shall then decide, in its sole discretion, whether such Vendor Personnel is required to have a background check.
2. If PBC requests a background check, PBC may choose whether to conduct such background checks itself or require Vendor to do so. If the PBC conducts the background check, PBC shall inform Vendor when and where the background check will be conducted. If the Vendor Personnel is located outside the 100 mile radius from the PBC's chosen location, Vendor may request an alternate location and PBC and Vendor shall work together to determine a mutually agreeable location. Background checks will be done at the PBC's expense and in accordance with all applicable law (including the Fair Credit Reporting Act and any applicable state laws).
3. If the PBC requests that Vendor conduct the background check on the Vendor Personnel, IBM conduct the background check in accordance with criteria provided by the PBC and will then notify the PBC whether such Vendor Personnel has successfully completed the background check (i.e., pass or fail). The Parties will keep such information confidential. In the event of a fail, that particular Vendor Personnel shall be immediately removed from the performance of the Services, and Vendor shall be given a reasonable amount of time to replace such individual. Vendor Personnel passing such background check will be authorized by the PBC to provide the Services and the PBC shall provide the Vendor Personnel with identification, as appropriate.
4. Vendor will be responsible for claims by Vendor Personnel arising from or related to the Vendor's background checking of such Vendor Personnel. PBC will be responsible for claims by Vendor Personnel arising from or related to the PBC's background checking of such Vendor Personnel.

Drug Screening Procedures

When directed to do so by the PBC, the Vendor will drug test Vendor Personnel before such Vendor Personnel begin work under the Agreement subject to the following:

1. Drug testing will be done in accordance with all applicable laws.

2. Such drug testing will be for the following 10 panel drug test categories listed on the first page of Attachment 1 to this Schedule 8.1(c), and in accordance with Department of Transportation standards and using National Institute on Drug Abuse certified laboratories.

3. Upon receipt of the drug test results, Vendor will advise the PBC only as to whether Vendor is in compliance with this section.

4. Thereafter, PBC may require a drug test of Vendor Personnel with notice to Vendor.

The PBC may audit Vendor's compliance with these background and drug test requirements by reviewing the actual test results for the duration of such Vendor Personnel's work under the Agreement.

ATTACHMENT 1
The Ten Panel Test

1.	Amphetamines	Benzedrine, Methamphetamine, Biphedamine, Dexedrine (Prescribed for narcolepsy, weightloss)
2.	Barbiturates	Amytal, Fiorinal, Luminal, Nembutal, Seconal, Tuinal (Main use is to control epilepsy)
3.	Benzodiazepine	Oxazepam, Alprazolam, Flurazepam, Lorazepam, Nordiazepam (Tranquilizers and sleeping pills)
4.	Methadone	Methadone (Used to treat heroin addiction)
5.	Methaqualone	Dolophine, Methdose (Originally used as a sedative, pain reliever for surgery)
6.	Opiate	Codeine, Morphine, Heroin, Oxycodone (Pain relievers)
7.	Phencyclidine	PCP (Can have veterinary applications)
8.	Propoxyphene	Darvon, Darvocet (Synthetic narcotic pain reliever)
9.	Marijuana	400 different chemicals, THC-delta 9 tetrahydrocannabinol metabolite
10.	Cocaine	Cocaine metabolite

Schedule 8.4
Subcontractors

Approved Subcontractors

Subcontractor	Subcontracted Services
Divane	Construction and installation
Quantum	Construction and installation
Teamwerks	Training
411	HW and HW installation
Catalyst	Project management
Cisco	HW and training
Anixter	HW and HW design
Insight	SW and SW training
CenterPath	Network monitoring

To the extent the following are mandatory requirements applicable to subawardees of federal or state grant funds currently in effect or as amended from time to time and to providers of the types of services being performed by Vendor under this Agreement, such requirements shall apply to Vendor in connection with its performance of the Services:

SUBCONTRACTOR TERMS

Vendor, as a contractor to the PBC and a subcontractor to the City, agrees to the following provisions. Vendor shall also include such terms in subcontracts with its Subcontractors.

1. SUBCONTRACT PROVISIONS.

- **CONTRACT TERMINATION:**

All subcontracts exceeding \$10,000 shall contain suitable provisions for termination by the Vendor, including the manner by which termination will be effected and the basis for settlement. Such provisions shall include conditions under which such contracts, respectively, can be terminated for default, as well as conditions where such contracts can be terminated because of circumstances beyond the PBC's control.

- **CONTRACT VIOLATIONS:**

Subcontracts shall contain provisions or conditions that will allow for administrative, contractual or other remedies in instances where Subcontractors violate or breach contract terms. Such provisions shall provide for such sanctions and penalties as may be appropriate.

- **PROVISIONS REQUIRED BY LAW:**

Any provisions required by law must be included in each subcontract.

2. **CONTRACTS ENTERED INTO BY STATE AGENCIES IN THE CAPACITY OF IMPLEMENTING AGENCIES:**

- In addition to the provisions listed above, implementing agencies that are state agencies must adhere to applicable Illinois CMS contract standards for contract format and content. State agencies not subject to specific contract standards of the Illinois Procurement Code (30 ILCS 500) must include all certifications and provisions required of Illinois' state agency contracts.

3. **CONSTRUCTION SUBCONTRACTS.** Vendor shall comply with, and all construction and repair subcontracts shall include, the following:

- All subcontracts for remodeling, renovation or construction shall include, and Vendor shall comply with, all Applicable Law.
- A provision for compliance with the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3). The implementing agency shall report all suspected violations of these provisions to the Authority and the Office of Justice Programs.
- All subcontracts exceeding \$2,000 for construction and exceeding \$2,500 for other contracts that involve the employment of mechanics and laborer shall include a provision for compliance with, and Vendor shall comply with, sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- When required by federal grant program legislation, all construction subcontracts exceeding \$2,000 shall include a provision for compliance with, and Vendor shall comply with, the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- In all subcontracts for construction or facility improvement awarded exceeding \$100,000, grantees shall observe, and Vendor shall comply with, the bonding requirements provided in OMB Circular A-102.
- All construction subcontracts exceeding \$10,000 shall include provisions for compliance with, and Vendor shall comply with, Executive Order No. 11246, titled "Equal Employment Opportunity," as amended by Executive Order 11375, as supplemented in Department of Labor Regulations (41 CFR Part 60).

All subcontracts for construction or facility improvements over \$100,000 shall require a bid guarantee equal to 5% of the bid price, a performance bond by the Subcontractor for 100% of the subcontract price, and a payment bond by the Subcontractor for 100% of the subcontract price.

- All construction subcontracts shall include provisions for compliance with, and Vendor shall comply with, Executive Order 13202, as amended by Executive Order 13208 – Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

4. **ADDITIONAL SUBCONTRACT PROVISIONS.** All subcontracts must also include the provisions on the following pages in the body of the subcontract, or, if allowed under the

implementing agency's internal procedures, they may be included as an addendum to the subcontract. Vendor shall also comply with the following provisions.

ADDENDUM TO AGREEMENT

The _____, hereafter referred to as the "implementing agency" and _____, hereafter referred to as the "CONTRACTOR", agree to adhere to and comply with the following terms and conditions, as an addendum to, and in the performance of, the agreement to which these provisions are attached.

- **RECORD RETENTION:**

CONTRACTOR agrees to retain financial and program records for a minimum of five (5) years after the expiration date of this agreement, or five (5) years after closure of CONTRACTOR's most recent audit report, whichever is later. CONTRACTOR shall maintain, for this five-year period, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this agreement; the agreement and all books, records, and supporting documents related to the agreement shall be available for review and audit by the Auditor General, federal awarding agency personnel, the Authority, or any person duly authorized by the Authority; and CONTRACTOR agrees to cooperate fully with any audit conducted by the Auditor General, the federal awarding agency, the Authority or any person duly authorized by the Authority, and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement. "Auditor General" means ----. "Authority" means----.

Records shall be maintained beyond the five-year period if any litigation, claim, audit, fiscal review, negotiation, or other action involving the records has been started before the expiration of the above three-year period; in such cases, these records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

- **CERTIFICATION:**

CONTRACTOR certifies that it has not been barred from contracting with a unit of state or local government as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code of 1961.

- **EQUIPMENT CONDITIONS:**

CONTRACTOR certifies that any equipment purchased using funds from this agreement shall be year 2000 compliant and shall be able to process all time/date data after December 31, 1999.

- **ELIGIBILITY FOR EMPLOYMENT IN THE UNITED STATES:**

CONTRACTOR shall complete and keep on file, as appropriate, the Immigration and Naturalization Service Employment Eligibility Form (I-9). This form shall be used by CONTRACTOR to verify that persons employed by CONTRACTOR are eligible to work in the United States.

- **NONDISCRIMINATION:**

CONTRACTOR certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this agreement on the basis of race, color, age, religion, national origin, disability, or sex. CONTRACTOR assures compliance with the following laws, and all associated rules and regulations: Non-Discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789(d); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, subparts C,D,E, and G; the Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39; the Illinois Human Rights Act, 775 ILCS 5; the Public Works Employment Discrimination Act, 775 ILCS 10; the Illinois Environmental Barriers Act, 410 ILCS 25. All applicable provisions, rules and regulations of these Acts are made a part of this agreement by reference as through set forth fully herein.

In the event that a federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, disability, or sex against CONTRACTOR, or any subgrantee or contractor of CONTRACTOR, CONTRACTOR will forward a copy of the finding to the implementing agency and the Authority. The Authority will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

CONTRACTOR certifies that it shall not pay any dues or fees on behalf of its employees or agents or subsidize or otherwise reimburse them for payment of their dues or fees to any club which unlawfully discriminates, and that it shall comply with all provisions of the Discriminatory Club Act (775 ILCS 25).

- **CONFIDENTIALITY OF INFORMATION:**

CONTRACTOR agrees not to use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with applicable federal legislation, regulations and guidelines. Such information shall be immune from legal process and shall not, without the consent of the person furnishing the information, be admitted as evidence or used for any purpose in any action, suite or other judicial, legislative or administrative proceeding.

- **PROCUREMENT REQUIREMENTS/CONFLICT OF INTEREST:**

All procurement transactions shall be conducted by CONTRACTOR in a manner to provide, to the maximum extent practical, open and free competition. CONTRACTOR must use procurement procedures that minimally adhere to standards established by the Illinois Procurement Code (30 ILCS 500) and all applicable executive orders and federal guidelines. No employee, officer or agent of CONTRACTOR shall participate in the selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

• **APPLICABLE LAW:**

CONTRACTOR shall operate in conformance with the following State and federal laws and guidelines, currently in effect and hereafter amended, when applicable: federal legislation, regulations and guidelines regarding the applicable federal grant program; the Office of Justice Programs' Financial Guide; Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, and A-133; the Illinois Grant Funds Recovery Act (30 ILCS 705); Illinois Procurement Code (30 ILCS 500); the State Comptroller Act (15 ILCS 405); the U.S. Department of Justice Regulations Governing Criminal History Record Information Systems (28 CFR Part 20.1 et seq.); the U.S. Department of Justice Regulations Governing Confidentiality of Identifiable Research and Statistical Information (28 CFR Part 22.1 et seq.); the U.S. Department of Justice Regulations Governing Government-wide Debarment and Suspension (28 CFR Part 67.100 et seq.) and the rules of the Authority (20 Ill. Adm. Code 1520 et seq.).

CONTRACTOR shall comply with all applicable laws, regulations, and guidelines of the State of Illinois, the Federal Government and the Authority in the performance of this agreement, currently in effect and hereafter amended, including but not limited to: the provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedures; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and Part 67, Government-wide Debarment and Suspension (Nonprocurement); provisions of 48 CFR regarding federal acquisition principles, including Part 31, Contract Cost Principles and Procedures; Section 8136 of the Department of Defense Appropriations Act of 1988 (P.L. 100-463, effective October 1, 1988); National Environmental Policy Act of 1969, 42 U.S.C. pars. 4321 et seq.; National Historic Preservation Act of 1966, 16 U.S.C. pars. 470 et seq.; Flood Disaster Protection Act of 1973, 42 U.S.C. pars. 4001 et seq.; Clean Air Act of 1970, 42 U.S.C. pars. 7401 et seq.; Clean Water Act, 33 U.S.C. pars. 1368 et seq.; Executive Order 11738; and EPA regulations (40 CFR Part 15); Federal Water Pollution Control Act of 1948, as amended, 33 U.S.C. pars. 1251 et seq.; Safe Drinking Water Act of 1974, 42 U.S.C. pars. 300f et seq.; Endangered Species Act of 1973, 16 U.S.C. pars. 1531 et seq.; Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. pars. 1271 et seq.; Historical and Archeological Data Preservation Act of 1960, as amended, 16 U.S.C. pars. 469 et seq.; Coastal Zone Management Act of 1972, 16 U.S.C. pars. 1451 et seq.; Coastal Barrier Resources of 1982, 16 U.S.C. pars. 3501 et seq.; Indian Self Determination Act, 25 U.S.C. par. 450f; Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4201 et seq.; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. pars. 4601 et seq.; Hatch Political Activity Act of 1940, as amended, 5 U.S.C. pars. 1501 et seq.; Animal Welfare Act of 1970, 7 U.S.C. pars. 2131 et seq.; Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. pars. 3301 et seq.; Federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. pars. 201 et seq.; and E.O. 11246 "Equal Employment Opportunity," as amended by E.O. 11375, and supplemented by regulations at 41 CFR Part 60.

Failure of CONTRACTOR to comply with applicable laws, regulations, and guidelines may result in the suspension or termination of this agreement, or pursuit of other remedies that may be legally available.

- **CERTIFICATIONS REGARDING DEBARMENT AND A DRUG-FREE WORKPLACE:**

As required by the Authority, CONTRACTOR shall complete and submit the federal Certification Regarding A Drug-Free Workplace and shall certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

- **CERTIFICATION REGARDING LOBBYING:**

Federal funds are prohibited from being used for influencing or attempting to influence persons in connection with covered federal transactions, which include the awarding, making, entering into, extension, continuation, renewal, amendment, or modification, or federal grants or contracts. If receiving more than \$100,00 pursuant to this agreement, CONTRACTOR agrees to provide a Certification Regarding Lobbying to the Authority and, if applicable, a Disclosure of Lobbying Activities form. If a subcontractor will receive more than \$100,000 in federal funds pursuant to this agreement, CONTRACTOR will provide to the Authority a Certification Regarding Lobbying and, if applicable, a Disclosure of Lobbying Activities form signed by the subcontractor. CONTRACTOR must provide these certifications and disclosures as required by the Authority.

- **STATEMENTS, PRESS RELEASES, ETC.:**

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, the CONTRACTOR shall clearly state (1) the percentage of the total cost of the program or project which will be financed with federal money, and (2) the dollar amount of federal funds for the project or program.

- **COPYRIGHTS, PATENTS:**

If this agreement results in a copyright, the Illinois Criminal Justice Information Authority and the federal awarding agency, reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes, the work or the copyright to any work developed under this agreement and any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

If this agreement results in the production of patentable items, patent rights, processes or inventions, the CONTRACTOR shall immediately notify the implementing agency, and the implementing agency shall notify the Authority. The Authority will provide the implementing agency and CONTRACTOR with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

- **PUBLICATIONS:**

CONTRACTOR shall submit to the implementing agency, and the implementing agency shall submit to the Illinois Criminal Justice Information Authority for review, a draft of any publication that will be issued by CONTRACTOR describing or resulting from programs or projects funded in whole or in part with federal or matching funds, no later than 60 days prior to its printing.

Any such publication shall contain the following statement:

"This project was supported by Grant # _____ (contact the implementing agency of the proper grant number), awarded by the _____ (contact the implementing agency for the proper federal awarding agency name), Office of Justice Programs, U.S. Department of Justice, through the Illinois Criminal Justice Information Authority. Points of view or opinions contained within this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice, or the Illinois Criminal Justice Information Authority."

These publication requirements pertain to any written, visual or sound publication, but are inapplicable to press releases, newsletters, and issue analyses. Exceptions to these requirements may be granted upon prior Authority approval,

- **INSPECTION AND AUDIT:**

If required by revised Office of Management and Budget Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations," CONTRACTOR agrees to provide for an independent audit of its activities in accordance with A-133. Such audits shall be made annually, unless A-133 allows CONTRACTOR to undergo biennial audits. All audits shall be conducted in accordance with Government Auditing Standards, Standards for Audit of Governmental Organizations, programs, Activities and Functions; the guidelines for Financial and Compliance Audits of Federally Assisted Programs; any compliance supplements approved by the Office of Management and Budget; and generally accepted auditing standards established by the American Institute of Certified Public Accountants. Copies of all audits must be submitted to the Authority within 30 days of completion.

Known or suspected violations of any law encountered during audits, including fraud, theft, embezzlement, forgery, or other serious irregularities, must be immediately communicated to the Authority and appropriate federal, State, and local law enforcement officials.

CONTRACTOR agrees to develop and maintain a record-keeping system to document all agreement related activities and expenditures. These records will act as the original source material for compilation of data and records required by the Authority and all other program activity.

The Authority shall have access for purposes of monitoring, audit and examination to all relevant books, documents, papers, and records of CONTRACTOR, and to relevant books, documents, papers and records of subcontractors.

ACCEPTANCE OF ADDENDUM

The implementing agency and CONTRACTOR agree to adhere to and comply with the above terms and conditions, as an addendum to, and in the performance of, the agreement to which these provisions are attached.

Authorized representative of the implementing agency

Date

Authorized representative of the CONTRACTOR

Date

**CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION AND
OTHER RESPONSIBILITY MATTERS; DRUG-FREE
WORKPLACE REQUIREMENTS AND LOBBYING**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 26, "Government-wide Debarment and Suspension (Nonprocurement)" and "Government-wide Requirements for Drug-Free Workplace" and 15 CFR Part 28, "New Restrictions on Lobbying." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant or cooperative agreement.

1. DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

As requested by Executive Order 12549, Debarment and Suspension, and implemented at 15 CFR Part 26, for prospective participants in primary covered transactions, as defined at 15 CFR Part 26, Sections 26.105 and 26.110-

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. DRUG-FREE WORKPLACE REQUIREMENTS

Alternate 1. Grantees Other Than Individuals

As required by the Drug-Free Workplace Act of 1988, and Implemented at 15 CFR Part 26, Subpart F, for grantees, as defined at 15 CFR Part 26, Sections 26.605 and 26.610 -

- A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing ongoing drug-free awareness program to inform employees about—

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (A);

(d) Notifying the employee in the statement required by paragraph (a) that as a condition of employment under the grant, the employee will —

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to the Director, Office of Federal Assistance, Office of Federal Assistance and Management Support, HCHB Room 6054, U.S. Department of Commerce, Washington, DC 20230. Notice shall include the identification number(s) of each affected grant.

(1) Taking appropriate personnel action, within 30 days of receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to the Director, Office of Federal Assistance and Management Support, HCHB Room 6054, U.S. Department of Commerce, Washington DC, 20230. Notice shall include the identification number(s) of each affected grant;

(f) Taking one to the following actions within 30 days of receiving notice under subparagraph (d)(2) with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance: (Street address, city, county, state, Zip code):

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. Grantees Who Are Individuals

As required by the Drug-Free Workplace Act of 1988, and implemented at 15 CFR 26, Subpart F, for grantees, as defined at 15 CFR Part 26, Sections 26.605 and 26.610-

(A) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity within the grant;

(B) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to the Director, Office of Federal Assistance, Office of Federal Assistance and Management Support, HCHB Room 6054, U.S. Department of Commerce, Washington, DC 20230. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

3. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement of contract over \$100,000, or loan or loan guarantee over \$150,000, as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards of all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was place when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification(s).

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

Schedule 9.3 Reports

Name	Type	Due Date
Project Plan - High level Project Schedule Detailed Project Schedule Base line Project Schedule	D	30 days after the effective date of the appropriate Notice to Proceed
Training Plan	D	30 days after the effective date of the appropriate Notice to Proceed
Acceptance Test Plan	D	45 days after the effective date of the appropriate Notice to Proceed
Implementation Plan	D	30 days after the effective date of the appropriate Notice to Proceed
Detailed Project Schedule	D	30 days after the effective date of the appropriate Notice to Proceed
Weekly Status Report	R	Every Tuesday after the effective date of the appropriate Notice to Proceed
Monthly Status Report	R	Every month + 10 days after the effective date of the appropriate Notice to Proceed
Quarterly Report	R	Every quarter + 10 days after the effective date of the appropriate Notice to Proceed
System Acceptance Test Procedures	D	45 days after the effective date of the appropriate Notice to Proceed
System Maintenance Plan	D	90 days after the effective date of the appropriate Notice to Proceed
Quality Assurance Plan	D	90 days after the effective date of the appropriate Notice to Proceed
Project Team/Project Organizational Chart	D	Proposal
Network System/Equipment Acceptance Report	R	Upon completion of each NTP
Surveillance Equipment Acceptance Report	R	Upon completion of each NTP
Monthly System Performance Report	R	Monthly - to be provided by the 5 th of every month
Report on Industry Trends	R	Quarterly - to be provided by the 5 th of the first month in the quarter
Redline "As Built" System Documentation	D	5 days after completion of a Deliverable
Final "As Built" System Documentation	D	30 days after completion of a Milestone Deliverable
Annual Maintenance Plan	D	Annually, beginning by January 5, 2007 and every year thereafter by January 5
Monthly Maintenance Report	R	Monthly - to be provided by the 5 th of every month
Written Mitigation Plan as required by Procedures Manual*	*	At such time that a planned maintenance is scheduled
Physical Inspection Report	R	Within 30 days of each physical inspection
Maintenance Report – Annual	R	Annually, beginning by January 21, 2007 and every year thereafter by January 21

Maintenance Issue Action Item Log	D	Weekly - to be provided every Friday
Maintenance SLA/SLO Report – Monthly	R	Monthly - to be provided by the 5 th of every month
Maintenance SLA/SLO Report - Quarterly	R	Quarterly - to be provided by the 5 th of the first month in the quarter
Root Cause Analysis, as required by Section 3.2 of the Master Agreement.*	*	As soon as practicable.
Status Reports of MBE/WBE Subcontract Payments	R	Monthly - to be provided by the 5 th of every month
MBE/WBE Utilization Report	R	Monthly - to be provided by the 5 th of every month

R=Report; D=Deliverable

Execution Copy

Schedule 10.1
Service Facilities

Vendor Facilities

1. IBM Project Management Office
71 South Wacker Drive
7th Floor
Chicago, IL 60606
2. IBM
325 McDonnell
Hazelwood, MO 63042
3. IBM
C/O Centrepath
265 Winster St.
Waltham, MA 02451
4. Anixter
Warehouse Location
11614 S. Austin Avenue, Alsip, IL 60803
5. Divane
2424 North 25th Ave
Franklin Park, IL 60131

City Facilities

1. Office of Emergency Management and Communications
1411 W. Madison St.
Chicago, IL 60607
2. Backup Communications Facility
2111 W. Lexington
Chicago, IL 60607

Schedule 10.4(b)
City Property at Vendor Facilities

None with respect to Task Order 1.

Schedule 11.1(a)
Vendor Pass-Through Licenses and Warranties

1) CISCO SOFTWARE LICENSE TERMS:	2
END USER LICENSE AGREEMENT	2
2) CISCO HARDWARE WARRANTY	6
CISCO LIMITED WARRANTY, DISCLAIMER OF WARRANTY, AND END USER LICENSE AGREEMENT	6
UNITED STATES FEDERAL COMMUNICATIONS COMMISSION NOTICE	10
3) WARRANTY FOR THE CISCO ONS 15454 OPTICAL SERVICE MODULES:	12
CISCO LIMITED 5-YEAR HARDWARE AND 5-YEAR SOFTWARE WARRANTY TERMS	12
4) INSIGHT VIDEO NET:	13
INSIGHT VIDEO NET LICENSE AGREEMENT	13
VIDEO MANAGEMENT SOFTWARE AND ENCODERS	15
5) PELCO	16
CAMERA	16
6) PCTEL	18
MAXRAD ANTENNAE	18
7) MILAN ETHERNET SWITCHES	19
8) 411	20
9) IBM STATEMENT OF LIMITED WARRANTY	21
10) IBM INTERNATIONAL PROGRAM LICENSE AGREEMENT	30
11) MICROSOFT	39
MS 2003 SERVER CAL EULA MS SQL SERVER 2005	39

1) Cisco Software License Terms:



http://www.cisco.com/en/US/products/prod_warranties_listing.html

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Customer Records. Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, Customer shall promptly pay to Cisco the appropriate license fees, plus the reasonable cost of conducting the audit.

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SUOMI	Takuu- tai käyttöoikeusehdoista, joita saatetaan soveltaa tietyissä maissa, sekä yllä olevien tietojen käännökset saat seuraavasta Web-osoitteesta.
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若要查阅适用于特定国家的担保条款或许可条款以及上述资料的译文，请访问以下 URL:

한국어

특정 국가에만 적용되는 보증이나 라이선스 조건 및 위의 정보에 대한 번역은 다음 URL을 참고하십시오.

http://www.cisco.com/univercd/cc/td/doc/es_inpkc/cetrans.htm

United States Federal Communications Commission Notice

The following information is for FCC compliance of Class A devices: This equipment has been tested and found to comply with the limits for a Class A digital device, pursuant to part 15 of the FCC rules. These limits are designed to provide reasonable protection against harmful interference when the equipment is operated in a commercial environment. This equipment generates, uses, and can radiate radio-frequency energy and, if not installed and used in accordance with the instruction manual, may cause harmful interference to radio communications. Operation of this equipment in a residential area is likely to cause harmful interference, in which case users will be required to correct the interference at their own expense.

The following information is for FCC compliance of Class B devices: The equipment described in this manual generates and may radiate radio-frequency energy. If it is not installed in accordance with Cisco's installation instructions, it may cause interference with radio and television reception. This equipment has been tested and found to comply with the limits for a Class B digital device in accordance with the specifications in part 15 of the FCC rules. These specifications are designed to provide reasonable protection against such interference in a residential installation. However, there is no guarantee that interference will not occur in a particular installation.

You can determine whether your equipment is causing interference by turning it off. If the interference stops, it was probably caused by the Cisco equipment or one of its peripheral devices. If the equipment causes interference to radio or television reception, try to correct the interference by using one or more of the following measures:

- Turn the television or radio antenna until the interference stops.
- Move the equipment to one side or the other of the television or radio.
- Move the equipment farther away from the television or radio.
- Plug the equipment into an outlet that is on a different circuit from the television or radio. (That is, make certain the equipment and the television or radio are on circuits controlled by different circuit breakers or fuses.)

Modifications to this product not authorized by Cisco could void the FCC approval and negate your authority to operate the product.

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78-5235-03A0

3) Warranty for the Cisco ONS 15454 Optical Service Modules:

Cisco Limited 5-Year Hardware and 5-Year Software Warranty Terms

The following are special terms that apply to your Optical hardware and software warranty during the warranty period. Your formal Warranty Statement appears in the *Cisco Information Packet* that accompanies your Cisco product.

Hardware Warranty Duration: Five (5) Years **Software Warranty Duration:** Five (5) Years

Hardware Replacement, Repair, or Refund Procedure: Cisco or its service center will use commercially reasonable efforts to ship a replacement part for delivery within fifteen (15) working days after receipt of the defective product at Cisco's site. Actual delivery times of replacement products may vary depending on Customer location. Cisco reserves the right to refund the purchase price as its exclusive warranty remedy.

Software: Cisco warrants that commencing from the date of shipment to Customer (but in case of resale by an authorized Cisco reseller, commencing not more than ninety (90) days after original shipment by Cisco), and continuing for a period of five (5) years: (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to its published specifications.

For defective hardware or software: Please contact the party from whom you purchased the product. If you purchased the product directly from Cisco, contact the Technical Assistance Center at 1-877-323-7368.

Complete the form below and keep for ready reference.

Product purchased from:

Their telephone number:

Product Model and Serial number:

Maintenance Contract number:

For warranty or license terms which may apply in particular countries and for translations of the above information, please visit the following URL:

http://www.cisco.com/univercd/cc/td/doc/es_inpk/cetrans.htm

Consult the above website or your Cisco Sales and Service Representative for a complete listing of Cisco products and applicable warranties.

¹The Cisco Limited 5-Year Hardware and 5-Year Software Warranty is available only to qualified World Wide Service Providers which Cisco defines as owners and operators of the world's collection of voice-oriented Public Switched Telephone Networks (PSTNs).

4) Insight Video Net:

Insight Video Net License Agreement

ATTENTION:

PLEASE READ THIS DOCUMENT CAREFULLY BEFORE USING THIS PRODUCT. THE INDIVIDUAL OR ENTITY INSTALLING, COPYING, OR OTHERWISE USING THIS PRODUCT (THE "END USER" or "BUYER") AGREES TO BE BOUND, BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE, DO NOT INSTALL OR USE THE PRODUCT; YOU MAY RETURN IT TO YOUR PLACE OF PURCHASE FOR A FULL REFUND.

Copyright

The Product is protected by copyright and other intellectual property laws and treaties. Insight or its suppliers own the title, copyright, and other intellectual property rights in the Product. The Product is licensed, not sold.

Restrictions and Limitations

The use of Video Net is subject to the following restrictions and limitations:

1. No right to recopy, sell, distribute, license, sub-license, alter, modify, disassemble, de-compile or reverse engineer any software in any manner whatsoever is hereby given. Violation may result in severe civil and/or criminal penalties, as violators will be prosecuted to the maximum extent possible.
2. You are permitted to use the Software on a single computer owned or leased by you. You may not use the Software on more than a single machine, even if you own or lease more than one machine, without prior written consent of Insight.
3. You may not provide or disclose the Software to any third party.
4. You may not grant any sublicense, lease or other right in the Software to others.

Mandatory Activation

The license rights granted under this license agreement are limited to the first thirty (30) days after you first install the Product unless you supply information required to activate your licensed copy in the manner described during the setup sequence of the Product. You can activate the Product through the use of the Internet or telephone; toll charges may apply. You may also need to reactivate the Product if you modify your computer hardware or alter the Product. There are technological measures in this Product that are designed to prevent unlicensed or illegal use of the Product. You agree that we may use those measures.

Limited warranty

Insight Video Net, LLC. (referred hereunder as Insight) warrants that, for a period of ninety (90) ninety days from the date of delivery of Video Net to the End User, Video Net will perform substantially in accordance with the accompanying user manual, and the media on which Video Net resides will be free from defects in materials and workmanship under normal use. Insight DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN Video Net WILL MEET THE END USER'S REQUIREMENTS, OR THAT THE OPERATION OF Video Net WILL BE ERROR FREE OR UNINTERRUPTED. Insight's entire liability and the End User's exclusive remedy under this limited warranty provision shall be, at Insight's sole option, either (a) refund of the price paid for Video Net, or (b) repair or replacement of the portions of Video Net that do not comply with this limited warranty.

ALL OTHER WARRANTIES – REPRESENTATIONS, TERMS AND CONDITIONS (STATUTORY, EXPRESS, IMPLIED OR OTHERWISE) AS TO QUALITY, CONDITION, DESCRIPTION, MERCHANTABILITY OR FITNESS FOR PURPOSE (EXCEPT FOR THE IMPLIED WARRANTY OF TITLE) ARE HEREBY EXPRESSLY EXCLUDED.

Protection and Security

The End-User agrees to use its best efforts and to take all reasonable steps to safeguard Video Net to ensure that no unauthorized person shall have access thereto and that no unauthorized copy, publication, disclosure or distribution in whole or in part, in any form, shall be made. The End-User acknowledges that Video Net contains valuable confidential information and trade secrets and that unauthorized use and/or copying is harmful to Insight.

Termination

This License is effective until terminated. This License will terminate immediately without notice from Insight if the End User fails to comply with any of its provisions. Upon termination the End User must destroy the Software and all copies thereof, and the End-User may terminate this License at any time by doing so.

Limitation of Liability

Insight shall have no liability in respect of any defect in Video Net arising from: specifications or materials supplied by the Buyer; willful damage or negligence of the Buyer or its employees or agents; abnormal working conditions at the Buyer's premises; failure to follow the Insight's instructions (whether oral or in writing); misuse or alteration or repair of Video Net without the Company's approval; if the total price for Video Net has not been paid; accident, abuse, or misapplication; products or equipment not specified by Insight as being compatible with Video Net; or if the Buyer/End User has not notified Insight in writing of the defect within the applicable warranty period.

THE COMPANY SHALL IN NO EVENT BE LIABLE UNDER ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND, FROM ANY CAUSE ARISING OUT OF THE SALE, INSTALLATION, USE OR INABILITY TO USE ANY PRODUCT OR SERVICE, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS REVENUE, LOST GOODWILL, BUSINESS INTERRUPTION, OTHER ECONOMIC LOSS OR ANY LOSS OF RECORDED DATA.

Insight shall not be bound by any representations or statements on the part of its employees or agents whether oral or in writing including those made in catalogues and other promotional material.

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This Product includes software developed by the OpenSSL Project for use in the OpenSSL Toolkit (<http://www.openssl.org>). This Product includes cryptographic software written by Eric Young (eay@cryptsoft.com). This Product includes software written by Tim Hudson (tjh@cryptsoft.com).

This Product includes Paintlib object code in accordance with the Paintlib license agreement. Paintlib is copyright (c) 1996-2000 Ulrich von Zadow.

Welcome > Getting Started > Insight Video Net License Agreement

Video Management Software and Encoders



INSIGHTVideonet

Warranty Statement -Video Processing Units and Software

Video Processing Units

- A. IVN provides warranty services for IVN branded VPU units only. All other hardware warranties are passed from the manufacturer to the client
- B. All equipment and materials use standard components that are regularly manufactured and utilized in the Insight Video Net system.
- C. All equipment and components have been thoroughly tested and proven in actual use.
- D. All equipment and components are CE-marked and FCC-certified.
- E. The warranty for repairing or replacing defective parts is for a period of 3 years from the date of shipment.
- F. IVN provides no additional hardware warranty or guarantee beyond that provided by the manufacturer

IVN will accept returns for failed hardware components FOB Rancho Cucamonga, CA

Software & Support

- A. IVN software warranty includes software version upgrades for 90 days from date of issue of license
- B. IVN software warranty includes updates and patches for one year from date of issue of license
- C. IVN software licenses include helpdesk support for 90 days from the date of installation
- D. Helpdesk services from IVN are available from 8:00 AM to 5:00 PM pacific time, Monday through Friday (excluding holidays)
- E. Software warranty and helpdesk support extension options are available for 1, 2 and 3 year periods

Insight Video Net, LLC 10134 6th St. Ste. M Rancho Cucamonga, CA 91730 ph: 909-373-1800 fax: 909-373-1805 web:

www.InsightVideoNet.com

email: sales@InsightVideoNet.com

5) Pelco

Camera

Product Warranty and Return Information

Warranty

Pelco will repair or replace, without charge, any merchandise proved defective in material or workmanship for a period of one year after the date of shipment. Exceptions to this warranty are as noted below:

- Five years on FT/FR8000 Series fiber optic products.
- Three years on Genex® Series products (multiplexers, server, and keyboard).
- Three years on all Camclosure® and fixed camera models, except the CC3701H-2, CC3701H-2X, CC3751H-2, CC3651H-2X, MC3651H-2, and MC3651H-2X camera models, which have a five-year warranty.
- Two years on standard motorized or fixed focal length lenses.
- Two years on Legacy®, CM6700/CM6800/CM9700 Series matrix, and DF5/DF8 Series fixed dome products.
- Two years on Spectra®, Esprit®, ExSite™, and PS20 scanners, including when used in continuous motion applications.
- Two years on Esprit® and WW5700 series window wiper (excluding wiper blades).
- Two years (except lamp and color wheel) on Digital Light Processing (DLPTM) displays. The lamp and color wheel will be covered for a period of 90 days. The air filter is not covered under warranty.
- Eighteen months on DX Series digital video recorders and NVR300 Series network video recorders, and Endura™ Series distributed network-based video products.
- One year (except video heads) on video cassette recorders (VCRs). Video heads will be covered for a period of six months.
- Six months on all pan and tilts, scanners or preset lenses used in continuous motion applications (that is, preset scan, tour and auto scan modes).

Pelco will warrant all replacement parts and repairs for 90 days from the date of Pelco shipment. All goods requiring warranty repair shall be sent freight prepaid to Pelco, Clovis, California. Repairs made necessary by reason of misuse, alteration, normal wear, or accident are not covered under this warranty.

Pelco assumes no risk and shall be subject to no liability for damages or loss resulting from the specific use or application made of the Products.

Pelco's liability for any claim, whether based on breach of contract, negligence, infringement of any rights of any party or product liability, relating to the Products shall not exceed the price paid by the Dealer to Pelco for such Products. In no event will Pelco be liable for any special, incidental or consequential damages (including loss of use, loss of profit and claims of third parties) however caused, whether by the negligence of Pelco or otherwise.

The above warranty provides the Dealer with specific legal rights. The Dealer may also have additional rights, which are subject to variation from state to state.

If a warranty repair is required, the Dealer must contact Pelco at (800) 289-9100 or (559) 292-1981 to obtain a Repair Authorization number (RA), and provide the following information:

1. Model and serial number
2. Date of shipment, P.O. number, Sales Order number, or Pelco invoice number
3. Details of the defect or problem

If there is a dispute regarding the warranty of a product which does not fall under the warranty conditions stated above, please include a written explanation with the product when returned.

Method of return shipment shall be the same or equal to the method by which the item was received by Pelco.

Returns

In order to expedite parts returned to the factory for repair or credit, please call the factory at (800) 289-9100 or (559) 292-1981 to obtain an authorization number (CA number if returned for credit, and RA number if returned for repair).

All merchandise returned for credit may be subject to a 20% restocking and refurbishing charge. Goods returned for repair or credit should be clearly identified with the assigned CA or RA number and freight should be prepaid. Ship to the appropriate address below.

If you are located within the continental U.S., Alaska, Hawaii or Puerto Rico, send goods to:

Service Department
Pelco
3500 Pelco Way
Clovis, CA 93612-5699

If you are located outside the continental U.S., Alaska, Hawaii or Puerto Rico and are instructed to return goods to the USA, you may do one of the following:

If the goods are to be sent by a COURIER SERVICE, send the goods to:

Pelco
3500 Pelco Way
Clovis, CA 93612-5699 USA

If the goods are to be sent by a FREIGHT FORWARDER, send the goods to:

Pelco c/o Expeditors
473 Eccles Avenue
South San Francisco, CA 94080 USA
Phone: 650-737-1700
Fax: 650-737-0933

6) PCTel

MaxRad Antennae

PCTEL Antenna Products Group, Inc.

4350 Chandler Drive Hanover Park, IL 60133-6763

Warranty. PCTEL warrants that the Products are free from defects in material and workmanship for a period of two (2) years from the date of shipment under normal use and operation. PCTEL sole and exclusive obligation under the foregoing warranty shall be, at its option, to repair or replace any defective Product that fails during the warranty period, provided that PCTEL receives written notice during the warranty period. The expense of removal and reinstallation of any item is not included in this warranty. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PCTEL shall have no obligation to make repairs or replacements resulting from faulty installation, incorrect application and/or improper use of the Products. Repair or replacement in the manner provided above shall be the sole and exclusive remedy of Buyer for breach of warranty and shall constitute fulfillment of all liabilities of PCTEL with respect to the quality and performance of the Products. PCTEL reserves the right to inspect all defective Products (which must be returned by Buyer to PCTEL's factory freight prepaid). No Products will be accepted for replacement or repair without prior written approval. PCTEL shall have no obligation to make repairs or replacement necessitated by catastrophe, fault, negligence, misuse, abuse, or accident of Buyer or others. The warranty period of any repaired or replaced Product shall not be extended beyond its original term. EXCEPT AS LIMITED BY LAW IN SOME STATES, IN NO EVENT SHALL PCTEL BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO BUYER OR ANY THIRD PARTY ARISING OUT OF THESE TERMS AND CONDITIONS OR ANY DEFECTIVE PRODUCT WHETHER THE DEFECT IS WARRRANTED AGAINST OR NOT AND WHETHER THE CLAIM IS BASED UPON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, NOR SHALL PCTEL BE LIABLE TO BUYER FOR ANY AMOUNT EXCEEDING THE PURCHASE PRICE OF THE PRODUCT. FURTHER, IN NO EVENT SHALL PCTEL BE RESPONSIBLE FOR DAMAGES OR CLAIMS OF ANY NATURE OR DESCRIPTION RELATING TO (I) SYSTEM PERFORMANCE, INCLUDING COVERAGE, (II) BUYER'S SELECTION OF PRODUCTS FOR BUYER'S APPLICATION AND/OR (III) FAILURE OF PRODUCTS TO MEET GOVERNMENT OR REGULATORY REQUIREMENTS.

7) MiLan ethernet switches

MiLan Technology Five-Year Warranty Card

MiLan Technology warrants the original consumer or purchaser that each of its products and all components thereof, will be free from defects in material and/or workmanship for a period of five years from the original factory shipment date. Any warranty hereunder is extended to the original consumer or purchaser and is not assignable.

MiLan Technology makes no express or implied warranties including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose, except as expressly set forth in this warranty. In no event shall Milan Technology be liable for incidental or consequential damages, cost, or expenses arising out of or in connection with the performance of the product delivered hereunder. MiLan Technology will in no case cover damages arising out of the product being used in a negligent fashion or manner.

8) 411



MAINTENANCE; WARRANTIES; DISCLAIMERS

The Seller represents and warrants that, at the time each machine is delivered, the Seller will be the lawful owner of such Machine, free and clear any liens and encumbrances (other than those which may arise from this Agreement) and will have full right, power and authority to sell the same to the Purchaser.

- The Seller further warrants that each Machine will be eligible for a Maintenance Agreement by Manufacturer.
- The Purchaser, recognizing that the Seller is not the manufacturer of the Machine(s) expressly waives any claim against the Seller based upon any infringement or alleged infringement of any patent with respect to any Machine(s) or for any indemnity against any such patent claim made by another against the Purchaser.
- The Warranties contained herein are made expressly in lieu of any other warranties, expressed or implied, including any warranty of merchantability of fitness for a particular purpose, and of any other obligation or liability on the part of the Seller, including but not limited to special or consequential damages, arising out of or in connection with the Agreement or with the Machine(s) or the use of performance thereof.

9) IBM Statement of Limited Warranty

IBM Statement of Limited Warranty

Z125-4753-08 04/2004

Part 1 - General Terms

*This Statement of Limited Warranty includes Part 1 - General Terms, Part 2 - Country-unique Terms, and Part 3 - Warranty Information. The terms of Part 2 replace or modify those of Part 1. The warranties provided by IBM in this Statement of Limited Warranty apply only to Machines you purchase for your use, and not for resale. The term "Machine" means an IBM machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" does not include any software programs, whether pre-loaded with the Machine, installed subsequently or otherwise. **Nothing in this Statement of Limited Warranty affects any statutory rights of consumers that cannot be waived or limited by contract.***

What this Warranty Covers

IBM warrants that each Machine 1) is free from defects in materials and workmanship and 2) conforms to IBM's Official Published Specifications ("Specifications") which are available on request. The warranty period for the Machine starts on the original Date of Installation and is specified in Part 3 - Warranty Information. The date on your invoice or sales receipt is the Date of Installation unless IBM or your reseller informs you otherwise. Many features, conversions, or upgrades involve the removal of parts and their return to IBM. A part that replaces a removed part will assume the warranty service status of the removed part. Unless IBM specifies otherwise, these warranties apply only in the country or region in which you purchased the Machine.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

What this Warranty Does not Cover

This warranty does not cover the following:

- any software programs, whether pre-loaded or shipped with the Machine, or installed subsequently;
- failure resulting from misuse (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
- failure caused by a product for which IBM is not responsible; and
- any non-IBM products, including those that IBM may procure and provide with or integrate into an IBM Machine at your request.

The warranty is voided by removal or alteration of identification labels on the Machine or its parts.

IBM does not warrant uninterrupted or error-free operation of a Machine.

Any technical or other support provided for a Machine under warranty, such as assistance with "how-to" questions and those regarding Machine set-up and installation, is provided **WITHOUT WARRANTIES OF ANY KIND**.

How to Obtain Warranty Service

If the Machine does not function as warranted during the warranty period, contact IBM or your reseller to obtain warranty service. If you do not register the Machine with IBM, you may be required to present proof of purchase as evidence of your entitlement to warranty service.

What IBM Will Do to Correct Problems

When you contact IBM for service, you must follow the problem determination and resolution procedures that IBM specifies. An initial diagnosis of your problem can be made either by a technician over the telephone or electronically by access to an IBM website.

The type of warranty service applicable to your Machine is specified in Part 3 - Warranty Information.

You are responsible for downloading and installing designated Machine Code (microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine) and other software updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM provides.

If your problem can be resolved with a Customer Replaceable Unit ("CRU") (e.g., keyboard, mouse, speaker, memory, hard disk drive), IBM will ship the CRU to you for you to install.

If the Machine does not function as warranted during the warranty period and your problem cannot be resolved over the telephone or electronically, through your application of Machine Code or software updates, or with a CRU, IBM or your reseller, if approved by IBM to provide warranty service, will either, at its discretion, 1) repair it to make it function as warranted, or 2) replace it with one that is at least functionally equivalent. If IBM is unable to do either, you may return the Machine to your place of purchase and your money will be refunded.

IBM or your reseller will also manage and install selected engineering changes that apply to the Machine.

Exchange of a Machine or Part

When the warranty service involves the exchange of a Machine or part, the item IBM or your reseller replaces becomes its property and the replacement becomes yours. You represent that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty service status of the replaced item.

Your Additional Responsibilities

Before IBM or your reseller exchanges a Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under warranty service.

You also agree to:

1. ensure that the Machine is free of any legal obligations or restrictions that prevent its exchange;
2. obtain authorization from the owner to have IBM or your reseller service a Machine that you do not own; and
3. where applicable, before service is provided:

- a. follow the service request procedures that IBM or your reseller provides;
 - b. backup or secure all programs, data, and funds contained in the Machine;
 - c. provide IBM or your reseller with sufficient, free, and safe access to your facilities to permit IBM to fulfill its obligations; and
 - d. inform IBM or your reseller of changes in the Machine's location.
4. (a) ensure all information about identified or identifiable individuals (Personal Data) is deleted from the Machine (to the extent technically possible), (b) allow IBM, your reseller or an IBM supplier to process on your behalf any remaining Personal Data as IBM or your reseller considers necessary to fulfill its obligations under this Statement of Limited Warranty (which may include shipping the Machine for such processing to other IBM service locations around the world), and (c) ensure that such processing complies with any laws applicable to such Personal Data.

Limitation of Liability

IBM is responsible for loss of, or damage to, your Machine only while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

Neither IBM nor your reseller are responsible for any of your confidential, proprietary or personal information contained in a Machine which you return to IBM for any reason. You should remove all such information from the Machine prior to its return.

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. In each such instance, regardless of the basis on which you are entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), except for any liability that cannot be waived or limited by applicable laws, IBM is liable for no more than

1. damages for bodily injury (including death) and damage to real property and tangible personal property; and
2. the amount of any other actual direct damages, up to the charges (if recurring, 12 months' charges apply) for the Machine that is subject of the claim. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code ("LIC").

This limit also applies to IBM's suppliers and your reseller. It is the maximum for which IBM, its suppliers, and your reseller are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS SUPPLIERS OR RESELLERS LIABLE FOR ANY OF THE FOLLOWING EVEN IF INFORMED OF THEIR POSSIBILITY: 1) THIRD PARTY CLAIMS AGAINST YOU FOR DAMAGES (OTHER THAN THOSE UNDER THE FIRST ITEM LISTED ABOVE); 2) LOSS OF, OR DAMAGE TO, DATA; 3) SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR 4) LOST PROFITS, BUSINESS REVENUE, GOODWILL OR ANTICIPATED SAVINGS. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Governing Law

Both you and IBM consent to the application of the laws of the country in which you acquired the Machine to govern, interpret, and enforce all of your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Statement of Limited Warranty, without regard to conflict of law principles.

THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which you acquired the Machine.

Part 2 - Country-unique Terms

AMERICAS

ARGENTINA

Jurisdiction: The following is added after the first sentence:

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BOLIVIA

Jurisdiction: The following is added after the first sentence:

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the courts of the city of La Paz.

BRAZIL

Jurisdiction: The following is added after the first sentence:

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the court of Rio de Janeiro, RJ.

CHILE

Jurisdiction: The following is added after the first sentence:

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Civil Courts of Justice of Santiago.

COLOMBIA

Jurisdiction: The following is added after the first sentence:

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Judges of the Republic of Colombia.

EQUADOR

Jurisdiction: The following is added after the first sentence:

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Judges of Quito.

MEXICO

Jurisdiction: The following is added after the first sentence:

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Federal Courts of Mexico City, Federal District.

PARAGUAY

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the courts of the city of Asuncion.

PERU

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Judges and Tribunals of the Judicial District of Lima, Cercado.

Limitation of Liability: *The following is added at the end of this section:*

In accordance with Article 1328 of the Peruvian Civil Code the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

URUGUAY

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the City of Montevideo Court's Jurisdiction.

VENEZUELA

Jurisdiction: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Courts of the Metropolitan Area Of the City of Caracas.

NORTH AMERICA

How to Obtain Warranty Service: *The following is added to this Section:*

To obtain warranty service from IBM in Canada or the United States, call 1-800-IBM-SERV (426-7378).

CANADA

Limitation of Liability: *The following replaces item 1 of this section:*

1. damages for bodily injury (including death) or physical harm to real property and tangible personal property caused by IBM's negligence; and

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws in the Province of Ontario.

UNITED STATES

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State of New York.

ASIA PACIFIC

AUSTRALIA

What this Warranty Covers: *The following paragraph is added to this section:*

The warranties specified in this Section are in addition to any rights you may have under the Trade Practices Act 1974 or other similar legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability: *The following is added to this section:*

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974 or other similar legislation, IBM's liability is limited to the repair or replacement of the goods or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State or Territory

CAMBODIA AND LAOS

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State of New York, United States of America.

CAMBODIA, INDONESIA AND LAOS

Arbitration: *The following is added under this heading:*

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

HONG KONG S.A.R. OF CHINA AND MACAU S.A.R. OF CHINA

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of Hong Kong Special Administrative Region of China.

INDIA

Limitation of Liability: *The following replaces items 1 and 2 of this section:*

1. liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and
2. as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Statement of Limited Warranty, the charge paid by you for the individual Machine that is the subject of the claim. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code ("LIC").

Arbitration: *The following is added under this heading*

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

JAPAN

Governing Law: *The following sentence is added to this section:*

Any doubts concerning this Statement of Limited Warranty will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA

Limitation of Liability: *The word "SPECIAL" in item 3 of the fifth paragraph is deleted.*

NEW ZEALAND

What this Warranty Covers: *The following paragraph is added to this section:*

The warranties specified in this section are in addition to any rights you may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if you require the goods for the purposes of a business as defined in that Act.

Limitation of Liability: *The following is added to this section:*

Where Machines are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA (PRC)

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State of New York, United States of America (except when local law requires otherwise).

PHILIPPINES

Limitation of Liability: *Item 3 in the fifth paragraph is replaced by the following:*

SPECIAL (INCLUDING NOMINAL AND EXEMPLARY DAMAGES), MORAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR

Arbitration: *The following is added: under this heading*

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc.. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

SINGAPORE

Limitation of Liability: *The words "SPECIAL" and "ECONOMIC" in item 3 in the fifth paragraph are deleted.*

EUROPE, MIDDLE EAST, AFRICA (EMEA)

THE FOLLOWING TERMS APPLY TO ALL EMEA COUNTRIES:

The terms of this Statement of Limited Warranty apply to Machines purchased from IBM or an IBM reseller.

How to Obtain Warranty Service:

Add the following paragraph in Western Europe (Andorra, Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Vatican State, and any country subsequently added to the European Union, as from the date of accession):

The warranty for Machines acquired in Western Europe shall be valid and applicable in all Western Europe countries provided the Machines have been announced and made available in such countries.

If you purchase a Machine in one of the Western European countries, as defined above, you may obtain warranty service for that Machine in any of those countries from either (1) an IBM reseller approved to perform warranty service or (2) from IBM, provided the Machine has been announced and made available by IBM in the country in which you wish to obtain service.

If you purchased a Personal Computer Machine in Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Federal Republic of Yugoslavia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, or Ukraine, you may obtain warranty service for that Machine in any of those countries from either (1) an IBM reseller approved to perform warranty service or (2) from IBM.

If you purchase a Machine in a Middle Eastern or African country, you may obtain warranty service for that Machine from the IBM entity within the country of purchase, if that IBM entity provides warranty service in that country, or from an IBM reseller, approved by IBM to perform warranty service on that Machine in that country. Warranty service in Africa is available within 50 kilometers of an IBM approved service provider. You are responsible for transportation costs for Machines located outside 50 kilometers of an IBM approved service provider.

Governing Law:

The phrase "the laws of the country in which you acquired the Machine" is replaced by:

1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia; 2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna; 3) "the laws of Finland" in Estonia, Latvia, and Lithuania; 4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and 5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

Jurisdiction: *The following exceptions are added to this section:*

1) In **Austria** the choice of jurisdiction for all disputes arising out of this Statement of Limited Warranty and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) In **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe** all disputes arising out of this Statement of Limited Warranty or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) In **Belgium and Luxembourg**, all disputes arising out of this Statement of Limited Warranty or related to its interpretation or its execution, the law, and the courts of the capital city, of the country of your registered office and/or commercial site location only are competent; 4) In **France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna** all disputes arising out of this Statement of Limited Warranty or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) In **Russia**, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Statement of Limited Warranty shall be settled by Arbitration Court of Moscow; 6) In **South Africa, Namibia, Lesotho and Swaziland**, both of us agree to submit all disputes relating to this Statement of Limited Warranty to the jurisdiction of the High Court in Johannesburg; 7) In **Turkey** all disputes arising out of or in connection with this Statement of Limited Warranty shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Statement of Limited Warranty will be brought before, and settled exclusively by, the competent court of a) Athens for Greece, b) Tel Aviv-Jaffa for Israel, c) Milan for Italy, d) Lisbon for Portugal, and e) Madrid for Spain; and 9) in the **United Kingdom**, both of us agree to submit all disputes relating to this Statement of Limited Warranty to the jurisdiction of the English courts.

Arbitration: *The following is added under this heading:*

In **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia** all disputes arising out of this Statement of Limited Warranty or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In **Estonia, Latvia and Lithuania** all disputes arising in connection with this Statement of Limited Warranty will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

EUROPEAN UNION (EU)

THE FOLLOWING TERMS APPLY TO ALL EU COUNTRIES:

The warranty for Machines acquired in EU countries is valid and applicable in all EU countries provided the Machines have been announced and made available in such countries.

How to Obtain Warranty Service: *The following is added to this section:*

To obtain warranty service from IBM in EU countries, see the telephone listing in Part 3 - Warranty Information.

You may contact IBM at the following address:

IBM Warranty & Service Quality Dept.
PO Box 30
Spango Valley

CONSUMERS

Consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the warranties provided in this Statement of Limited Warranty.

AUSTRIA, DENMARK, FINLAND, GREECE, ITALY, NETHERLANDS, NORWAY, PORTUGAL, SPAIN, SWEDEN AND SWITZERLAND

Limitation of Liability: *The following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Statement of Limited Warranty or due to any other cause related to this Statement of Limited Warranty is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges you paid for the Machine. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code ("LIC").
The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.
2. **UNDER NO CIRCUMSTANCES IS IBM, ITS SUPPLIERS OR RESELLERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

FRANCE AND BELGIUM

Limitation of Liability: *The following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Statement of Limited Warranty is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges you paid for the Machine that has caused the damages. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code ("LIC").
The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.
2. **UNDER NO CIRCUMSTANCES IS IBM, ITS SUPPLIERS OR RESELLERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

THE FOLLOWING TERMS APPLY TO THE COUNTRY SPECIFIED:

AUSTRIA

The provisions of this Statement of Limited Warranty replace any applicable statutory warranties.

What this Warranty Covers: *The following replaces the first sentence of the first paragraph of this section:*

The warranty for an IBM Machine covers the functionality of the Machine for its normal use and the Machine's conformity to its Specifications.

The following paragraphs are added to this section:

The limitation period for consumers in action for breach of warranty is the statutory period as a minimum. In case IBM or your reseller is unable to repair an IBM Machine, you can alternatively ask for a partial refund as far as justified by the reduced value of the unrepaired Machine or ask for a cancellation of the respective agreement for such Machine and get your money refunded.

The second paragraph does not apply.

What IBM Will Do to Correct Problems: *The following is added to this section:*

During the warranty period, IBM will reimburse you for the transportation charges for the delivery of the failing Machine to IBM.

Limitation of Liability: *The following paragraph is added to this section:*

The limitations and exclusions specified in the Statement of Limited Warranty will not apply to damages caused by IBM with fraud or gross negligence and for express warranty.

The following sentence is added to the end of item 2:

IBM's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

EGYPT

Limitation of Liability: *The following replaces item 2 in this section:*

as to any other actual direct damages, IBM's liability will be limited to the total amount you paid for the Machine that is the subject of the claim. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code ("LIC").

Applicability of suppliers and resellers (unchanged).

FRANCE

Limitation of Liability: *The following replaces the second sentence of the first paragraph of this section:*

In such instances, regardless of the basis on which you are entitled to claim damages from IBM, IBM is liable for no more than: (items 1 and 2 unchanged).

GERMANY

What this Warranty Covers: *The following replaces the first sentence of the first paragraph of this section:*

The warranty for an IBM Machine covers the functionality of the Machine for its normal use and the Machine's conformity to its Specifications.

The following paragraphs are added to this section:

The minimum warranty period for Machines is twelve months. In case IBM or your reseller is unable to repair an IBM Machine, you can alternatively ask for a partial refund as far as justified by the reduced value of the unrepaired Machine or ask for a cancellation of the respective agreement for such Machine and get your money refunded.

The second paragraph does not apply.

What IBM Will Do to Correct Problems: *The following is added to this section:*

During the warranty period, transportation for delivery of the failing Machine to IBM will be at IBM's expense.

Limitation of Liability: *The following paragraph is added to this section:*

The limitations and exclusions specified in the Statement of Limited Warranty will not apply to damages caused by IBM with fraud or gross negligence and for express warranty.

The following sentence is added to the end of item 2:

IBM's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

HUNGARY

Limitation of Liability: *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Statement of Limited Warranty balance this limitation of liability.

IRELAND

What this Warranty Covers: *The following is added to this section:*

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

Limitation of Liability: *The following replaces the terms of section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of this Statement of Limited Warranty in respect of which IBM is legally liable to you, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, you are entitled to recover damages from IBM.

This section sets out the extent of IBM's liability and your sole remedy.

1. IBM will accept unlimited liability for death or personal injury caused by the negligence of IBM.
2. Subject always to the **Items for Which IBM is Not Liable** below, IBM will accept unlimited liability for physical damage to your tangible property resulting from the negligence of IBM.
3. Except as provided in items 1 and 2 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) EUR 125,000, or 2) 125% of the amount you paid for the Machine directly relating to the Default.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM, its suppliers or resellers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

SLOVAKIA

Limitation of Liability: *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

SOUTH AFRICA, NAMIBIA, BOTSWANA, LESOTHO AND SWAZILAND

Limitation of Liability: *The following is added to this section:*

IBM's entire liability to you for actual damages arising in all situations involving nonperformance by IBM in respect of the subject matter of this Statement of Warranty will be limited to the charge paid by you for the individual Machine that is the subject of your claim from IBM.

UNITED KINGDOM

Limitation of Liability: *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of this Statement of Limited Warranty in respect of which IBM is legally liable to you, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, you are entitled to recover damages from IBM.

This section sets out the extent of IBM's liability and your sole remedy.

1. IBM will accept unlimited liability for:
 - a) death or personal injury caused by the negligence of IBM; and
 - b) any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section.
2. IBM will accept unlimited liability, subject always to the **Items for Which IBM is Not Liable** below, for physical damage to your tangible property resulting from the negligence of IBM.
3. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in items 1 and 2 above, exceed the greater of 1) Pounds Sterling 75,000, or 2) 125% of the total purchase price payable or the charges for the Machine directly relating to the Default.

These limits also apply to IBM's suppliers and resellers. They state the maximum for which IBM and such suppliers and resellers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or resellers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

Part 3 - Warranty Information

This Part 3 provides information regarding the warranty applicable to your Machine, including the warranty period and type of warranty service IBM provides.

Warranty Period

The warranty period may vary by country or region and is specified in the table below. NOTE: "Region" means either Hong Kong or Macau Special Administrative Region of China.

A warranty period of 3 years on parts and 1 year on labor means that IBM provides warranty service without charge for:

- a. parts and labor during the first year of the warranty period; and
- b. parts only, on an exchange basis, in the second and third years of the warranty period. IBM will charge you for any labor provided in performance of the repair or replacement(s) in the second and third year of warranty period.

Machine type XXXX

Country or Region of Purchase	Warranty Period	Type of Warranty Service

Types of Warranty Service

If required, IBM provides repair or exchange service depending on the type of warranty service specified for your Machine in the above table and as described below. Warranty service may be provided by your reseller if approved by IBM to perform warranty service. Scheduling of service will depend upon the time of your call and is subject to parts availability. Service levels are response time objectives and are not guaranteed. The specified level of warranty service may not be available in all worldwide locations, additional charges may apply outside IBM's normal service area, contact your local IBM representative or your reseller for country and location specific information.

1. Customer Replaceable Unit ("CRU") Service

IBM provides replacement CRUs to you for you to install. CRU information and replacement instructions are shipped with your Machine and are available from IBM at any time on your request. Installation of Tier 1 CRUs is your responsibility. If IBM installs a Tier 1 CRU at your request, you will be charged for the installation. You may install a Tier 2 CRU yourself or request IBM to install it, at no additional charge, under the type of warranty service designated for your Machine. IBM specifies in the materials shipped with a replacement CRU whether a defective CRU must be returned to IBM. When return is required, 1) return instructions and a container are shipped with the replacement CRU, and 2) you may be charged for the replacement CRU if IBM does not receive the defective CRU within 30 days of your receipt of the replacement.

2. On-site Service

IBM or your reseller will either repair or exchange the failing Machine at your location and verify its operation. You must provide suitable working area to allow disassembly and reassembly of the IBM Machine. The area must be clean, well lit and suitable for the purpose. For some Machines, certain repairs may require sending the Machine to an IBM service center.

3. Courier or Depot Service*

You will disconnect the failing Machine for collection arranged by IBM. IBM will provide you with a shipping container for you to return your Machine to a designated service center. A courier will pick up your Machine and deliver it to the designated service center. Following its repair or exchange, IBM will arrange the return delivery of the Machine to your location. You are responsible for its installation and verification.

4. Customer Carry-In or Mail-In Service

You will deliver or mail as IBM specifies (prepaid unless IBM specifies otherwise) the failing Machine suitably packaged to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will make it available for your collection or, for Mail-in Service, IBM will return it to you at IBM's expense, unless IBM specifies otherwise. You are responsible for the subsequent installation and verification of the Machine.

5. CRU and On-site Service

This type of Warranty Service is a combination of Type 1 and Type 2 (see above)

6. CRU and Courier or Depot Service

This type of Warranty Service is a combination of Type 1 and Type 3 (see above)

7. CRU and Customer Carry-In or Mail-In Service

This type of Warranty Service is a combination of Type 1 and Type 4 (see above)

When a 5, 6 or 7 type of warranty service is listed, IBM will determine which type of warranty service is appropriate for the repair.

This type of service is called ThinkPad EasyServ or EasyServ in some countries.

The IBM Machine Warranty worldwide web site at http://www.ibm.com/servers/support/machine_warranties/ provides a worldwide overview of IBM's Limited Warranty for Machines, a Glossary of IBM definitions, Frequently Asked Questions (FAQs) and Support by Product (Machine) with links to Product Support pages. The IBM Statement of Limited Warranty is also available on this site in 29 languages.

To obtain warranty service contact IBM or your IBM reseller. In Canada or the United States, call 1-800-IBM-SERV (426-7378). In the EU countries, see the telephone numbers below.

EU Country Telephone List

Phone numbers are subject to change without notice. For the warranty service contact telephone number in a country subsequently added to the EU and not yet reflected in the list below, contact IBM in that country or visit the website above for a current telephone listing.

Austria -- +43-1-24592-5901	Latvia -- +386-61-1796-699
Belgium -- + 32-70-23-3392	Lithuania -- +386-61-1796-699
Cyprus -- +357-22-841100	Luxembourg -- +352-298-977-5063
Czech Republic -- +420-2-7213-1316	Malta -- +356-23-4175
Denmark -- +45-4520-8200	Netherlands -- +31-20-514-5770
Estonia -- +386-61-1796-699	Poland -- +48-22-878-6999
Finland -- +358-8001-4260	Portugal -- +351-21-892-7147
France -- +33-238-557-450	Slovakia -- +421-2-4954-1217
Germany -- +49-1805-253553	Slovenia -- +386-1-4796-699
Greece -- +30-210-680-1700	Spain -- +34-91-714-7983
Hungary -- +36-1-382-5720	Sweden -- +46-8-477-4420
Ireland -- +353-1-815-4000	United Kingdom -- +44-1475-555-055
Italy -- +39-800-820-094	

10) IBM International Program License Agreement

International Program License Agreement

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.

"Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of Your eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide You with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of the IBM International Passport Advantage Agreement, the terms of the latter agreement prevail.

1. Entitlement

License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when you lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

Program Transfer

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

2. Charges

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

3. Limited Warranty

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

IBM provides You with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Guide for further information at <http://www.ibm.com/software/support>. IBM will maintain this information for at least one year after the original licensee acquires the Program ("Warranty Period").

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, You may return the Program and its PoE to the party (either IBM or its reseller) from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

4. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1. LOSS OF, OR DAMAGE TO, DATA;
2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

5. General

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
3. You agree to comply with all applicable export and import laws and regulations.
4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).
5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

6. Governing Law, Jurisdiction, and Arbitration

Governing Law

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

IBM International Program License Agreement

Part 2 - Country-unique Terms

AMERICAS

ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6): *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6): *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

CANADA: Limitation of Liability (Section 4): *The following replaces item 1 in the first paragraph of this section:*

1) damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence; and

General (Section 5): *The following replaces item 7:*

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable."

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*
the laws in the Province of Ontario"

PERU: Limitation of Liability (Section 4): *The following is added at the end of this section:*

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

UNITED STATES OF AMERICA: General (Section 5): *The following is added to this section:*

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

ASIA PACIFIC

AUSTRALIA: Limited Warranty (Section 3): *The following is added:*

The warranties specified this Section are in addition to any rights You may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability (Section 4): *The following is added :*

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State or Territory in which the You acquired the Program license

CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

The following is added to this section:

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of Hong Kong Special Administrative Region of China

INDIA: Limitation of Liability (Section 4): *The following replaces the terms of items 1 and 2 of the first paragraph:*

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

General (Section 5): *The following replaces the terms of item 5:*

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The following is added to this section:*

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

JAPAN: General (Section 5): *The following is inserted after item 5:*

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA: Limitation of Liability (Section 4): *The word "SPECIAL" in item 2 of the third paragraph is deleted:*

NEW ZEALAND: Limited Warranty (Section 3): *The following is added:*

The warranties specified in this Section are in addition to any rights You may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if You require the goods for the purposes of a business as defined in that Act.

Limitation of Liability (Section 4): *The following is added:*

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2): *The following is added:*

All banking charges incurred in the People's Republic of China will be borne by You and those incurred outside the People's Republic of China will be borne by IBM.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America (except when local law requires otherwise)

PHILIPPINES: Limitation of Liability (Section 4): *The following replaces the terms of item 2 of the third paragraph:*

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

Governing Law, Jurisdiction, and Arbitration (Section 6): *The following is added to this section:*

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

SINGAPORE: Limitation of Liability (Section 4): *The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.*

General (Section 5): *The following replaces the terms of item 7:*

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

TAIWAN: Limited Warranty (Section 3): The last paragraph is deleted.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

Limited Warranty (Section 3): *In the European Union, the following is added:*

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the Limited Warranty provision set out above at section 3 of this Agreement. The territorial scope of the Limited Warranty is worldwide.

Limitation of Liability (Section 4): *In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Limitation of Liability (Section 4): *In France and Belgium, the following replaces the terms of this section in its entirety.*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Governing Law, Jurisdiction, and Arbitration (Section 6)

Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by: 1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia; 2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna; 3) "the laws of Finland" in Estonia, Latvia, and Lithuania; 4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and 5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

Jurisdiction

The following exceptions are added to this section:

1) In **Austria** the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe** all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) in **Belgium and Luxembourg**, all disputes arising out of this Agreement or related to its interpretation or its execution, the law, and the courts of the capital city, of the country of Your registered office and/or commercial site location only are competent; 4) in **France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna** all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) in **Russia**, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow; 6) in **South Africa, Namibia, Lesotho and Swaziland**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg; 7) in **Turkey** all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for **Greece**, b) Tel Aviv-Jaffa for **Israel**, c) Milan for **Italy**, d) Lisbon for **Portugal**, and e) Madrid for **Spain**; and 9) in the **United Kingdom**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

Arbitration

In **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia** all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In **Estonia, Latvia and Lithuania** all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

AUSTRIA: Limited Warranty (Section 3): *The following is inserted at the beginning of this Section:*

The Warranty Period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for a Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

The final two paragraphs are replaced with the following:

This is our sole obligation to You, except as otherwise required by applicable statutory law.

General (Section 5): *The following is added to item 4:*

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

GERMANY: Limited Warranty (Section 3): *The same changes apply as those in Limited Warranty (Section 3) under Austria above.*

Limitation of Liability (Section 4): *The following paragraph is added to this Section:*

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

General (Section 5): *The following replace the terms of item 5:*

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3 (Limited Warranty) of this Agreement.

HUNGARY: Limitation of Liability (Section 4): *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: Limited Warranty (Section 3): *The following is added to this section:*

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing, all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

Limitation of Liability (Section 4): *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.
2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) €125,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

ITALY: General (Section 5): *The following is added to this section:*

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

SLOVAKIA: Limitation of Liability (Section 4): *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

General (Section 5): *The terms of item 5 are replaced with the following:*

THE PARTIES AGREE THAT, AS DEFINED BY APPLICABLE LOCAL LAW, ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER THAN FOUR YEARS FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND: Limited Warranty (Section 3): *The following is added at the end of the first paragraph:*

notwithstanding any advice or assistance that IBM may have given to You prior to the selection of such Programs.

SWITZERLAND: General (Section 5): *The following is added to item 4:*

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

UNITED KINGDOM: Limited Warranty (Section 3): *The following replaces the first sentence in the fourth paragraph of this section:*

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Liability (Section 4): *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for:

(a) death or personal injury caused by the negligence of IBM;

(b) any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section; and

(c) subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) £75,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
4. loss of profits, business, revenue, goodwill, or anticipated savings.

11) Microsoft

MS 2003 Server

CAL Eula

MS SQL Server 2005

END-USER LICENSE AGREEMENT FOR MICROSOFT SOFTWARE

MICROSOFT WINDOWS SERVER 2003, STANDARD EDITION MICROSOFT WINDOWS SERVER 2003, ENTERPRISE EDITION

PLEASE READ THIS END-USER LICENSE AGREEMENT ("EULA") CAREFULLY. BY INSTALLING OR USING THE SOFTWARE THAT ACCOMPANIES THIS EULA ("SOFTWARE"), YOU AGREE TO THE TERMS OF THIS EULA. IF YOU DO NOT AGREE, DO NOT USE THE SOFTWARE AND, IF APPLICABLE, RETURN IT TO THE PLACE OF PURCHASE FOR A FULL REFUND.

THIS SOFTWARE DOES NOT TRANSMIT ANY PERSONALLY IDENTIFIABLE INFORMATION FROM YOUR SERVER TO MICROSOFT COMPUTER SYSTEMS WITHOUT YOUR CONSENT.

1. **GENERAL.** This EULA is a legal agreement between you (either an individual or a single entity) and Microsoft Corporation ("Microsoft"). This EULA governs the Software, which includes computer software (including online and electronic documentation) and any associated media and printed materials. This EULA applies to updates, supplements, add-on components, and Internet-based services components of the Software that Microsoft may provide or make available to you unless Microsoft provides other terms with the update, supplement, add-on component, or Internet-based services component. Microsoft reserves the right to discontinue any Internet-based services provided to you or made available to you through the use of the Software. This EULA also governs any product support services relating to the Software except as may be included in another agreement between you and Microsoft. An amendment or addendum to this EULA may accompany the Software. The Software may contain the following:
 - "Server Software" provides services or functionality on your server (your computers capable of running the Server Software are "Servers"); and
 - "Device Software" allows a single personal computer, workstation, terminal, handheld computer, pager, telephone, personal digital assistant, or other electronic device ("Device") to access or use the Server Software.
2. **GRANT OF LICENSE.** Microsoft grants you the following rights, conditioned on your compliance with all the terms and conditions of this EULA:
 - a. **Installation, Server Software.** You may install only one copy of Server Software on a single Server, even if multiple copies of Server Software (for example, 32-bit and 64-bit versions) are included in the Software. Features supported on 32-bit and 64-bit versions, including some features mentioned in this EULA, may not be identical or available in both versions; please refer to product documentation for a list of specific features included with each version. Separate component parts of the Server Software may not be used on more than one Server. An additional license is required if you install another copy of the Server Software on the same Server (whether in a separate partition, by using server emulation software, or otherwise) or to install or run a copy of the Server Software on a different Server (for example, a Server employed for backup or fail-over support).
 - b. **Processor Rights.** You may use Microsoft Windows Server 2003, Standard Edition, with up to four CPUs of the Server at any one time, or Microsoft Windows Server 2003, Enterprise Edition, with up to eight CPUs of the Server at any one time.
 - c. **Installation, Device Software.** You may install and use the Device Software on any Device solely to access or use the Server Software.
 - d. **Mandatory Activation.** To reduce software piracy, Microsoft requires 32-bit versions of the Server Software to be activated. Microsoft will not collect any personally identifiable information from your Server or any Device during the activation process without your consent. Activation of your copy of the Software in the manner described during its setup sequence is required; otherwise, the license rights granted under this EULA are limited to the first thirty (30) days after you first install the Software. You may activate the Software through the use of the Internet or telephone; toll

charges may apply. You may also need to reactivate the Software if you modify your computer hardware or alter the Software. If you choose Internet activation, the Software will contact Microsoft computer systems over the Internet to conduct an authentication process to confirm that you have a licensed copy of the Software. You agree to allow the Software to conduct this authentication process. If you have an unlicensed copy of the Software, you are not allowed to install the Software or future Software updates. Additional information about activation is available online at the Microsoft support site.

3. **CLIENT ACCESS LICENSES ("CALs").** The Software licensing model consists of an operating system license and incremental CALs, so that the total cost for the Software scales with usage. Several CAL types and licensing modes are available to suit your individual needs.

a. **Windows Server 2003 Client Access License ("Windows CAL") Requirements.** In addition to the license for the Server Software, you must acquire a Windows CAL for each individual person ("User") or Device that accesses or uses the Server Software, whether directly or through a Multiplexing Service (defined below). For example, a Windows CAL is required for each User or Device that uses any of the following services of the Server Software:

- authentication services (when user or application credentials are exchanged between the Server Software and a User or Device),
- file services (accessing or managing files or disk storage),
- printing services (printing to a printer managed by the Server Software), or
- remote access service (accessing the Server from a remote location through a communications link, including a virtual private network).

However, you do not need to acquire a Windows CAL for any User or Device that accesses the Server Software solely through the Internet and is not authenticated or otherwise individually distinguished by the Server Software or a Multiplexing Service (for example, by browsing a public website anonymously). A "Multiplexing Service" is a software application or service accessing or using the Server Software at the request of or on behalf of a User or Device.

Further, you do not need to acquire a Windows CAL for any User or Device that has a valid Small Business Server (SBS) 2003 CAL, is accessing Server Software that is not operating as a domain controller, and is within the same Small Business Server domain.

b. **Types of Windows CALs.** Two different types of Windows CALs are available to you: "Device" and "User." Each Windows Device CAL permits one Device (used by any User) to access or use the Server Software. Each Windows User CAL permits one User (using any Device) to access or use the Server Software. You may use a mix of Windows Device CALs and Windows User CALs simultaneously with the Server Software.

c. **Windows CAL Licensing Modes.** At your option, you may use Windows CALs with the Server Software in either "Per Device or Per User" or "Per Server" mode.

- (i) In Per Device or Per User mode, a separate Windows CAL is required for each Device or User that accesses or uses Server Software on any of your Servers. If you choose Per Device or Per User mode, the choice is permanent. In this mode, you may reassign a Windows CAL from one Device to another Device, or from one User to another User, provided the reassignment is made either (A) permanently away from the one Device or User or (B) temporarily to accommodate the use of the Windows CAL by a loaner Device while a permanent Device is out of service, or the use of the Windows CAL by a temporary worker while a regular employee is absent.
- (ii) In Per Server mode, the maximum number of Devices and Users that may simultaneously access or use Server Software installed on a particular Server equals the number of Windows CALs (of either type) that you acquire and designate for use exclusively with that Server. You have the one-time right to change your use of the Server Software from Per Server mode to Per Device or Per User mode. If you do so, you may apply the same number of Windows CALs you acquired for use in Per Server mode in Per Device or Per User mode instead.

d. **Terminal Server Client Access License ("TS CAL") Requirements.** In addition to a Windows CAL, if you wish to conduct a Windows Session, you must acquire a TS CAL for each User or Device. A "Windows Session" means a session during which Server Software hosts a graphical user interface on a Device (whether via the TS component of the Server Software or via other technology).

- e. **Types of TS CALs; TS CAL Licensing Modes.** Similar to Windows CALs, two different TS CALs are available to you: "Device" and "User." Each TS Device CAL permits one Device (used by any User) to conduct Windows Sessions on any of your Servers. Each TS User CAL permits one User (using any Device) to conduct Windows Sessions on any of your Servers. You may use a mix of TS Device CALs and TS User CALs simultaneously with the Server Software.
 - (i) In Per Device or Per User mode, a separate TS CAL is required for each Device or User that accesses or uses Server Software on any of your Servers. You may reassign a TS CAL from one Device to another Device, or from one User to another User, provided the reassignment is made either (A) permanently away from the one Device or User or (B) temporarily to accommodate the use of the TS CAL by a loaner Device while a permanent Device is out of service, or the use of the TS CAL by a temporary worker while a regular employee is absent.
 - (ii) Windows Sessions are not allowed in Per Server mode.
- f. **Premium Windows Server Services.** Microsoft may subsequently create new software functionality ("Premium Services") that you may wish to use with this version of the Software. To make these Premium Services available to you for use with this version of the Software, Microsoft may provide them under additional license terms and may charge additional access license fees for you to install and use them, if you choose.
- g. **Additional CAL Requirements.**
 - (i) **Single Licensee.** Windows CALs, TS CALs, and any future Premium Services CALs that you acquire may not be used in conjunction with Server Software licensed to anyone other than you.
 - (ii) **Version Matching.** Each required CAL must be version Windows Server 2003 or a later version.
 - (iii) **Administration.** Up to two Users or Devices may simultaneously access or use the Server Software solely for administration of the Server Software, without acquiring any CALs. You do not need a TS CAL when attaching to or mirroring the single Console Session. The "Console Session" is the Windows Session that is conducted through the designated primary keyboard and display device (or similar peripherals).

4. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

- a. **Other Licenses.** Your use of software applications installed on the Server, accessed through the Server, or providing application-sharing functionality may require additional licenses. Please consult the license agreement accompanying such software.
- b. **Component Data Storage.** The 32-bit version of the Software contains components that use the data storage technology known as Microsoft SQL Server Desktop Engine ("MSDE"). All copies and instances of MSDE contained in or installed by those Software components may be used only by those Software components. Any such copy or instance of MSDE may not be accessed or used for any other purpose. For example, applications may not be created or run on the Software if they access or use the services or functionality of any copy or instance of MSDE contained in or installed by those Software components. In addition, any MSDE network library files that are disabled at the time you first install the Software may not be re-enabled.
- c. **Automatic Internet-Based Services.** The Software features described below are enabled by default to connect via the Internet to Microsoft computer systems automatically, without separate notice to you. You consent to the operation of these features, unless you choose to switch them off or not use them. Microsoft does not obtain personally identifiable information through any of these features. For more information about these features, please see your Software documentation or the Microsoft online support site.
 - (i) **Windows Update Features.** Under the Software's default configuration, if you connect a device to your Server and the correct device driver is not available on your Server, then Windows Update features on your Server (including Device Manager and the Plug & Play CDM Module) automatically attempt to check Microsoft computer systems via the Internet for the correct device driver. Having this happen automatically makes Plug-and-Play installation of new hardware a better experience for customers. You may switch off Windows Update's automatic driver checking feature.
 - (ii) **Web Content Features.** Under the Software's default configuration, if you are connected to the Internet, several features of the Software are enabled by default to retrieve content from Microsoft computer systems and display it to you. When you activate such a feature, it uses standard Internet protocols, which transmit the type of operating system, browser and language code of your Server to the Microsoft computer system so that the content can be

viewed properly from your Server. These features only operate when you activate them, and you may choose to switch them off or not use them. Examples of these features include Windows Catalog, Search Assistant, and the Headlines and Search features of Help and Support Center.

- (iii) *Digital Certificates.* Use of certificates based on the X.509 standard is an important security feature of the Software. Certain functions of the X.509 implementation (for example, certificate revocation checking and certificate path building) connect via the Internet to computer systems belonging to Microsoft and other digital certificate authorities to check the validity of digital certificates that you receive from third parties during certain Internet-based operations (for example, communications secured with SSL or IPsec, mail secured with S/MIME, and smartcard authentication). In accordance with the X.509 standard, the Software automatically retrieves user certificates and certificate revocation lists when you attempt to access certificate protected content. Additionally, the Software's Auto Root Update feature will occasionally update the list of trusted certificate authorities. Auto Root Update is an optional feature; you can uninstall it if you do not desire it to function. The other security operations based on the X.509 standard can be prevented from operating by blocking Server Internet access.
 - (iv) *Windows Media Digital Rights Management.* Content providers are using the digital rights management technology for Windows Media contained in this Software ("WM-DRM") to protect the integrity of their content ("Secure Content") so that their intellectual property, including copyright, in such content is not misappropriated. Portions of this Software and third party applications such as media players use WM-DRM to play Secure Content ("WM-DRM Software"). If the WM-DRM Software's security has been compromised, owners of Secure Content ("Secure Content Owners") may request that Microsoft revoke the WM-DRM Software's right to copy, display and/or play Secure Content. Revocation does not alter the WM-DRM Software's ability to play unprotected content. A list of revoked WM-DRM Software is sent to your computer whenever you download a license for Secure Content from the Internet. Microsoft may, in conjunction with such license, also download revocation lists onto your computer on behalf of Secure Content Owners. Secure Content Owners may also require you to upgrade some of the WM-DRM components in this Software ("WM-DRM Upgrades") before accessing their content. When you attempt to play such content, WM-DRM Software built by Microsoft will notify you that a WM-DRM Upgrade is required and then ask for your consent before the WM-DRM Upgrade is downloaded. WM-DRM Software built by third parties may do the same. If you decline the upgrade, you will not be able to access content that requires the WM-DRM Upgrade; however, you will still be able to access unprotected content and Secure Content that does not require the upgrade. WM-DRM features that access the Internet, such as acquiring new licenses and/or performing a required WM-DRM Upgrade, can be switched off. When these features are switched off, you will still be able to play Secure Content if you have a valid license for such content already stored on your computer.
 - (v) *Windows Media Player.* Some features of Windows Media Player automatically contact Microsoft computer systems if you use Windows Media Player or specific features of it: features that (A) check for new codecs if your Server does not have the correct ones for content you attempt to play (this feature may be switched off), and (B) check for new versions of Windows Media Player (this feature will operate only when you are using Windows Media Player).
- d. *Benchmark Testing.* The 32-bit version of the Software contain the Microsoft .NET Framework. Disclosure of the results of any benchmark test of the .NET Framework component of the Software to any third party without Microsoft's prior written approval is prohibited.
- e. *Reservation of Rights; Other Restrictions.* The Software is protected by copyright and other intellectual property laws and treaties. Microsoft or its suppliers own the title, copyright, and other intellectual property rights in the Software. The Software is licensed, not sold. Microsoft reserves all rights not expressly granted to you in this EULA. Notwithstanding any other provision in this EULA, neither this EULA nor any CAL grants a license, under any Microsoft intellectual property, to implement any functionality contained in the Software (including without limitation communication protocols used by the Software) in any software installed on a Device accessing or utilizing the Server Software. Reverse engineering, decompiling, or disassembling the Software is prohibited, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Renting, leasing, or lending the Software (including providing commercial hosting services) is also prohibited.
5. **PRODUCT SUPPORT SERVICES**
- a. *Rights and Obligations.* Microsoft may provide you with product support services related to the Software. Use of any such support services is governed by the Microsoft policies and programs described in the user manual, in online

documentation, on Microsoft's support webpage, or in other Microsoft-provided materials. Any software Microsoft may provide you as part of support services are governed by this EULA, unless separate terms are provided. This EULA does not obligate Microsoft to provide any support services or to support any software provided as part of those services.

- b. **Consent to Use of Data.** You agree that Microsoft and its affiliates and use technical information gathered as part of the support services provided to you, if any, related to the Software. Microsoft may use this information solely to improve our products or to provide customized services or technologies to you and will not disclose this information in a form that personally identifies you.
6. **LINKS TO THIRD PARTY INTERNET SITES.** You may link to third party Internet sites through the use of the Software. Microsoft does not control the third party sites, and Microsoft is not responsible for the contents of any third party sites, any links contained in third party sites, or any changes or updates to third party sites. Microsoft is not responsible for web-casting or any other form of transmission received from any third party sites. Microsoft is providing you these links to third party sites to you only as a convenience, and the inclusion of any link does not imply an endorsement by Microsoft of the third party site.
7. **UPGRADES/DOWNGRADES**
 - a. **Software upgrades generally.** To use Software identified as an upgrade by Microsoft, it is required that you be licensed for the software identified by Microsoft as eligible for the upgrade. After upgrading, the software that formed the basis for your upgrade eligibility may no longer be used. The resulting upgraded Software may be used only in accordance with the terms of this EULA.
 - b. **Software upgrades for a component of Microsoft BackOffice Server ("BackOffice Server").** To use any Software as an upgrade to a component of BackOffice Server, then the requirements of this paragraph apply in addition to those in the paragraph above. If you upgrade to the Software from BackOffice Server, the remaining components may only be used in accordance with the terms of the Microsoft End User License Agreement that accompanied BackOffice Server. After an upgrade of BackOffice Server, all Software must run on the same Server on which BackOffice Server is installed, unless the upgrade is an Enterprise Edition, in which case you may use the Software as stand-alone software in accordance with the terms of this EULA.
 - c. **Software downgrades.** Instead of installing and using the Server Software, you may install and use one copy of an earlier version of the Server Software on a single Server, provided that such earlier version is no earlier than Windows NT version 4.0, and that you completely remove such earlier version and install the Server Software within a reasonable time. Your use of such earlier version shall be governed by this EULA, where applicable, and your rights to use such earlier version shall terminate when you install the current version of Server Software.
 - d. **CAL downgrades.** You may use Windows Device CALs and Windows User CALs with an earlier version of the Software in accordance with the terms of this EULA. You may use TS Device CALs, but due to technical incompatibilities not TS User CALs, with earlier versions of the Software in accordance with the terms of this EULA.
8. **NOT FOR RESALE SOFTWARE.** Software identified as "Not for Resale" or "NFR," may not be sold or otherwise transferred for value or used for any purpose other than demonstration, test or evaluation.
9. **ACADEMIC EDITION SOFTWARE.** To use Software identified as "Academic Edition" or "AE," you must be a "Qualified Educational User." For qualification-related questions, please contact the Microsoft Sales Information Center/One Microsoft Way/Redmond, WA 98052-6399 or the Microsoft subsidiary serving your country.
10. **EXPORT RESTRICTIONS.** You acknowledge that the Software is subject to U.S. export jurisdiction. You agree to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments. For additional information see <http://www.microsoft.com/exporting/>.
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Si une garantie ou condition implicite est créée par votre État ou votre territoire et qu'une loi fédérale ou provinciale ou État en interdit le déni, vous jouissez également d'une garantie ou condition implicite, MAIS UNIQUEMENT POUR LES DÉFAUTS DÉCOUVERTS DURANT LA PÉRIODE DE LA PRÉSENTE

GARANTIE

LIMITÉE (QUATRE-VINGT-DIX JOURS). IL N'Y A AUCUNE GARANTIE OU CONDITION DE QUELQUE NATURE QUE CE SOIT QUANT AUX DÉFAUTS DÉCOUVERTS

APRÈS CETTE PÉRIODE DE QUATRE-VINGT-DIX JOURS. Certains États ou territoires ne permettent pas de limiter la durée d'une garantie ou condition implicite

de sorte que la limitation ci-dessus peut ne pas s'appliquer à vous.

Tous les suppléments ou toutes les mises à jour relatifs au Produit, notamment, les ensembles de services ou les réparations à chaud (le cas échéant) qui vous sont fournis après l'expiration de la période de quatre-vingt-dix jours de la garantie limitée ne sont pas couverts par quelque garantie ou condition que ce soit, expresse ou implicite.

LIMITATION DES RECOURS; ABSENCE DE DOMMAGES INDIRECTS OU AUTRES. Votre recours exclusif pour toute violation de la présente garantie limitée est

décrété ci-après. Sauf pour tout remboursement au choix de Microsoft, si le Produit ne respecte pas la garantie limitée de Microsoft et, dans la mesure

maximale permise par les lois applicables, même si tout recours n'atteint pas son but essentiel, VOUS N'AVEZ DROIT À AUCUNS DOMMAGES,

NOTAMMENT

DES DOMMAGES INDIRECTS. Les modalités de la clause «Exclusion des dommages accessoires, indirects et de certains autres dommages » sont également

intégrées à la présente garantie limitée. Certains États ou territoires ne permettent pas l'exclusion ou la limitation des dommages indirects ou accessoires de sorte que la limitation ou l'exclusion ci-dessus peut ne pas s'appliquer à vous. La présente garantie limitée vous donne des droits légaux spécifiques. Vous pouvez avoir d'autres droits qui peuvent varier d'un territoire ou d'un État à un autre. **VOTRE RECOURS EXCLUSIF.** L'obligation intégrale de Microsoft et de ses

fournisseurs et votre recours exclusif seront, selon le choix de Microsoft de temps à autre sous réserve de toute loi applicable, a) le remboursement du prix payé, le cas échéant, pour le Produit ou b) la réparation ou le remplacement du Produit qui ne respecte pas la présente garantie limitée et qui est retourné à Microsoft avec une copie de votre reçu. Vous recevrez la compensation choisie par Microsoft, sans frais, sauf que vous êtes responsable des dépenses que vous pourriez engager (p. ex., les frais d'envoi du Produit à Microsoft). La présente garantie limitée est nulle si la défectuosité du Produit est causée par un accident, un usage abusif, une mauvaise application, un usage anormal ou un virus. Tout Produit de remplacement sera garanti pour le reste de la période de garantie initiale ou pendant trente (30) jours, selon la plus longue entre ces deux périodes. À l'extérieur des États-Unis ou du Canada, ces recours ou l'un quelconque des services de soutien technique offerts par Microsoft ne sont pas disponibles sans preuve d'achat d'une source internationale autorisée. Pour exercer votre recours, vous devez communiquer avec Microsoft et vous adresser au Microsoft Sales Information Center/One Microsoft Way/Redmond, WA 98052-6399, ou à la filiale de Microsoft de votre pays.

DÉNI DE GARANTIES. Dans la mesure maximale permise par les lois applicables, Microsoft et ses fournisseurs fournissent la présente LAC TELLE QU'ELLE AVEC TOUS LES DÉFAUTS et par les présentes dénie toutes autres garanties et conditions expresses, implicites ou en vertu de la loi, notamment (le cas échéant) les garanties ou conditions implicites de qualité marchande, d'adaptation à un usage particulier, d'exactitude ou d'exhaustivité des réponses, des résultats, des efforts déployés selon les règles de l'art, d'absence de virus et de négligence, le tout relativement à la LAC. **DE PLUS, IL N'Y A AUCUNE GARANTIE**

OU CONDITION QUANT AU TITRE DE PROPRIÉTÉ, À LA JOUISSANCE OU LA POSSESSION PAISIBLE, À LA CONCORDANCE À UNE DESCRIPTION NI QUANT À UNE

ABSENCE DE CONTREFAÇON RELATIVEMENT À LA LAC.

EXCLUSION DES DOMMAGES ACCESSOIRES, INDIRECTS ET DE CERTAINS AUTRES DOMMAGES. DANS LA MESURE MAXIMALE PERMISE PAR

LES LOIS APPLICABLES, EN AUCUN CAS MICROSOFT OU SES FOURNISSEURS NE SERONT RESPONSABLES DES DOMMAGES SPÉCIAUX

CONSÉCUTIFS, ACCESSOIRES OU INDIRECTS DE QUELQUE NATURE QUE CE SOIT (NOTAMMENT LES DOMMAGES À L'ÉGARD DU MANQUE À

GAGNER OU DE LA DIVULGATION DE RENSEIGNEMENTS CONFIDENTIELS OU AUTRES, DE LA PERTE D'EXPLOITATION, DE BLESSURES

CORPORELLES, DE LA VIOLATION DE LA VIE PRIVÉE, DE L'OMISSION DE REMPLIR TOUT DEVOIR, Y COMPRIS D'AGIR DE BONNE FOI OU

D'EXERCER UN SOIN RAISONNABLE, DE LA NÉGLIGENCE ET DE TOUTE AUTRE PERTE PÉCUNIAIRE OU AUTRE PERTE DE QUELQUE NATURE

QUE CE SOIT SE RAPPORTANT DE QUELQUE MANIÈRE QUE CE SOIT À L'UTILISATION DE LA LAC OU À L'INCAPACITÉ DE S'EN SERVIR, OU

AUTREMENT AUX TERMES DE TOUTE DISPOSITION DE LA PRÉSENTE LAC OU RELATIVEMENT À UNE TELLE DISPOSITION, MÊME EN CAS DE

FAUTE, DE DÉLIT CIVIL (Y COMPRIS LA NÉGLIGENCE), DE RESPONSABILITÉ STRICTE, DE VIOLATION DE CONTRAT OU DE VIOLATION DE

GARANTIE DE MICROSOFT OU DE TOUT FOURNISSEUR ET MÊME SI MICROSOFT OU TOUT FOURNISSEUR A ÉTÉ AVISÉ DE LA POSSIBILITÉ DE

TELS DOMMAGES.

LIMITATION DE RESPONSABILITÉ ET RECOURS. Malgré les dommages que vous puissiez subir pour quelque motif que ce soit (notamment tous les dommages

susmentionnés et tous les dommages directs ou généraux), l'obligation intégrale de Microsoft et de l'un ou l'autre de ses fournisseurs aux termes de toute disposition de la présente LAC et votre recours exclusif à l'égard de tout ce qui précède se limite au plus élevé entre les montants suivants : le montant que vous avez réellement payé pour la LAC ou 5,00 \$US. Les limites, exclusions et dénis qui précèdent (y compris les clauses ci-dessus) s'appliquent dans la mesure maximale permise par les lois applicables, même si un recours n'atteint pas son but essentiel.

La présente Convention est régie par les lois de la province d'Ontario, Canada. Chacune des parties à la présente reconnaît irrévocablement la compétence des tribunaux de la province d'Ontario et consent à instituer tout litige qui pourrait découler de la présente auprès des tribunaux situés dans le district judiciaire de York, province d'Ontario.

Au cas où vous auriez des questions concernant cette licence ou que vous désiriez vous mettre en rapport avec Microsoft pour quelque raison que ce soit, veuillez contacter la succursale Microsoft desservant votre pays, dont l'adresse est fournie dans ce produit, ou écrivez à : Microsoft Sales Information Center, One Microsoft Way, Redmond, Washington 98052-6399.

THIS LICENSE IS VALID ONLY WHEN DISTRIBUTED WITH MICROSOFT SOFTWARE OR AS PART OF A MICROSOFT LICENSE PACK. PLEASE E-MAIL PIRACY@MICROSOFT.COM OR CALL YOUR LOCAL MICROSOFT OFFICE IF YOU HAVE ANY QUESTIONS.

0603 Part No. X09-84991

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____USERS____DEVICES

Please select the number of SQL Server User CALs and SQL Server Device CALs (which together may not exceed the total number of licenses

printed at the top of this page) and write them in the spaces provided above. No CALs are valid until those spaces are completed, and you may not change them once completed.

MICROSOFT LICENSE AGREEMENT

CLIENT ACCESS LICENSE FOR MICROSOFT SERVER PRODUCTS

IMPORTANT—READ CAREFULLY BEFORE ACCESSING MICROSOFT SERVER SOFTWARE: This Client Access License Agreement

("CAL") is a legal agreement between you (either an individual or a single entity) and Microsoft Corporation for the Microsoft server software identified above ("Server Software"). By accessing or otherwise utilizing the services or functionality of the Server Software, you agree to be bound by the terms of this CAL. If you do not agree to the terms of this CAL, you may return this package to the place from which you obtained it for a full refund.

1. GRANT OF LICENSE.

a. Overview of the CAL. This CAL grants a User (using any Device) or a Device (used by any User) the right to access or otherwise utilize the services of the Server Software residing on your Server, solely as described in the end-user license agreement accompanying your Server Software (the "Server EULA"). (Capitalized terms in this CAL have the same meaning as in the Server EULA unless otherwise noted.) This CAL does not entitle a User or Device to access any Server Software when it is a component of Microsoft BackOffice Small Business Server.

b. Note for Microsoft BackOffice CAL. Each Microsoft BackOffice CAL entitles you to access or utilize the services or functionality of any computer running any Server Software component of the Microsoft BackOffice product suite.

2. UPGRADES. To use a CAL identified as an upgrade, you must first be licensed for the product identified by Microsoft as eligible for the upgrade. To determine your upgrade eligibility, please contact the Microsoft Sales Information Center/One Microsoft Way/Redmond, WA 98052-6399 or the Microsoft subsidiary serving your country. After upgrading, you may no longer use the product that formed the basis for your upgrade eligibility. If this CAL is an "Upgrade" from a Microsoft BackOffice Small Business Server CAL, you may continue to use the Microsoft BackOffice Small Business Server CAL to access only the remaining server software component(s) of Microsoft BackOffice Small Business Server that you have not upgraded.

3. TRANSFER. You may make a one-time permanent transfer of a CAL to another of your Devices or Users. Transfer to Third Party. The initial end user of the CAL may make a one-time permanent transfer to another third-party end user. The transfer may not be an indirect transfer, such as a consignment. The recipient of this transfer must agree to comply with the terms of this CAL, including the obligation not to further transfer this CAL. No Rental. You may not rent, lease, or lend the CAL.

4. TERMINATION. Without prejudice to any other rights, Microsoft may terminate this CAL if you fail to comply with the terms and conditions herein. In such event, you must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.

5. NOT FOR RESALE SOFTWARE. CALs identified as "Not for Resale" or "NFR" may not be resold, transferred, or used for any purpose other than demonstration, test, or evaluation.

6. ACADEMIC EDITION SOFTWARE. CALs identified as "Academic Edition" or "AE," must be used only by a "Qualified Educational User." If you are not a Qualified Educational User, you have no rights under this EULA. To determine whether you are a Qualified Educational User, please contact the Microsoft Sales Information Center/One Microsoft Way/Redmond, WA 98052-6399 or the Microsoft subsidiary serving your country.

LIMITED WARRANTY

LIMITED WARRANTY. For the Limited Warranty pertaining to the Product (including the Server Software), please refer to the Server EULA.

8. DISCLAIMER OF WARRANTIES. To the maximum extent permitted by applicable law, Microsoft and its suppliers provide this CAL AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties, duties, and conditions, either express, implied, or statutory, including, but not limited to, any (if any) implied warranties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the CAL. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET

ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, OR NON-INFRINGEMENT WITH REGARD TO THE CAL.

9. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL, AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE

LAW, IN NO EVENT SHALL MICROSOFT OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL

DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY

INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE CAL, OR OTHERWISE UNDER OR IN

CONNECTION WITH ANY PROVISION OF THIS CAL, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY,

BREACH OF CONTRACT, OR BREACH OF WARRANTY OF MICROSOFT OR ANY SUPPLIER, AND EVEN IF MICROSOFT OR ANY SUPPLIER HAS

BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. LIMITATION OF LIABILITY AND REMEDIES. Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all

damages referenced above and all direct or general damages), the entire liability of Microsoft and any of its suppliers under any provision of this CAL and your exclusive remedy for all of the foregoing shall be limited to the greater of the amount actually paid by you for the CAL or U.S.\$5.00. The foregoing

limitations, exclusions, and disclaimers (including Sections 8 and 9 above) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

11. APPLICABLE LAW. If you acquired this CAL in the United States, this CAL is governed by the laws of the State of Washington. If you acquired this CAL in Canada, unless expressly prohibited by local law, this CAL is governed by the laws in force in the Province of Ontario, Canada; and, in respect of any dispute which may arise hereunder, you consent to the jurisdiction of the federal and provincial courts sitting in Toronto, Ontario. If this CAL was acquired outside the United States, then local law may apply.

12. ENTIRE AGREEMENT. This CAL (including any addendum or amendment to this CAL which is included with the CAL) are the entire agreement between you

and Microsoft relating to the CAL and they supersede all prior or contemporaneous oral or written communications, proposals, and representations with respect to the CAL or any other subject matter covered by this CAL.

Si vous avez acquis votre produit Microsoft au CANADA, la garantie limitée suivante vous concerne :

GARANTIE LIMITÉE

Microsoft garantit que le Produit fonctionnera conformément aux documents inclus pendant une période de 90 jours suivant la date de réception.

Si une garantie ou condition implicite est créée par votre État ou votre territoire et qu'une loi fédérale ou provinciale ou État en interdit le déni, vous jouissez également d'une garantie ou condition implicite, MAIS UNIQUEMENT POUR LES DÉFAUTS DÉCOUVERTS DURANT LA PÉRIODE DE LA PRÉSENTE GARANTIE

LIMITÉE (QUATRE-VINGT-DIX JOURS). IL N'Y A AUCUNE GARANTIE OU CONDITION DE QUELQUE NATURE QUE CE SOIT QUANT AUX DÉFAUTS DÉCOUVERTS

APRÈS CETTE PÉRIODE DE QUATRE-VINGT-DIX JOURS. Certains États ou territoires ne permettent pas de limiter la durée d'une garantie ou condition implicite

de sorte que la limitation ci-dessus peut ne pas s'appliquer à vous.

Tous les suppléments ou toutes les mises à jour relatifs au Produit, notamment, les ensembles de services ou les réparations à chaud (le cas échéant) qui vous sont fournis après l'expiration de la période de quatre-vingt-dix jours de la garantie limitée ne sont pas couverts par quelque garantie ou condition que ce soit, expresse ou implicite.

LIMITATION DES RECOURS; ABSENCE DE DOMMAGES INDIRECTS OU AUTRES. Votre recours exclusif pour toute violation de la présente garantie limitée est

décrit ci-après. Sauf pour tout remboursement au choix de Microsoft, si le Produit ne respecte pas la garantie limitée de Microsoft et, dans la mesure maximale permise par les lois applicables, même si tout recours n'atteint pas son but essentiel, VOUS N'AVEZ DROIT À AUCUNS DOMMAGES,

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DES DOMMAGES INDIRECTS. Les modalités de la clause «Exclusion des dommages accessoires, indirects et de certains autres dommages » sont également

intégrées à la présente garantie limitée. Certains États ou territoires ne permettent pas l'exclusion ou la limitation des dommages indirects ou accessoires de sorte que la limitation ou l'exclusion ci-dessus peut ne pas s'appliquer à vous. La présente garantie limitée vous donne des droits légaux spécifiques. Vous pouvez avoir d'autres droits qui peuvent varier d'un territoire ou d'un État à un autre. VOTRE RECOURS EXCLUSIF. L'obligation intégrale de Microsoft et de ses

fournisseurs et votre recours exclusif seront, selon le choix de Microsoft de temps à autre sous réserve de toute loi applicable, a) le remboursement du prix payé, le cas échéant, pour le Produit ou b) la réparation ou le remplacement du Produit qui ne respecte pas la présente garantie limitée et qui est retourné à Microsoft avec une copie de votre reçu. Vous recevrez la compensation choisie par Microsoft, sans frais, sauf que vous êtes responsable des dépenses que vous pourriez engager (p. ex., les frais d'envoi du Produit à Microsoft). La présente garantie limitée est nulle si la défectuosité du Produit est causée par un accident, un usage abusif, une mauvaise application, un usage anormal ou un virus. Tout Produit de remplacement sera garanti pour le reste de la période de garantie initiale ou pendant trente (30) jours, selon la plus longue entre ces deux périodes. À l'extérieur des États-Unis ou du Canada, ces recours ou l'un quelconque des services de soutien technique offerts par Microsoft ne sont pas disponibles sans preuve d'achat d'une source internationale autorisée. Pour exercer votre recours, vous devez communiquer avec Microsoft et vous adresser au Microsoft Sales Information Center/One Microsoft Way/Redmond, WA 98052-6399, ou à la filiale de Microsoft de votre pays.

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GARANTIE OU CONDITION QUANT AU TITRE DE PROPRIÉTÉ, À LA JOUISSANCE OU LA POSSESSION PAISIBLE, À LA CONCORDANCE À UNE DESCRIPTION NI QUANT À UNE

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EXCLUSION DES DOMMAGES ACCESSOIRES, INDIRECTS ET DE CERTAINS AUTRES DOMMAGES. DANS LA MESURE MAXIMALE PERMISE PAR

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QUE CE SOIT SE RAPPORTANT DE QUELQUE MANIÈRE QUE CE SOIT À L'UTILISATION DE LA LAC OU À L'INCAPACITÉ DE S'EN SERVIR, OU

AUTREMENT AUX TERMES DE TOUTE DISPOSITION DE LA PRÉSENTE LAC OU RELATIVEMENT À UNE TELLE DISPOSITION, MÊME EN CAS DE

FAUTE, DE DÉLIT CIVIL (Y COMPRIS LA NÉGLIGENCE), DE RESPONSABILITÉ STRICTE, DE VIOLATION DE CONTRAT OU DE VIOLATION DE GARANTIE DE MICROSOFT OU DE TOUT FOURNISSEUR ET MÊME SI MICROSOFT OU TOUT FOURNISSEUR A ÉTÉ AVISÉ DE LA POSSIBILITÉ DE TELS DOMMAGES.

LIMITATION DE RESPONSABILITÉ ET RECOURS. Malgré les dommages que vous puissiez subir pour quelque motif que ce soit (notamment tous les dommages

susmentionnés et tous les dommages directs ou généraux), l'obligation intégrale de Microsoft et de l'un ou l'autre de ses fournisseurs aux termes de toute disposition de la présente LAC et votre recours exclusif à l'égard de tout ce qui précède se limite au plus élevé entre les montants suivants : le montant que vous avez réellement payé pour la LAC ou 5,00 \$US. Les limites, exclusions et dénis qui précèdent (y compris les clauses ci-dessus) s'appliquent dans la mesure maximale permise par les lois applicables, même si un recours n'atteint pas son but essentiel.

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THIS LICENSE IS VALID ONLY WHEN DISTRIBUTED WITH MICROSOFT SOFTWARE OR AS PART OF A MICROSOFT LICENSE PACK. PLEASE E-MAIL PIRACY@MICROSOFT.COM OR CALL YOUR LOCAL MICROSOFT OFFICE IF YOU HAVE ANY QUESTIONS.

0603 Part No. X09-64991

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MICROSOFT SOFTWARE LICENSE TERMS

MICROSOFT SQL SERVER 2005 STANDARD EDITION

These license terms are an agreement between you and

- the server manufacturer that distributes the software with the server; or
- the software installer that distributes the software with the server.

Please read them. They apply to the software named above, which includes the media on which you received it, if any. The terms also apply to any Microsoft

- updates,
- supplements,
- Internet-based services, and
- support services

for this software, unless other terms accompany those items. If so, those terms apply. If you obtain updates or supplements directly from Microsoft, Microsoft, and not the manufacturer or installer, licenses those to you.

By using the software, you accept these terms. If you do not accept them, do not use the software. Instead, contact the manufacturer or installer to determine its return policy for a refund or credit.

Each license for the software is acquired under either the Server + Client Access License model or the Per Processor license model, and may not be changed. If you comply with these license terms you have the rights below for each software license you acquire or each server appropriately licensed, as further explained in sections 2 and 3.

OVERVIEW

Software. The software includes

- server software; and
- additional software that may only be used with the server software directly, or indirectly through other additional software.

License Models. The software is licensed based on either

- the number of instances of server software that you run and the number of devices and users that access instances of the server software (see section 2 – Terms Specific to the Server + Client Access License Model); or
- the number of physical and virtual processors used by operating system environments in which you run instances of the server software (see section 3 – Terms Specific to the Per Processor License Model).

Definitions.

- **Instance.** You create an “instance” of software by executing the software’s setup or install procedure. You also create an instance of software by duplicating an existing instance. References to software in this agreement include “instances” of the software.
- **Run an Instance.** You “run an instance” of software by loading it into memory and executing one or more of its instructions. Once running, an instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.
- **Operating System Environment.** An “operating system environment” is one instance of an operating system and instances of applications, if any, configured to run on that operating system instance. There are two types of operating system environments, physical and virtual. A physical operating system environment is configured to run directly on a physical hardware system. A virtual operating system environment is configured to run on a virtual (or otherwise emulated) hardware system. A physical hardware system can have either or both of the following
 - one physical operating system environment
 - one or more virtual operating system environments
- **Server.** A server is a physical hardware system capable of running server software. A hardware partition or blade is considered to be a separate physical hardware system.
- **Physical and Virtual Processors.** A physical processor is a processor in a physical hardware system. Physical operating system environments use physical processors. A virtual processor is a processor in a virtual (or otherwise emulated) hardware system. Virtual operating system environments use virtual processors. A virtual processor is considered to have the same number of threads and cores as each physical processor on the underlying physical hardware system.
- **Assigning a Software License.** To assign a software license means simply to designate that license to one server.

TERMS SPECIFIC TO THE SERVER + CLIENT ACCESS LICENSE MODEL.

Assignment of the License to the Server. The software license is permanently assigned to the server with which the software was distributed. If the server has multiple hardware partition(s) or blade(s), you must permanently assign that license to one of the hardware partition(s) or blade(s). That server is the licensed server for that particular license. You may assign other software licenses to the same server, but you may not assign the same license to more than one server. A hardware partition or blade is considered to be a separate server.

Running Instances of the Server Software. You may run any number of instances of the server software in one physical or virtual operating system environment on the licensed server at a time.

Running Instances of the Additional Software. You may run or otherwise use any number of instances of additional software listed below on any number of devices. You may use additional software only with the server software directly, or indirectly through other additional software.

- Analysis Services Shared Tools
- Business Intelligence Development Studio
- SQL Server 2005 Books Online
- Connectivity Components

- Legacy Components
- Management Tools
- Notification Services Client Components
- Reporting Services Report Manager
- Reporting Services Shared Tools
- SQL Server 2005 Shared Tools
- Software Development Kit
- SQLXML Client Features
- SQL Server Mobile Server Tools

Creating and Storing Instances on Your Servers or Storage Media. You have the additional rights below for each software license you acquire.

- **You may create any number of instances of the server software and additional software.**
- **You may store instances of the server software and additional software on any of your servers or storage media.**
- **You may create and store instances of the server software and additional software solely to exercise your right to run instances of the server software under any of your software licenses as described above (e.g., you may not distribute instances to third parties).**

Included Microsoft Programs. The software contains other Microsoft programs. The license terms with those programs apply to your use of them.

Client Access Licenses (CALs).

1. In addition to the software license, you must acquire the appropriate CAL for each device or user that accesses instances of the server software directly or indirectly.
 - You may not access instances of the server software under Workgroup Edition CALs.
 - You do not need a CAL for any of your servers licensed to run instances of the server software.
 - You do not need a CAL for up to two devices or users to access instances of the server software only to administer those instances.
 - Your CALs permit access to instances of earlier versions, but not later versions, of the server software.
2. Types of CALs. There are two types of CALs: one for devices and one for users. Each device CAL permits one device, used by any user, to access instances of the server software on your licensed servers. Each user CAL permits one user, using any device, to access instances of the server software on your licensed servers. You may use a combination of device and user CALs.
3. Reassignment of CALs. **You may**
 - permanently reassign your device CAL from one device to another, or your user CAL from one user to another; or
 - temporarily reassign your device CAL to a loaner device while the first device is out of service, or your user CAL to a temporary worker while the user is absent.

TERMS SPECIFIC TO THE PER PROCESSOR LICENSE MODEL.

Licensing a Server. The manufacturer or installer has determined the required number of software licenses and assigned those licenses to the server with which the software was distributed as described below.

Determining the Number of Licenses Required. The total number of software licenses required for a server equals the sum of the software licenses required under (A) and (B) below.

- A. To run instances of the server software in the physical operating system environment on a server, you need a software license for each physical processor that the physical operating system environment uses.
- B. To run instances of the server software in virtual operating system environments on a server, you need a software license for each virtual processor that each of those virtual operating system environments uses. If a virtual operating system environment uses a fraction of a virtual processor, the fraction counts as a full virtual processor.

Assignment of the Required Number of Licenses to the Server. The software license(s) are permanently assigned to the server with which the software was distributed. If the server has multiple hardware partition(s) or blade(s), you must permanently assign those licenses to one of the hardware partition(s) or blade(s). That server is the licensed server for all of those licenses. You may not assign the same license to more than one server. A hardware partition or blade is considered to be a separate server.

Running Instances of the Server Software. For each server that has been assigned the required number of software licenses, you may run, at any one time, any number of instances of the server software in physical and virtual operating system environments on the licensed server. However, the total number of physical and virtual processors used by those operating system environments cannot exceed the number of software licenses assigned to that server.

Running Instances of the Additional Software. You may run or otherwise use any number of instances of additional software listed below on any number of devices. You may use additional software only with the server software directly, or indirectly through other additional software.

- Analysis Services Shared Tools
- Business Intelligence Development Studio
- SQL Server 2005 Books Online
- Connectivity Components
- Legacy Components
- Management Tools
- Notification Services Client Components
- Reporting Services Report Manager
- Reporting Services Shared Tools
- SQL Server 2005 Shared Tools
- Software Development Kit
- SQLXML Client Features
- SQL Server Mobile Server Tools

Creating and Storing Instances on Your Servers or Storage Media. You have the additional rights below for each software license you acquire.

- **You may create any number of instances of the server software and additional software.**
- **You may store instances of the server software and additional software on any of your servers or storage media.**
- **You may create and store instances of the server software and additional software solely to exercise your right to run instances of the server software under any of your software licenses as described above (e.g., you may not distribute instances to third parties).**

Included Microsoft Programs. The Software contains other Microsoft programs. The license terms with those programs apply to your use of them.

ADDITIONAL LICENSING REQUIREMENTS AND/OR USE RIGHTS.

Multiplexing. Hardware or software you use to

- pool connections,
- reroute information,
- reduce the number of devices or users that directly access or use the software, or
- reduce the number of devices or users the software directly manages,
- (sometimes referred to as "multiplexing" or "pooling"), does not reduce the number of licenses you need.

Fail-over Rights. For any operating system environment in which you run instances of the server software, you may run up to the same number of passive fail-over instances in a separate operating system environment for temporary support. If you have licensed the server software under the Per Processor licensing model, the number of processors used in that separate operating system environment must not exceed the number of processors used in the corresponding operating system environment in which the active instances are running. You may run the passive fail-over instances on a server other than the licensed server.

No Separation of Server Software. You may not use the server software in more than one operating system environment under a single license, unless expressly permitted. This applies even if the operating system environments are on the same physical hardware system.

.NET Framework Software. The software contains Microsoft .NET Framework software. This software is part of Windows. The license terms for Windows apply to your use of the .NET Framework software.

Microsoft Operations Manager (MOM) Management Packs. The software may contain MOM Management Packs. This data is part of MOM. The license terms for MOM apply to your use of these MOM Management Packs.

Distributable Code. The software contains code that you are permitted to distribute in programs you develop if you comply with the terms below.

I. Right to Use and Distribute. The code and text files listed below are "Distributable Code."

- Sample Code. You may modify, copy, and distribute the source and object code form of code marked as "sample."
- Third-Party Distribution. You may permit distributors of your programs to copy and distribute the Distributable Code as part of those programs.

II. Distribution Requirements. For any Distributable Code you distribute, you must

- add significant primary functionality to it in your programs;
- require distributors and external end users to agree to terms that protect it at least as much as this agreement;
- display your valid copyright notice on your programs; and
- indemnify, defend, and hold harmless Microsoft from any claims, including attorneys' fees, related to the distribution or use of your programs.

III. Distribution Restrictions. You may not

- alter any copyright, trademark or patent notice in the Distributable Code;
- use Microsoft's trademarks in your programs' names or in a way that suggests your programs come from or are endorsed by Microsoft;
- distribute Distributable Code to run on a platform other than the Windows platform;
- include Distributable Code in malicious, deceptive or unlawful programs; or
- modify or distribute the source code of any Distributable Code so that any part of it becomes subject to an Excluded License. An Excluded License is one that requires, as a condition of use, modification or distribution, that

- the code be disclosed or distributed in source code form; or
- others have the right to modify it.

BENCHMARK TESTING. You must obtain Microsoft's prior written approval to disclose to a third party the results of any benchmark test of the software. However, this does not apply to the Microsoft .NET Framework (see below).

MICROSOFT .NET FRAMEWORK BENCHMARK TESTING. The software includes the .NET Framework component of the Windows operating systems ("NET Component"). You may conduct internal benchmark testing of the .NET Component. You may disclose the results of any benchmark test of the .NET Component, provided that you comply with the following terms: (1) you must disclose all the information necessary for replication of the tests, including complete and accurate details of your benchmark testing methodology, the test scripts/cases, tuning parameters applied, hardware and software platforms tested, the name and version number of any third party testing tool used to conduct the testing, and complete source code for the benchmark suite/harness that is developed by or for you and used to test both the .NET Component and the competing implementation(s); (2) you must disclose the date (s) that you conducted the benchmark tests, along with specific version information for all Microsoft software products tested, including the .NET Component; (3) your benchmark testing was performed using all performance tuning and best practice guidance set forth in the product documentation and/or on Microsoft's support web sites, and uses the latest updates, patches and fixes available for the .NET Component and the relevant Microsoft operating system; (4) it shall be sufficient if you make the disclosures provided for above at a publicly available location such as a website, so long as every public disclosure of the results of your benchmark test expressly identifies the public site containing all required disclosures; and (5) nothing in this provision shall be deemed to waive any other right that you may have to conduct benchmark testing. The foregoing obligations shall not apply to your disclosure of the results of any customized benchmark test of the .NET Component, whereby such disclosure is made under confidentiality in conjunction with a bid request by a prospective customer, such customer's application(s) are specifically tested and the results are only disclosed to such specific customer. Notwithstanding any other agreement you may have with Microsoft, if you disclose such benchmark test results, Microsoft shall have the right to disclose the results of benchmark tests it conducts of your products that compete with the .NET Component, provided it complies with the same conditions above.

SCOPE OF LICENSE. The software is licensed, not sold. This agreement only gives you some rights to use the software. The manufacturer or installer and Microsoft reserve all other rights. Unless applicable law gives you more rights despite this limitation, you may use the software only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the software that only allow you to use it in certain ways. For more information, see the software documentation. You may not

- work around any technical limitations in the software;
- reverse engineer, decompile or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;
- publish the software for others to copy;
- rent, lease or lend the software; or
- use the software for commercial software hosting services.

Rights to access the server software do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access the server.

PROOF OF LICENSE. If you acquired the software on the server, or on a disc or other media, a genuine Certificate of Authenticity label with a genuine copy of the software identifies licensed software. To be valid, this label must be affixed to the server or appear on the manufacturer's or installer's software packaging. If you receive the label separately, it is invalid. You should keep the label on the server or packaging to prove that you are licensed to use the software. To identify genuine Microsoft software, see <http://howtotell.com>.

BACKUP COPY. You may make one backup copy of the software media. You may use it only to create instances of the software.

DOCUMENTATION. Any person that has valid access to your computer or internal network may copy and use the documentation for your internal, reference purposes.

NOT FOR RESALE SOFTWARE. You may not sell software marked as "NFR" or "Not for Resale."

ACADEMIC EDITION SOFTWARE. You must be a "Qualified Educational User" to use software marked as "Academic Edition" or "AE." If you do not know whether you are a Qualified Educational User, visit www.microsoft.com/education or contact the Microsoft affiliate serving your country.

DOWNGRADE. Instead of using the software, you may use an earlier version. This agreement applies to your use of the earlier version. If the earlier version includes different components, any terms for those components in the agreement that comes with the earlier version apply to your use of them. Neither the manufacturer or installer, nor Microsoft is obligated to supply earlier versions to you. At any time, you may replace an earlier version with this version of the software.

TRANSFER TO A THIRD PARTY. The first user of the software may transfer it only with the licensed server, the Certificate of Authenticity label, this agreement, and CALs, directly to a third party. Before the transfer, that party must agree that this agreement applies to the transfer and use of the software. The first user may not retain any instances of the software unless that user also retains another license for the software.

EXPORT RESTRICTIONS. The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users, and end use. For additional information, see www.microsoft.com/exporting.

SUPPORT SERVICES. Contact the manufacturer or installer for support options. Refer to the support number provided with the software.

ENTIRE AGREEMENT. This agreement (including the warranty below), and the terms for supplements, updates, Internet-based services and support services that you use, are the entire agreement for the software and support services.

APPLICABLE LAW.

United States. If you acquired the software in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.

Outside the United States. If you acquired the software in any other country, the laws of that country apply.

LEGAL EFFECT. This agreement describes certain legal rights. You may have other rights under the laws of your state or country. You may also have rights with respect to the party from whom you acquired the software. This agreement does not change your rights under the laws of your state or country if the laws of your state or country do not permit it to do so.

LIMITATION ON AND EXCLUSION OF DAMAGES. Except for any refund the manufacturer or installer may provide, you cannot recover any other damages, including consequential, lost profits, special, indirect, or incidental damages.

This limitation applies to

- anything related to the software, services, content (including code) on third party Internet sites, or third party programs; and
- claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.
- It also applies even if
- repair, replacement or a refund for the software does not fully compensate you for any losses; or
- the manufacturer or installer, or Microsoft knew or should have known about the possibility of the damages.

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. They also may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential or other damages.

LIMITED WARRANTY

- A. **LIMITED WARRANTY.** If you follow the instructions, the software will perform substantially as described in the Microsoft materials that you receive in or with the software.
- B. **TERM OF WARRANTY; WARRANTY RECIPIENT; LENGTH OF ANY IMPLIED WARRANTIES.** The limited warranty covers the software for 90 days after acquired by the first user. If you receive supplements, updates, or replacement software during those 90 days, they will be covered for the remainder of the warranty or 30 days, whichever is longer. If the first user transfers the software, the remainder of the warranty will apply to the recipient.
- C. To the extent permitted by law, any implied warranties, guarantees, or conditions last only during the term of the limited warranty. Some states do not allow limitations on how long an implied warranty lasts, so these limitations may not apply to you. They also might not apply to you because some countries may not allow limitations on how long an implied warranty, guarantee or condition lasts.
- D. **EXCLUSIONS FROM WARRANTY.** This warranty does not cover problems caused by your acts (or failures to act), the acts of others, or events beyond the reasonable control of the manufacturer or installer, or Microsoft.
- E. **REMEDY FOR BREACH OF WARRANTY.** The manufacturer or installer will, at its election, either (i) repair or replace the software at no charge, or (ii) accept return of the software together with the server for a refund of the amount shown on your receipt for the software and the server. The manufacturer or installer may also repair or replace supplements, updates, and replacement software or provide a refund of the amount you paid for them, if any; contact the manufacturer or installer about its policy. These are your only remedies for breach of the limited warranty.
- F. **CONSUMER RIGHTS NOT AFFECTED.** You may have additional consumer rights under your local laws, which this agreement cannot change.
- G. **WARRANTY PROCEDURES.** Contact the manufacturer or installer to find out how to obtain warranty service for the software. For a refund, you must provide a copy of your receipt, the original Certificate of Authenticity label must be on the server or the software packaging, and you must comply with the manufacturer's or installer's return policies.
- H. **NO OTHER WARRANTIES.** The limited warranty is the only direct warranty from the manufacturer or installer, or Microsoft. The manufacturer or installer and Microsoft give no other express warranties, guarantees, or conditions. Where allowed by your local laws, the manufacturer or installer and Microsoft exclude implied warranties of merchantability, fitness for a particular purpose and non-infringement. If your local laws give you any implied warranties, guarantees or conditions, despite this exclusion, your remedies are described in the Remedy for Breach of Warranty clause above, to the extent permitted by your local laws.
- I. **LIMITATION ON AND EXCLUSION OF DAMAGES FOR BREACH OF WARRANTY.** The Limitation on and Exclusion of Damages clause above applies to breaches of this limited warranty.

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state. You may also have other rights which vary from country to country.

SCHEDULE 11.2(a)
City Licensed Materials

This Schedule will be periodically updated in writing by mutual agreement of the Parties.

City System Third Party Software

1. CAD (Computer Aided Dispatch)
2. HP OpenView
3. VidShield

Schedule 11.3
City Owned Materials and Hardware

City Owned Materials

1. VidShield
2. HP Open View
3. GIS DataBases

City Owned Hardware

CAMERA NUMBER:	CAMERA SITE:
1.	CONGRESS / STATE
2.	JACKSON / STATE
3.	MONROE / STATE
4.	WASHINGTON / DEARBORN
5.	WASHINGTON / CLARK
6.	RANDOLPH / STATE
7.	OAK / MICHIGAN
8.	LAKE / MICHIGAN
9.	PULASKI / FOSTER
10.	DEARBORN / ADAMS
11.	ILLINOIS / MICHIGAN
12.	OHIO / MICHIGAN
13.	ERIE / MICHIGAN
14.	SUPERIOR / MICHIGAN
15.	CHICAGO / MICHIGAN
16.	DELAWARE / MICHIGAN
17.	JACKSON / MICHIGAN
18.	MICHIGAN / MONROE
19.	CONGRESS / MICHIGAN
20.	COLUMBUS / MONROE
21.	COLUMBUS / JACKSON
22.	WENTWORTH / 39 TH
23.	39 TH / WENTWORTH
24.	RANDOLPH / MICHIGAN
25.	COLUMBUS / RANDOLPH
26.	63 RD / CICERO
27.	PRES.TWRS

CAMERA NUMBER:	CAMERA SITE:
28.	AON
29.	JACKSON / LASALLE
30.	JACKSON / CLARK
31.	MADISON / CLARK
32.	DIVISION / HALSTED
33.	HALSTED / DIVISION
34.	22 ND / STATE
35.	24 th / STATE
36.	26 th / STATE
37.	29 th / STATE
38.	31 st / STATE
39.	33 rd / STATE
40.	35 th / STATE
41.	37 th / STATE
42.	39 th / STATE
43.	41 st / STATE
44.	43 rd / STATE
45.	45 th / STATE
46.	47 th / STATE
47.	49 th / STATE
48.	51 st / STATE

City Owned System Software

None with respect to Task Order 1.

Schedule 11.4
Vendor Materials

Vendor Owned Materials

Vendor Owned Materials – Services

1. Rational Portfolio Management

Vendor Owned System Software

None

Vendor Third Party Materials

Vendor System Third Party Software

Category	Description
Networking Backhaul Software	IOS Software
Video Server Software	Central Video Management System (see chart below) Microsoft 2003 Server Microsoft SQL Server 2005

Insight Video Net

Videonet Building 3.5	Limited to 70 cameras per server
Insight-B-3.5	Video Management/Storage Software with 8 connection licenses and 2 user licenses: Includes IVS
Insight-B-70C-3.5	31 to 70 connection licenses
Insight-B-2U-3.5	1 workstation license (user license)
Insight-B-1M-3.5	1 Hardware matrix connections license
Insight-B-1G-3.5	1 Media Gateway Streaming License
Insight-B-IVS-3.5	Additional IVS server
Insight-B-VMS-3.5	Additional Virtual Matrix server
Insight-B-FOD-3.5	Failover directory server
Insight-B-70-RAS-3.5	Remote Archiver for 33-70 cameras
Insight-B-Audio-3.5	Audio
Insight-B-MAPS-3.5	Maps and Procedures option

Insight-B-OLA-3.5	Offline Archiving (back-up and restore)
Insight-B-RDA-3.5	Redundant archiving
Insight-B-CAB-3.5	Camera blocking
Insight-B-LAR-3.5	Local Archiving
Insight-B-VM-MA-3.5	Macros
Insight-B-VM-CS-3.5	Camera Sequences
Insight-B-VM-AL-3.5	Alarm Management

Schedule 11.5(a)
Critical Licensed Software

Vendor Owned Materials

Vendor Owned Materials – Services

None

Vendor Owned System Software

None

Vendor Third Party Materials

Vendor System Third Party Software

Category	Description
Networking Backhaul Software	IOS Software
Video Server Software	Central Video Management System (see chart below) Microsoft 2003 Server Microsoft SQL Server 2005

Insight Video Net

Videonet Building 3.5	Limited to 70 cameras per server
Insight-B-3.5	Video Management/Storage Software with 8 connection licenses and 2 user licenses: Includes IVS
Insight-B-70C-3.5	31 to 70 connection licenses
Insight-B-2U-3.5	1 workstation license (user license)
Insight-B-1M-3.5	1 Hardware matrix connections license
Insight-B-1G-3.5	1 Media Gateway Streaming License
Insight-B-IVS-3.5	Additional IVS server
Insight-B-VMS-3.5	Additional Virtual Matrix server
Insight-B-FOD-3.5	Failover directory server
Insight-B-70-RAS-3.5	Remote Archiver for 33-70 cameras
Insight-B-Audio-3.5	Audio
Insight-B-MAPS-3.5	Maps and Procedures option
Insight-B-OLA-3.5	Offline Archiving (back-up and restore)
Insight-B-RDA-3.5	Redundant archiving

Insight-B-CAB-3.5	Camera blocking
Insight-B-LAR-3.5	Local Archiving
Insight-B-VM-MA-3.5	Macros
Insight-B-VM-CS-3.5	Camera Sequences
Insight-B-VM-AL-3.5	Alarm Management

Date: February 14, 2006

DISCLOSURE AFFIDAVIT

Name: IBM Corporation

Address: 71 S. Wacker, Chicago, IL 60606

Telephone No.: 312-529-3828

Federal Employer I.D. #: 13-0871985 Social Security #: _____

Nature of Transaction:

- ☐ Sale or purchase of land
☐ Construction Contract
☒ Professional Services Agreement
☐ Other

Instructions: FOR USE WITH ANY OF THE ABOVE TRANSACTIONS. Any firm proposing one of the above transactions with the Public Building Commission of Chicago must complete this Disclosure Affidavit. Please note that in the event the Contractor is a joint venture, the joint venture and each of the joint venture partners must submit a completed Disclosure Affidavit.

The undersigned Robert Legatzke, as Senior Client Rep
(Name) (Title)

and on behalf of IBM Corporation
("Bidder/ Proposer" or "Contractor") having been duly sworn under oath certifies that:

I. DISCLOSURE OF OWNERSHIP INTERESTS

Pursuant to Resolution No. 5371 of the Board of Commissioners of the Public Building Commission of Chicago, all bidders/proposers shall provide the following information with their bid/proposal. If the question is not applicable, answer "NA". If the answer is none, please answer "none".

Bidder/Proposer/Contractor is a: ☒ Corporation ☐ LLC
☐ Partnership ☐ LLP
☐ Joint Venture ☐ Not-for-Profit Corporation
☐ Sole Proprietorship ☐ Other

SECTION 1.**FOR PROFIT CORPORATION OR LIMITED LIABILITY COMPANY (LLC)**

a. State of Incorporation or organization New York

b. Authorized to do business in the State of Illinois: Yes [☒] No [☐]

c. Names of all officers of corporation or LLC
(or attach list):

Names of all directors of corporation
(or attach list):

Name (Print or Type)	Title (Print or Type)	Name (Print or Type)	Title (Print or Type)
<u>See Attached List</u>	<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>	<u></u>

d. If the corporation has fewer than 100 shareholders indicate here or attach a list of names and addresses of all shareholders and the percentage interest of each.

Name (Print or Type)	Address	Ownership Interest
<u>Does Not Apply</u>	<u></u>	<u> </u> %
<u></u>	<u></u>	<u> </u> %
<u></u>	<u></u>	<u> </u> %

e. If the corporation has 100 or more shareholders, indicate here or attach a list of names and addresses of all shareholders owning shares equal to or in excess of seven and one-half percent (7.5%) of the proportionate ownership of the corporation and indicate the percentage interest of each.

Name (Print or Type)	Address	Ownership Interest
<u>None</u>	<u></u>	<u> </u> %
<u></u>	<u></u>	<u> </u> %
<u></u>	<u></u>	<u> </u> %

f. For LLC's, state whether member-managed or identify managing member:

Board of Directors and Senior Executive Officers

Board of Directors

Cathleen Black
President
Hearst Magazines

Kenneth I. Chenault
Chairman and
Chief Executive Officer
American Express Company

Juergen Dormann*
Chairman of the Board
President and
Chief Executive Officer
ABB Ltd.

Nannerl O. Keohane
President
Duke University

Charles F. Knight
Chairman of the Board
Emerson Electric Company

Minoru Makihara*
Chairman of the Board
Mitsubishi Corporation

Lucio A. Noto
Managing Partner
Midstream Partners LLC

Samuel J. Palmisano
Chairman of the Board
President and
Chief Executive Officer
IBM

John B. Slaughter
President and
Chief Executive Officer
National Action Council for
Minorities in Engineering, Inc.

Sidney Taurel
Chairman of the Board
President and
Chief Executive Officer
Eli Lilly and Company

Alex Trotman
Chairman of the Board
Imperial Chemical
Industries PLC

Charles M. Vest
President
Massachusetts Institute
of Technology

Senior Executive Officers

Nicholas M. Donofrio
Senior Vice President
Technology and
Manufacturing

Douglas T. Elix
Senior Vice President
and Group Executive
Global Services

Jesse J. Greene, Jr.
Vice President and
Treasurer

J. Bruce Harreld
Senior Vice President
Strategy

Paul M. Horn
Senior Vice President
Research

Jon C. Iwata
Senior Vice President
Communications

John R. Joyce
Senior Vice President and
Chief Financial Officer

John E. Kelly III
Senior Vice President
and Group Executive
Technology Group

Abby F. Kohnstamm
Senior Vice President
Marketing

J. Michael Lawrie
Senior Vice President
and Group Executive
Sales and Distribution

Edward M. Lineen
Senior Vice President
and General Counsel

Mark Loughridge
Senior Vice President
and General Manager
Global Financing

J. Randall MacDonald
Senior Vice President
Human Resources

Steven A. Mills
Senior Vice President
and Group Executive
Software Group

Robert W. Moffat, Jr.
Senior Vice President
Integrated Supply Chain

Daniel E. O'Donnell
Vice President
Assistant General Counsel
and Secretary

Samuel J. Palmisano
Chairman of the Board
President and
Chief Executive Officer

Linda S. Sanford
Senior Vice President
Enterprise On Demand
Transformation and
Information Technology

Stephen M. Ward, Jr.
Senior Vice President
and General Manager
Personal Systems Group

Robert F. Woods
Vice President and
Controller

William M. Zeitler
Senior Vice President
and Group Executive
Systems Group

g. For LLC's identify each member:

Name (Print or Type)	Address	Ownership Interest
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %

h. Is the corporation or LLC owned partially or completely by one or more other corporations or legal entities?

Yes [] No [X]

If "yes" provide the above information, as applicable, for each such corporation or entity.

SECTION 2. PARTNERSHIPS

a. If the bidder/proposer or Contractor is a partnership, indicate the name of each partner and the percentage of interest of each therein. Also indicate, if applicable, whether general partner (GP) or limited partner (LP)

Name of Partners (Print or Type)	Percentage Interest
Not Applicable _____	_____ %
_____	_____ %
_____	_____ %

SECTION 3. SOLE PROPRIETORSHIP

a. The bidder/proposer or Contractor is a sole proprietorship and is not acting in any representative capacity on behalf of any beneficiary: Yes [] No [X]
If NO, complete items b. and c. of this Section 3.

b. If the sole proprietorship is held by an agent(s) or a nominee(s), indicate the principal(s) for whom the agent or nominee holds such interest.

Name(s) of Principal(s). (Print or Type)

c. If the interest of a spouse or any other party is constructively controlled by another person or legal entity, state the name and address of such person or entity possessing such control and the relationship under which such control is being or may be exercised.

Name(s)	Address(es)
_____	_____
_____	_____
_____	_____

SECTION 4. LAND TRUSTS, BUSINESS TRUSTS, ESTATES & OTHER ENTITIES

If the bidder/proposer or Contractor is a land trust, business trust, estate or other similar commercial or legal entity, identify any representative, person or entity holding legal title as well as each beneficiary in whose behalf title is held including the name, address and percentage of interest of each beneficiary.

Name(s)	Address(es)
_____	_____
_____	_____
_____	_____

SECTION 5. NOT-FOR-PROFIT CORPORATIONS

a. State of incorporation _____

b. Name of all officers and directors of corporation (or attach list):

Name (Print or Type)	Title (Print or Type)	Name (Print or Type)	Title (Print or Type)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NOTE: The Public Building Commission of Chicago may require additional information from any entity or individual to achieve full disclosure relevant to the transaction. Further, any material change in the information required above must be provided by supplementing this statement at any time up to the time the Public Building Commission of Chicago takes action on the contract or other action requested of the Public Building Commission.

II. CONTRACTOR CERTIFICATION

A. CONTRACTOR

1. The Contractor, or any subcontractor to be used in the performance of this contract, or any affiliated entities of the Contractor or any such subcontractor, or any responsible official thereof, or any other official, agent or employee of the Contractor, any such subcontractor or any such affiliated entity, acting pursuant to the direction or authorization of a responsible official thereof has not, during a period of three years prior to the date of execution of this certification or if a subcontractor or subcontractor's affiliated entity during a period of three years prior to the date of award of the subcontract:
 - a. Bribe or attempted to bribe, or been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, any agency of the federal government or any state or local government in the United States (if an officer or employee, in that officer's or employee's official capacity); or
 - b. Agreed or colluded, or been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
 - c. Made an admission of such conduct described in 1(a) or (b) above which is a matter of record but has not been prosecuted for such conduct.
2. The Contractor or agent, partner, employee or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rigging² in violation of Section 3 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-3), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rigging during a period of five years prior to the date of submittal of this bid, proposal or response.³
3. The Contractor or any agent, partner, employee, or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rotating⁴ in violation of Section 4 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-4), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rotating.
4. The Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code entitled "Office of the Inspector General" and all provisions of the Public Building Commission Code of Ethics Resolution No.5339, as amended by Resolution No. 5371.
5. The Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state or local department or agency.
 - b. Have not within a three-year period preceding this bid or proposal been convicted of or had a civil judgement rendered against them for: commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (5)(b) above; and
- d. Have not within a three-year period preceding this bid or proposal had one or more public transactions (federal, state or local) terminated for cause or default.

IBM RESPONSE:

The IBM Corporation certifies that it is not in violation of the provisions of this paragraph.

B. SUBCONTRACTOR

1. The Contractor has obtained from all subcontractors being used in the performance of this contract or agreement, known by the Contractor at this time, certifications substantially in the form of Section 1 of this Disclosure Affidavit. Based on such certification(s) and any other information known or obtained by the Contractor, is not aware of any such subcontractor or subcontractor's affiliated entity or any agent, partner, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A) (1)(a) or (b) of this certification; (b) bid-rigging, bid-rotating, or any similar offense of any state or the United States which contains the same elements as bid-rigging or bid-rotating, or having made an admission of guilt of the conduct described in Section II(A)(1)(a) or (b) which is matter of record but has/have not been prosecuted for such conduct.
2. The Contractor will, prior to using them as subcontractors, obtain from all subcontractors to be used in the performance of this contract or agreement, but not yet known by the Contractor at this time, certifications substantially in the form of this certification. The Contractor shall not, without the prior written permission of the Commission, use any of such subcontractors in the performance of this contract if the Contractor, based on such certifications or any other information known or obtained by Contractor, became aware of such subcontractor, subcontractor's affiliated entity or any agent, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A)(1)(a) or (b) of this certification or (b) bid-rigging, bid-rotating or any similar offenses of any state or the United States which contains the same elements as bid-rigging or bid-rotating or having made an admission of guilt of the conduct described in Section II(A)(1)(a) or (b) which is a matter of record but has/have not been prosecuted for such conduct. The Contractor shall cause such subcontractors to certify as to Section II(A)(5). In the event any subcontractor is unable to certify to Section II(A)(5), such subcontractor shall attach an explanation to the certification.
3. For all subcontractors to be used in the performance of this contract or agreement, the Contractor shall maintain for the duration of the contract all subcontractors' certifications required by Section II(B)(1) and (2) above, and Contractor shall make such certifications promptly available to the Public Building Commission of Chicago upon request.

4. The Contractor will not, without the prior written consent of the Public Building Commission of Chicago, use as subcontractors any individual, firm, partnership, corporation, joint venture or other entity from whom the Contractor is unable to obtain a certification substantially in the form of this certification.
5. The Contractor hereby agrees, if the Public Building Commission of Chicago so demands, to terminate its subcontract with any subcontract if such subcontractor was ineligible at the time that the subcontract was entered into for award of such subcontract. The Contractor shall insert adequate provisions in all subcontracts to allow it to terminate such subcontract as required by this certification.

C. STATE TAX DELINQUENCIES

1. The Contractor is not delinquent in the payment of any tax administered by the Illinois Department of Revenue or, if delinquent, the Contractor is contesting, in accordance with the procedures established by the appropriate Revenue Act, its liability for the tax or amount of the tax.
2. Alternatively, the Contractor has entered into an agreement with the Illinois Department of Revenue for the payment of all such taxes that are due and is in compliance with such agreement.
3. If the Contractor is unable to certify to any of the above statements [(Section II (C))], the Contractor shall explain below. Attach additional pages if necessary.

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

4. If any subcontractors are to be used in the performance of this contract or agreement, the Contractor shall cause such subcontractors to certify as to paragraph (C)(1) or (C)(2) of this certification. In the event that any subcontractor is unable to certify to any of the statements in this certification, such subcontractor shall attach an explanation to this certification.

D. OTHER TAXES/FEEES

1. The Contractor is not delinquent in paying any fine, fee, tax or other charge owed to the City of Chicago.
2. If Contractor is unable to certify to the above statement, Contractor shall explain below and attach additional sheets if necessary.

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

E. ANTI-COLLUSION

The Contractor, its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal or contract. Failure to attest to this section as part of a bid will make the bid non-responsive and not eligible for award consideration.

F. PUNISHMENT

A Contractor who makes a false statement material to Section II(A)(2) of this certification commits a Class 3 felony. 720 ILCS 5/33E-11(b).

G. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

1. The Contractor is not a party to any pending lawsuits against the City of Chicago or the Public Building Commission of Chicago nor has Contractor been sued by the City of Chicago or the Public Building Commission of Chicago in any judicial or administrative proceeding.
2. If the Contractor cannot certify to the above, provide the (1) case name; (2) docket number; (3) court in which the action is or was pending; and (4) a brief description of each such judicial or administrative proceeding. Attach additional sheets if necessary.

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

III. CERTIFICATION OF ENVIRONMENTAL COMPLIANCE

- A. Neither the Contractor nor any affiliated entity of the Contractor has, during a period of five years prior to the date of execution of this Affidavit: (1) violated or engaged in any conduct which violated federal, state or local Environmental Restriction⁵, (2) received notice of any claim, demand or action, including but not limited to citations and warrants, from any federal, state or local agency exercising executive, legislative, judicial, regulatory or administrative functions relating to a violation or alleged violation of any federal, state or local statute, regulation or other Environmental Restriction; or (3) been subject to any fine or penalty of any nature for failure to comply with any federal, state or local statute, regulation or other Environmental Restriction.

If the Contractor cannot make the certification contained in Paragraph A of Section III, identify any exceptions:

IBM measures its environmental performance against both internal and external requirements. In addition, each manufacturing and hardware development site undertakes an annual self-assessment, with some functions and operations being assessed even more frequently. Every year, 10 to 12 facilities are also audited by Corporate Internal Audit. This independent and comprehensive audit takes from three to four weeks. It focuses on regulatory as well as internal IBM

requirements in environmental, safety and industrial hygiene, and chemical management programs. The IBM audit protocol includes provisions for auditing the Environmental management system consistent with ISO 14001. Audit results are communicated to top management, and follow-up, accountability and actions are all clearly delineated.

C. Accidental spills and releases

IBM sites throughout the world use the company's Environmental Incident Reporting System (EIRS) to report to IBM management on incidents of noncompliance and accidental releases. Each incident meeting IBM's environmental incident reporting criteria--which either equal or surpass regulatory reporting requirements--has to be reported through EIRS. In addition, each IBM location must have a documented incident prevention program (including provisions for preventing environmental incidents or their recurrence) and reporting procedures.

In 2000, a total of 58 accidental releases was reported through EIRS. Ten of them were contained in secondary containment. Of the remaining 48, 16 involved refrigerants, 12 involved petroleum products such as fuel and hydraulic oils, 9 involved dilute water solutions (for example, fire protection water, domestic water, recycled water, secondary hot water, chilled water and treated wastewater) and 6 involved dilute industrial wastewater. The rest of the incidents included two releases of sanitary waste, two acid releases and one involving 0.4 pounds of polychlorinated biphenyl. The polychlorinated biphenyl, the suspected source of which was removed long ago, was discovered under one of IBM's buildings. The contaminated soil was removed and no environmental damage is believed to have occurred.

The incident with relatively greatest potential environmental impact was the release of 650 gallons of number 2 fuel oil from an emergency generator at an IBM location in Irving, Texas. During a scheduled operation of the generator, an in-line pressure gauge came loose from the system, causing the spill of oil. Upon discovery of the spill, IBM emergency response plans were activated immediately, and about 390 gallons of the oil were recovered. Although approximately 260 gallons reached the environment, there was no significant environmental damage once cleanup was complete. All incidents were responded to promptly and had little actual environmental impact.

D. Fines and penalties

One significant measure of a company's environmental performance is its record for fines and penalties. In 2000, IBM was assessed one fine in the amount of \$1,916. This was an administrative fine assessed against one site in association with documentation relating to its water discharges and water extraction permit.

Over the past five years, IBM has paid 14 fines, amounting to \$17,584.

(Attach additional pages of explanation to this Disclosure Affidavit, if necessary.)

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

- B. Without the prior written consent of the Public Building Commission of Chicago, Contractor will not employ any subcontractor in connection with the contract or proposal to which this Affidavit pertains without obtaining from such subcontractor a certification similar in form and substance to the certification contained in Paragraph A of this Section III prior to such subcontractor's performance of any work or services or furnishing any goods, supplies or materials of any kind under the proposal or the contract to which this Affidavit pertains.
- C. Until completion of the Contract's performance under the proposal or contract to which this Affidavit pertains, the Contractor will not violate any federal, state or local statute, regulation or other Environmental Restriction, whether in the performance of such contract or otherwise.

IV. CERTIFICATION OF COURT-ORDERED CHILD SUPPORT COMPLIANCE

For purpose of this Section IV, "SUBSTANTIAL OWNER" means any person who owns or holds a ten percent (10%) or more percentage of interest in the Contractor. If the Contractor is an individual or sole proprietorship, substantial owner means that individual or sole proprietorship. Percentage of interest includes direct, indirect and beneficial interests in the Contractor. Indirect or beneficial interest means that an interest in the Contractor is held by a corporation, joint venture, trust, partnership, association, state or other legal entity in which the individual holds an interest or by agent(s) or nominee(s) on behalf of an individual or entity. For example, if Corporation B holds or owns a twenty percent (20%) interest in Contractor, and an individual or entity has a fifty percent (50%) or more percentage of interest in Corporation B, then such individual or entity indirectly has a ten (10%) or percentage of interest in the Contractor. In this case, the response to this Section IV, must cover such individual(s) or entity. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

If Contractor's response in this Section IV is 1 or 2, then all of the Contractor's Substantial Owners must remain in compliance with any such child support obligations (1) throughout the term of the contract and any extensions thereof; or (2) until the performance of the contract is completed, as applicable. Failure of Contractor's Substantial Owners to remain in compliance with their child support obligations in the manner set forth in either 1 or 2 constitutes an event of default.

Check one:

1. _____ No Substantial Owner has been declared in arrearage on his or her child support obligations by the Circuit Court of Cook County or by another Illinois court of competent jurisdiction.
2. _____ The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations. All such Substantial Owners, however, have entered into court-approved agreements for the payment of all such child support owed, and all such Substantial Owners are in compliance with such agreements.
3. _____ The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support for the payment of all such child support owed; or both (1) and (2).
4. X There are no Substantial Owners.

V. INCORPORATION INTO CONTRACT AND COMPLIANCE

The above certification shall become part of any contract awarded to the Contractor set forth on page 1 of this Disclosure Affidavit and are a material inducement to the Public Building Commission of Chicago's execution of the contract, contract modification or contract amendment with respect to which this Disclosure Affidavit is being executed and delivered on behalf of the Contractor. Furthermore, Contractor shall comply with these certifications during the term and/or performance of the contract.

VI. VERIFICATION

Under penalty or perjury, I certify that I am authorized to execute this Disclosure Affidavit on behalf of the Contractor set forth on page 1, that I have personal knowledge of all the certifications made herein and that the same are true.

The Contractor must report any change in any of the facts stated in this Affidavit to the Public Building Commission of Chicago reasonably promptly after the effective date of such change by completing and submitting a new Disclosure Affidavit. Failure to comply with this requirement is grounds for your firm to be deemed non-qualified to do business with the PBCC. Deliver any such new Disclosure Affidavit to: Public Building Commission of Chicago, Director of Procurement, 50 W. Washington, Room 200, Chicago, IL 60602.

Robert Legatzke
Signature of Authorized Officer

Robert Legatzke
Name of Authorized Officer (Print or Type)

Senior Client Rep
Title

312-529-3828
Telephone Number

State of Illinois

County of COOK

Signed and sworn to before me on this 15 day of February 2008 by
Bob Legatzke (Name) as Senior Client Rep (Title) of
IBM Corporation (Bidder/Proposer or Contractor)

Jennifer Long
Notary Public Signature and Seal



Notes 1-5 Disclosure Affidavit

1. Business entities are affiliated if, directly or indirectly, one controls or has the power to control the other, or if a third person controls or has the power to control both entities. Indicia of control include without limitation: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or organization of another business entity using substantially the same management, ownership or principals as the first entity.
2. For purposes of Section II (A) (2) of this certification, a person commits the offense of and engages in bid-rigging when he knowingly agrees with any person who is, or but for such agreement should be, a competitor of such person concerning any bid submitted or not submitted by such person or another to a unit of state or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) provides such person or receives from another information concerning the price or other material term or terms of the bid which would otherwise not be disclosed to a competitor in an independent non-collusive submission of bids or (2) submits a bid that is of such a price or other material term or terms that he does not intend the bid to be accepted. see 720 ILCS 5/33-E-3.
3. No corporation shall be barred from contracting with any unit of state or local government as a result of a conviction, under either Section 33E-3 or Section 33E-4 of Article 33 of the State of Illinois Criminal Code of 1961, as amended, of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent on behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of the State of Illinois Criminal Code.
4. For purposes of Section II(A) of this certification, a person commits the offense of and engages in bid rotating when, pursuant to any collusive scheme or agreement with another, he engages in a pattern over time (which, for the purposes hereof, shall include at least three contract bids within a period of ten years, the most recent of which occurs after January 1, 1989) of submitting sealed bids to units of state or local government with the intent that the award of such bids rotates, or is distributed among, persons or business entities which submit bids on a substantial number of the same contracts. See 720 ILCS 5/33E-4.
5. "Environmental Restriction" means any statute, ordinance, rule, regulation, permit, permit condition, order or directive relating to or imposing liability or standards of conduct concerning the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, and to the generation, use, storage, transportation, or disposal of construction debris, bulk waste, refuse, garbage, solid wastes, hazardous materials, special wastes or other contaminants including but not limited to (1) Section 7-28-440 or 11-4-1500 or Article XIV of Chapter 11-4 or Chapter 7-28 or 11-4 of the Municipal Code of Chicago; (2) Comprehensive Environment Response and Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*) the Hazardous Material Transportation Act (49 U.S.C. § 1801 *et seq.*); (4) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 7401 *et seq.*); (5) the Clean Water Act (33 U.S.C. § 1251 *et seq.*); (6) the Clean Air Act (42 U.S.C. § 7401 *et seq.*); (7) the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et seq.*); (8) the Safe Drinking Water Act (42 U.S.C. § 300f); (9) the Occupational Health and Safety Act of 1970 (29 U.S.C. § 651 *et seq.*); (10) the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et seq.*); and (10) the Illinois Environmental Protection Act (415 ILCS 5/1 through 5/56.6).

SCHEDULE 14.10(a)
MBE / WBE SPECIAL CONDITIONS

1. Introduction - Remedial Program for Utilization of Minority Business Enterprise ("MBE"), Women Business Enterprise ("WBE") and Economically Disadvantaged Firms
 - a. In February 1992 the Board of Commissioners (the "Board") of the Public Building Commission of Chicago (the "Commission") adopted a Remedial Program for Utilization of MBE and WBE firms (the "Program") as a means of providing open access to the award of Commission Contracts and to remedy the effects of racial and sexual discrimination which have placed such firms at a competitive disadvantage in the award of Commission Contracts.
 - b. In 2003, District Judge James B. Moran in the case Builders Association of Greater Chicago v. City of Chicago, No. 96 C 1122 (N.D. Ill.) held that the evidence introduced at trial demonstrated that past and current discriminatory practices continue to place MBE and WBE firms at a competitive disadvantage in the award of governmental contracts and such practices have and continue to impede the growth and success of MBE and WBE firms.
 - c. The Commission has a compelling interest in preventing public funds from perpetuating the past and current discrimination against MBE and WBE firms, which currently exist in the market.
 - d. The February 1992 Program adopted by the Commission has not been sufficient to ameliorate the effects of racial and gender discrimination in the marketplace.
 - e. The remedies adopted herein by the Commission will not overly burden non-MBE and non-WBE firms in the award of Commission Contracts.
 - f. The Commission will periodically review MBE and WBE participation on contracts awarded by the Commission to insure that the Commission continues to have a compelling interest in remedying discrimination against MBE and WBE firms in the award of Commission Contracts and that the measures adopted herein remain narrowly tailored to accomplish that objective.
2. Policy Statement
 - a. It is the policy of the Commission to ensure competitive business opportunities for MBE and WBE firms in the performance of Contracts, to prohibit discrimination in the award of or participation in Contracts, and to abolish arbitrary barriers to full participation in Contracts by all persons, regardless of race, sex or ethnicity. Therefore, during the performance of this Contract, the Contractor must agree that it shall not discriminate against any person or business on the basis of race, color, religion, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military service, parental status, sexual orientation, national origin or sex, in the solicitation or the purchase of goods and services or the subcontracting of work in the performance in this Contract.
 - b. The Commission shall require the Contractor also agrees to take affirmative action to ensure that MBE and WBE firms shall have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.

3. Definitions

For purposes of this Special Condition, the following definitions shall apply:

- a. "Affiliate" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the person or entity. In determining whether persons or entities are affiliates, the Commission shall consider all appropriate factors including common ownership, common management and contractual relationships. Affiliates shall be considered together in determining whether a firm is a Small Business Enterprise.
- b. "Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of existing inventory and provides no commercially useful function other than acting as a conduit between a supplier and a customer.
- c. "Certification" or "Certified" shall mean a person or entity qualified or granted certification as a Minority Business Enterprise (MBE) or Woman Business Entity (WBE) by the City of Chicago.
- d. "Commercially useful function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing and supervising the work involved or fulfilling responsibilities as a joint venture.
- e. "Construction Contract" means a contract for the construction, repair, alteration, renovation or improvement of any building, facility or other structure.
- f. "Contract" means any contract awarded by the Commission which is to be paid from funds belonging to or administered by the Commission regardless of source.
- g. "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract based upon the availability of MBEs and WBEs to perform and anticipated scope of work of the contract and the Commission's progress towards meeting the aspirational goals.
- h. "Contractor" means any person or business entity that seeks to enter into a Construction Contract with the Commission and includes all partners, affiliates and joint ventures of such person or entity.
- i. "Economically disadvantaged" means an individual whose personal net worth is less than \$750,000, indexed annually for the Chicago Metro Area Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January, 1999.
- j. "Executive Director" means the Executive Director of the Commission or his duly designated representative as appointed in writing.
- k. "Good faith efforts" means actions undertaken by a Contractor to achieve a Contract Specific Goal that by their scope, intensity and appropriations to the objective can reasonably be expected to fulfill the Program's requirements.

- l. "Joint venture" means an association of two or more persons or entities or any combination of two or more business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly-defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the parties and their relationship and responsibilities to the contract.
- m. "Local business enterprise" means, for purposes of Certification, a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois (the "Six County Region"), which has the majority of its regular, full time work force located within the Six County Region.
- n. "Minority" means:
 - (a) Any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:
 - (i) African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race; and
 - (b) Individual members of other groups, including but not limited to Asian-Americans, Arab-Americans and Native-Americans, found by the Commission to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the Commission.
- o. "Minority-owned business enterprise" or "MBE" means a small local business enterprise which is at least 51 percent owned by one or more economically disadvantaged minority persons, or in the case of a publicly held corporation at least 51 percent of all classes of the stock of which is owned by one or more economically disadvantaged minority persons whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged minority persons.
- p. "Owned" means having all of the customary incidents of ownership, including the right of disposition and sharing in all of the risks, responsibilities and profits commensurate with the degree of ownership.
- q. "Personal net worth" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other certified MBE or WBE or the individual's equity in his or her primary place of residence. As to assets held jointly

with his or her spouse, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, Individual Retirement Accounts, 401(K) accounts or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

- r. "Program" means the minority- and women-owned business enterprise construction procurement program established in this special condition.
- s. "Small business enterprise" means a small business as defined by the U.S. Small Business Administration pursuant to the business size standards found in 13 C.F.R. Part 121 relevant to the scope(s) of work the firm seeks to perform on Commission contracts. A firm is not an eligible small business enterprise in any fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 C.F.R. Part 121.
- t. "Small local business enterprise" means a business that is a small business enterprise and a local business enterprise.
- u. "Woman" means a person of the female gender, who is presumed to be socially disadvantaged.
- v. "Women-owned business enterprise" or "WBE" means a small local business enterprise which is at least 51 percent owned by one or more economically disadvantaged women or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more economically disadvantaged women, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged women.

4. Aspirational and Contract Specific Goals

- a. Upon the effective date of these Special Conditions, the bi-annual aspirational goals shall be to award 24 percent of the annual dollar value of all Commission Construction Contracts to certified MBEs and 4 percent of the annual dollar value of all Commission Contracts to qualified WBEs and 25 percent of the annual dollar value of all other Commission Contracts to certified MBEs and 5 percent of the annual dollar value of the all other Commission Contracts to certified WBEs.

The Commission shall establish subsequent bi-annual aspirational goals for the award of Commission Contracts based on the best available evidence. Quotas are hereby prohibited.

- b. As one method to achieve the aspirational goals, the Executive Director is authorized to establish contract specific goals for MBE and WBE participation for each contract let through competitive bidding. Contract specific goals shall be based on normal industry practice, as determined in consultation with other governmental agencies, the scope of work of the contract, the availability of at least three MBEs and three WBEs to perform the functions of those individual contracts, and the Commission's progress to date

towards meeting the bi-annual, aspirational goals of Section 4.1. The Executive Director shall implement administrative procedures to establish contract-specific goals.

- c. Each Bidder's commitment to utilization of certified MBE and WBE firms shall be considered as further evidence of the responsibility of the Bidder. Further, the Bidder must agree to use its best efforts to include MBE and WBE firms in any Contract modification work that increases the Contract value of ten (10%) percent of the initial Contract value or fifty thousand (\$50,000) dollars, whichever is less.
- d. Failure to carry out the commitments and policies set forth in this Program shall constitute a material breach of contract and may result in termination of the Contractor or such other remedy, as the Commission deems appropriate.

5. Race and Gender-Neutral Measures

The Commission shall develop and use race and gender-neutral measures to facilitate the participation of small business enterprises in Commission Contracts. Race and gender-neutral measures shall be used to the maximum feasible extent to meet the bi-annual aspirational goals established in Section 4.1. These measures may include, but are not limited to:

- a. Arranging solicitation times for the presentations of bids, specifications, and delivery schedules so as to facilitate the participation of interested contractors and subcontractors;
- b. Segmenting contracts so as to facilitate the participation of small business enterprises;
- c. Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing;
- d. Providing timely informational programs on contracting procedures, bid preparation and specific contracting opportunities;
- e. Holding pre-bid conferences, where appropriate, to explain the projects and to encourage contractors to use small business enterprises as subcontractors;
- f. Adopting prompt payment procedures, including requiring by contract that prime contractors pay subcontractors within specified days of receipt of payment from the Commission and where necessary, issuing payments directly to subcontractors in lieu of payments to prime contractors;
- g. Reviewing bonding, insurance and retainage requirements so as to eliminate unnecessary barriers to and reduce the burdens of contracting with the Commission;
- h. Expediting payments and advancing payments to cover start-up and mobilization costs, where appropriate;
- i. Providing information concerning small business loan programs and other programs providing access to capital to small business enterprises;
- j. Collecting information from all prime contractors on Commission construction contracts detailing the bids received from all subcontractors for Commission

construction contracts and the expenditures to subcontractors utilized by prime contractors on Commission construction contracts;

- k. At the discretion of the Executive Director, letting a representative sample of Commission construction contracts without goals to determine MBE and WBE utilization in the absence of goals;
- l. Providing a bid preference on construction contracts of 2 percent for firms bidding on prime contracts whose principal place of business is located in the City of Chicago;
- m. Limiting the self-performance of prime contractors, where appropriate;
- n. Creating a target market program for bidding on Commission prime construction contracts by small local business enterprises;
- o. To the extent practicable, awarding contracts requiring the expenditure of funds not exceeding \$5,000 to small local business enterprises; and
- p. Referring complaints of discrimination against MBEs or WBEs to appropriate authorities, for investigation and resolution.

6. Contract Provision

- a. Each Commission Contract let through competitive bidding with an estimated value in excess of \$5,000 for which contract specific goals have been established shall contain the following requirements:
 - (1) Include with the bid specifications for each competitively bid contract a list of certified MBEs and WBEs that are available to perform the work required by the specifications or otherwise make such a list available to potential contractors.
 - (2) A description of this Special Condition and the program including the requirement of an approved compliance plan; the requirements related to achieving the goals and counting MBE or WBE participation towards meeting the goals; if goals are not met, the requirement of documentation of the Contractor's good faith efforts to achieve the goals including the good faith efforts of MBEs and WBEs to achieve the goal for which they do not qualify; and a requirement that the Contractor commit to the expenditure of at least the dollar value of the contract specific goals with one or more MBEs and one or more WBEs or make good faith efforts to do so. This commitment may be met by the contractor's status as a MBE or WBE, a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE's or WBE's participation in such joint venture), subcontracting a portion of the work to one or more MBEs or WBEs, purchasing materials or services for the work from one or more MBEs or WBEs or by any combination of the foregoing;
 - (3) A requirement that prime contractors on Commission construction contracts notify MBEs and WBEs utilized on those contracts about opportunities on contracts without affirmative action contracting goals;

- (4) A requirement that where the Contractor cannot achieve the contract specific goals it must document its good faith efforts to do so. In determining whether the contractor has made such good faith efforts, the performance of other contractors in meeting the goals may be considered. The Executive Director or his designee shall consider, at a minimum, the Contractor's efforts to do the following:
- (a) Soliciting through reasonable and available means the interest of MBEs or WBEs that have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the MBEs or WBEs to respond. The contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
 - (b) Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
 - (c) Negotiating in good faith with interested MBEs or WBEs that have submitted bids. Documentation of negotiation must include the names, addresses and telephone numbers of MBEs or WBEs that were solicited; the date of each such solicitation; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached with MBEs or WBEs to perform the work. That there may be some additional costs involved in solicitation and using MBEs and WBEs is not a sufficient reason for a contractor's failure to meet the goals, as long as such costs are reasonable.
 - (d) Not rejecting MBEs or WBEs as being unqualified without sound reasons based on the thorough investigation of their capabilities. The MBEs' or WBEs' standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the goals.
 - (e) Making a portion of the work available to MBE or WBE subcontractors and suppliers and to select those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the goals.
 - (f) Making good faith efforts despite the ability or desire of a Contractor to perform the work of a contract with its own organization. A Contractor that desires to self-perform the work of a contract must demonstrate good faith efforts unless the goals have been met.
 - (g) Selecting portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation

even when the Contractor might otherwise prefer to perform these work items with its own forces.

- (h) Making efforts to assist interested MBEs or WBEs in obtaining bonding lines of credit or insurance as required by the Commission or Contractor.
- (i) Making efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials or related assistance or services, including participation in a mentor-protégée program; and
- (5) Effectively using the services of the Commission; minority or women community organizations; minority or women contractors' groups; local, state and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- (6) Provide a procedure whereby the Contractor may protest the determination that it did not make good faith efforts.
- (7) Negotiate with any Contractor whose contract is in excess of \$25,000 in value and is not awarded by competitive bidding a commitment, where practicable, to meet at least the aspirational goals as percentages of the dollar value of the contract.
- (8) Include MBEs and WBEs on solicitation mailing lists and encourage that they be solicited for suitable contracts.
- (9) Publicize the Program through appropriate means, in order to attract qualified MBEs and WBEs.
- b. To achieve the contract specific goals, the Executive Director shall undertake, in addition to the other measures provided herein, the following:
 - (1) Include uniform provisions permitting the termination of the contract by the Commission upon the disqualification of the Contractor as a MBE or WBE if the contractor's status as MBE or WBE was a factor in the award of the contract and such status was misrepresented by the Contractor;
 - (2) Include uniform provisions permitting termination of the contract by the Commission upon the disqualification of any MBE or WBE if the subcontractor's or supplier's status as a MBE or WBE was a factor in the award of the contract and the status of the subcontractor or supplier was misrepresented by the contractor. If the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall discharge the disqualified subcontractor or supplier and make good faith efforts to engage a qualified MBE or WBE replacement;
 - (3) Include uniform provisions allowing the Executive Director access to the Contractor's books and records, including without limitation payroll records,

tax returns and records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by the Commission for any purpose;

- (4) Review each proposed contract modification request that, by itself or aggregated with previous modification requests, increases the contract value by ten percent of the initial contract value or \$50,000.00, whichever is less, for opportunities to increase participation of MBEs or WBEs. Where the proposed contract modification involves work which can be performed by MBEs or WBEs already performing work on the contract such MBEs and WBEs shall participate in such work specified in the contract modification;
- (5) Insert in each contract containing a commitment to MBE and/or WBE participation:
 - (a) A requirement of periodic reporting by the Contractor to the Executive Director on all expenditures made to achieve compliance with the foregoing provisions. Such reports shall include the name and business address of each subcontractor and supplier actually involved in the contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as may assist the Executive Director in determining the Contractor's compliance with the foregoing provisions;
 - (b) A requirement that the Contractor cannot make changes to its contractual MBE and WBE commitments or substitute such MBE or WBE subcontractors without the prior written approval of the Executive Director. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of this section and a breach of the contract with the Commission, and may cause termination of the contract for breach, and/or subject the Contractor to contract remedies or other sanctions. The facts supporting the request must not have been known nor reasonably should have been known by the parties before entering into the subcontract.
- (6) Substitutions of the subcontractor shall be permitted only on the following bases:
 - (a) Unavailability after receipt of reasonable notice to proceed;
 - (b) Failure of performance;
 - (c) Financial incapacity;
 - (d) Refusal by the subcontractor to honor the bid or proposal price or scope;

- (e) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
- (f) Failure of the subcontractor to meet insurance, licensing or bonding requirements;
- (g) The subcontractor's withdrawal of its bid or proposal; or
- (h) Decertification of the subcontractor as MBE or WBE.

Where the Contractor has established the basis for the substitution to the satisfaction of the Executive Director, it must make good faith efforts to substitute with a MBE or WBE subcontractor. If the MBE or WBE contract specific goal cannot be reached and good faith efforts have been made, the Contractor may substitute with a non-MBE or non-WBE. If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed within the compliance plan the Contractor must obtain the approval of the Executive Director to modify the compliance plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.

7. Determining MBE/WBE Utilization

The methodology for determining MBE and WBE utilization shall be determined for purposes of analysis with respect to this contract as follows:

- a. The total dollar value of the contract awarded to the certified MBE or WBE firm shall be credited to such participation. Only minority business participation may be counted toward MBE participation and only women business participation may be counted toward WBE participation.
- b. The total dollar value of a contract with a firm owned and controlled by minority women is counted toward either the MBE or WBE goal, but not both. The Contractor employing the firm may choose the goal to which the contract value is applied. Various work done by one and the same subcontractor shall be considered, for the purpose of this principle, as work effectively done under one subcontract only, which subcontractor may be counted toward only one of the goals, not toward both.
- c. In a firm owned and controlled by both minority males and minority females, if the minority females own and control 51% or more of the business, then the total dollar value of a contract with such firm may be counted toward either MBE participation or WBE participation, but not both. If the minority females, however, own and control less than 51% of the firm, then the firm's participation may be counted only toward MBE utilization.
- d. A Contractor may count toward its MBE or WBE goal the portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the MBE or WBE partner in the joint venture. A joint venture seeking to be credited for MBE participation may be formed among certified MBE and WBE firms, or between certified MBE and WBE firms and a non-MBE/WBE firm. A joint venture satisfies the eligibility standards of this Program if the certified MBE or WBE participant of the joint venture:

- (1) Shares in the ownership, control, management responsibilities, risks and profits of the joint venture; and
 - (2) Is responsible for a clearly defined portion of work to be performed in proportion to the MBE or WBE ownership percentage.
- e. A Contractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially useful function in the work of a contract. A firm is considered to perform a commercially-useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, the Commission shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- f. Consistent with normal industry practices, a MBE or WBE firm may enter into subcontracts. If a MBE or WBE contractor subcontracts a significantly greater portion of the work of a contract than would be expected on the basis of normal industry practices, the MBE or WBE shall be rebuttably presumed not to be performing a commercially-useful function.
- g. A Contractor may count toward its goals expenditures to MBE or WBE manufacturers (i.e., suppliers that produce goods from raw materials or substantially alters them before resale).
- h. A Contractor may count toward its goals expenditures to MBE or WBE suppliers provided that the supplier performs a commercially useful function in the supply process.

8. Submission of Bid Proposals

- a. The following schedules and documents constitute the Bidder's MBE/WBE compliance proposal and must be submitted at the time of the bid or proposal or within such extended period as provided in Section VII hereof:
 - (1) Evidence of Certification/Schedule A: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the certifying agency must be submitted. Where the Bidder's MBE/WBE compliance proposal includes any MBE or WBE firm that is not currently certified (as evidenced by a Letter of Certification), "Schedule A: Affidavit of MBE/WBE" executed by the proposed MBE or WBE must be submitted.
 - (2) Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Ventures. Where the Bidder's MBE/WBE compliance proposal includes participation of any MBE or WBE as a joint venture participant on any tier, the Bidder must submit a "Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Venture" with an attached copy of the joint venture agreement proposed among the parties. The Schedule B and the joint venture agreement must clearly evidence that the MBE or WBE participant will be responsible for a clearly defined portion of the work to be performed and that the MBE or WBE firm's responsibilities are in proportion with its ownership percentage. In order to

demonstrate the MBE or WBE participant's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement should include specific details related to:

- (a) The contributions of capital and equipment;
 - (b) Work items to be performed by the MBE or WBE firm's own forces;
 - (c) Work items to be performed under the supervision of the MBE or WBE participant; and
 - (d) The commitment of management, supervisory and operational personnel employed by the MBE or WBE to be dedicated to the performance of the contract.
- (3) Schedule C: Letter of Intent to Perform as a Subcontractor, Subconsultant, or Material Supplier, Schedule C, executed by the MBE/WBE firm (or Joint Venture Subcontractor) must be submitted by the Bidder for each MBE/WBE included on the Schedule D. Schedule C must accurately detail the work to be performed by the MBE or WBE firm and the agreed rates and prices to be paid.
- (4) Schedule D: Affidavit of Prime Contractor Regarding MBE or WBE Utilization. A completed Schedule D committing to the utilization of each listed MBE or WBE firm. Unless the Bidder has submitted a completed request for a waiver of participation by MBE/WBE firms (See Request for Waiver procedures in Section VIII hereof), the Bidder must include the specific dollar amount of participation of each MBE/WBE firm listed on its Schedule D. The total dollar commitment to proposed MBE firms must at least equal the MBE goal, and the total dollar commitment to proposed WBE firms must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of MBE or WBE utilization as percentages of their total base bid.
- b. The submittals must have all blank spaces on the Schedule pages applicable to the contract correctly filled in. Agreements between a Bidder and a MBE/WBE in which the MBE/WBE promises not to provide subcontracting quotations to other Bidders are prohibited.

9. Evaluation of Bid Proposals

- a. During the period between bid opening and contract award, the submitted documentation will be evaluated by the Commission. The Bidder agrees to provide, upon request, earnest and prompt cooperation to the Executive Director or his designee in submitting to interviews that may be necessary, in allowing entry to places of business, in providing further documentation, or in soliciting the cooperation of a proposed MBE or WBE firm in providing such assistance. A bid may be treated as non-responsive by reason of the determination that the Bidder's proposal did not contain a sufficient level of Certified MBE or WBE participation, that the Bidder was unresponsive or uncooperative when asked for further information relative to the proposal, or that false statements were made in the Schedules.

- b. If the Commission's review of a Bidder's proposal concludes that the MBE or WBE proposal was deficient, the Commission shall promptly notify the Bidder of the apparent deficiency and instruct the Bidder to submit (within three (3) Days of such notice given by the Commission) a modification of the MBE or WBE Proposal, in proper format, which remedies the deficiencies cited. Failure to correct all deficiencies cited by the Commission will be cause for rejection of the Bidder's proposal as non-responsive.
- c. Bidders will not be permitted to modify their MBE/WBE compliance proposal except insofar as directed to do so by the Commission. Therefore, all terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers should be satisfactorily negotiated before the submission to the Commission of the Bidder's MBE/WBE compliance proposal with the bid. If circumstances should arise, however, where a proposed MBE/WBE is no longer available, the process described in Section 6.2(f) should be followed.

10. Request for Waiver

- a. If a Bidder is unable to identify qualified MBE and WBE firms to perform sufficient work to fulfill the MBE or WBE percentage goals for this Contract, the bid or proposal must include a written request for waiver. A request for waiver shall set forth the Bidder's inability to obtain sufficient MBE and WBE firms notwithstanding good faith attempts to achieve such participation.
- b. Examples of such good faith efforts may include, but are not limited to, the following:
 - (1) Attendance at the Pre-bid conference;
 - (2) The Bidder's general affirmative action policies regarding the utilization of MBE and WBE firms, plus a description of the methods used to carry out those policies;
 - (3) Advertisement in trade association newsletters and minority and women-oriented and general circulation media for specific sub-bids;
 - (4) Timely notification of specific sub-bids to minority and women contractor assistance agencies and associations;
 - (5) Description of direct negotiations with MBE and WBE firms for specific sub-bids, including:
 - (a) The name, address and telephone number of MBE and WBE firms contacted;
 - (b) A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and
 - (c) The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.

- (6) A statement of the efforts made to select portions of the work proposed to be performed by MBE and WBE firms (such as sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract) in order to increase the likelihood of achieving such participation.
 - (7) As to each MBE and WBE contacted, which the Bidder considers to be not, qualified, a detailed statement of the reasons for the Bidder's conclusion.
 - (8) Efforts made by the Bidder to expand its search for MBE and/or WBE firms beyond usual geographic boundaries.
 - (9) General efforts made to assist MBE and WBE firms to overcome participation barriers.
- c. The Executive Director, after review and evaluation of the documents provided by the Bidder, may grant a waiver request upon the determination that:
- (1) Sufficient qualified MBE and/or WBE firms capable of providing the goods or services required by the contract are unavailable despite the good faith efforts of the Bidder;
 - (2) The Bidder is the sole source for work to be performed under the contract; or
 - (3) The price(s) quoted by potential MBE and/or WBE firms for goods or services is above competitive levels to an extent unwarranted by any increased cost of doing business attributable to the present effects of disadvantage or discrimination.

11. Reporting and Record-Keeping Requirements

- a. The Contractor, within 5 days of contract award, shall execute a formal subcontract or purchase order in compliance with the terms of the Contractor's bid proposal and MBE/WBE assurances, and submit to the Commission a copy of the MBE and WBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the MBE and WBE firms. During the performance of the contract, the Contractor shall submit partial and final waivers of lien from MBE and WBE subcontractors and suppliers indicating the current payment amount and the cumulative dollar amount of payments made to date. The Contractor shall file regular MBE and WBE utilization reports on the form entitled "Status Report of MBE and WBE (Sub) Contract Payments" at the time of submitting each monthly payment voucher ("Summary of Estimate"), which reflects the current status of cumulative and projected payments to MBE and WBE firms.
- b. The Contractor shall maintain records of all relevant data with respect to the utilization of MBE and WBE firms, including without limitation payroll records, tax returns and records, and books of account, and retain such records for a period of at least three (3) years after final acceptance of the work. Full access to such records shall be granted to the Commission and/or its designees, on 5 *Days' notice in order for the Commission to determine the Contractor's compliance with its MBE and WBE commitments and the status of any MBE or WBE firm performing any portion of the contract.

12. Non-Compliance and Liquidated Damages

- a. The Executive Director has the authority to apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the MBE and WBE requirements. Failure to comply with the MBE or WBE terms of this contract or failure to use MBE and WBE firms as stated in the Contractor's assurances constitutes a material breach of the contract, and may lead to the suspension or termination of the contract in part or in whole, disqualification from entering into future contracting arrangements with the Commission, and criminal liability. In some cases, monthly progress payments may be withheld until corrective action is taken.
- b. When the contract is completed, if the Executive Direct has determined that the Contractor did not comply in the fulfillment of the required MBE and/or WBE goals, and a grant of relief of the requirements was not obtained, the Commission will thereby be damaged in the failure to provide the benefit of participation to minority or women business to the degree set forth in this Special Condition. Therefore, in case of such non-compliance, the Commission will deduct as liquidated damages one (1%) percent (or fraction thereof) deficiency toward the MBE goal or WBE goal.

13. Review and Sunset

These Special Conditions shall be reviewed no later than 5 years from their adoption and shall expire on October 31, 2009 unless the Commission find that its remedial purposes have not been fully achieved and there is a compelling interest in continuing narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the Commission will not function as a passive participant in a discriminatory marketplace.

14. Severability

If any section, subsection, paragraph, clause, provision or application of these Special Conditions shall be held invalid by any court, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions hereof.

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JOHN BLAIRIE
CATALYST CONSULTING

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PUBLIC BUILDING COMMISSION OF CHICAGO
Contract No.

SCHEDULE C - Letter of Intent from MBE/WBE
To Perform As
Subcontractor, Subconsultant, and/or Material Supplier (1 of 2)

SCHEDULE C AND SUPPORTING DOCUMENTS MUST BE
SUBMITTED WITH BID

Name of Project: OPERATION VIRTUAL SHIELD

Project Number: _____

FROM:

CATALYST CONSULTING GROUP, INC MBE X WBE _____
(Name of MBE or WBE)

TO:

IBM and Public Building Commission of Chicago
(Name of General Bidder)

The undersigned intends to perform work in connection with the above-referenced project as (check one):

_____ a Sole Proprietor
_____ a Partnership

X a Corporation
_____ a Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached Letter of Certification, dated 12.5.05. In addition, in the case where the undersigned is a Joint Venture with a non-MBE/WBE firm, a Schedule B, Joint Venture Affidavit, is provided.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above-named project:

Project Management technical consulting
and overall project administration
support

The above-described services or goods are offered for the following price, with terms of payment as stipulated in the Contract Documents:

2 consultants @ \$95/hr 1 consultant
\$190/hr = \$6,550.

2006-02-06 10:57

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JOHN BLAIKIE

CATALYST CONSULTING

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PUBLIC BUILDING COMMISSION OF CHICAGO

Contract No.

SCHEDULE C - Letter of Intent from MBE/WBE

To Perform As

Subcontractor, Subconsultant, and/or Material Supplier (1 of 2)

PARTIAL PAY ITEMS

For any of the above items that are partial pay items, specifically describe the work and subcontract dollar amount:

NA

If more space is needed to fully describe the MBE/WBE firm's proposed scope of work and/or payment schedule, attach additional sheet(s).

SUB-SUBCONTRACTING LEVELS

☒ % of the dollar value of the MBE/WBE subcontract will be sublet to non-MBE/WBE contractors.☒ % of the dollar value of the MBE/WBE subcontract will be sublet to MBE/WBE contractors.

If MBE/WBE subcontractor will not be sub-subcontracting any of the work described in this Schedule, a zero (0) must be filled in each blank above. If more than 10% percent of the value of the MBE/WBE subcontractor's scope of work will be sublet, a brief explanation and description of the work to be sublet must be provided.

The undersigned will enter into a formal agreement for the above work with the General Bidder, conditioned upon its execution of a contract with the Public Building Commission of Chicago, and will do so within five (5) working days of receipt of a notice of Contract award from the Commission.

By:

CATALYST CONSULTING GROUP, INC.

Name of MBE/WBE Firm (Print)

12.27.05

Date

312.499.2000

Phone

IF APPLICABLE:

By:

Joint Venture Partner (Print)

Date

Phone

Signature

ARVIND K. TALWAR

Name (Print)

Signature

Name (Print)

MBE ___ WBE ___ Non-MBE/WBE ___

2006-02-06 10:57

01/25/2006 13:06

12/27/2005 11:23 FAX

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FAX 631 696 5144

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From: CITY OF CHICAGO PROCUREMENT

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JOHN BLAIRIE

CATALYST CONSULTING

+1 312 7440626

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City of Chicago
Richard M. Daley, Mayor

Department of
Procurement Services

Barbara A. Lounsbury
Chief Procurement Officer

City Hall, Room 403
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-4800
(312) 744-2949 (TTY)
<http://www.cityofchicago.org>

December 5, 2005

Arwin K. Talwar, President
Catalyst Consulting Group, Inc.
211 West Wacker Dr., Suite 400
Chicago, Illinois 60606

Dear Mr. Talwar:

The City of Chicago Department of Procurement Services ("Department") has undertaken an evaluation of procurement policies and procedures including those utilized within the M/WBE and DBE certification unit. In light of this evaluation and in anticipation of streamlining our procedures, the Department extends your MBE certification until September 1, 2006.

The Department may request additional information from you prior to the expiration of the courtesy period. This information will assist us in making a determination on the recertification of your company. You will receive additional information from the Department in the coming days.

As you know, your firm's participation on contracts will be credited only toward MBE in the following specialty area(s):

Information Technology Consulting and Services Management
Consulting; Methods Analysis

If you have any questions, please contact our office at 312-742-0766.

Sincerely,

Lori Ann Eypson
Deputy Procurement Officer

LL/wa



JAN 25 '06 12:46

631 696 5144

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PUBLIC BUILDING COMMISSION OF CHICAGO
Contract No.

**SCHEDULE C - Letter of Intent from MBE/WBE
To Perform As
Subcontractor, Subconsultant, and/or Material Supplier (1 of 2)**

**SCHEDULE C AND SUPPORTING DOCUMENTS MUST BE
SUBMITTED WITH BID**

Name of Project: OVS Project

Project Number: _____

FROM:

411 Solutions International
(Name of MBE or WBE)

MBE _____ WBE ☒

TO:

IBM and Public Building Commission of Chicago
(Name of General Bidder)

The undersigned intends to perform work in connection with the above-referenced project as (check one):

_____ a Sole Proprietor

☒ a Corporation

_____ a Partnership

_____ a Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached Letter of Certification, dated _____. In addition, in the case where the undersigned is a Joint Venture with a non-MBE/WBE firm, a Schedule B, Joint Venture Affidavit, is provided.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above-named project.

Storage HW, SW, and client.
Server HW, SW, and support

The above-described services or goods are offered for the following price, with terms of payment as stipulated in the Contract Documents.

\$ 1,481,200.00

PUBLIC BUILDING COMMISSION OF CHICAGO

Contract No.

**SCHEDULE C - Letter of Intent from MBE/WBE
To Perform As
Subcontractor, Subconsultant, and/or Material Supplier (2 of 2)**

PARTIAL PAY ITEMS

For any of the above items that are partial pay items, specifically describe the work and subcontract dollar amount:

N/A

If more space is needed to fully describe the MBE/WBE firm's proposed scope of work and/or payment schedule, attach additional sheet(s).

SUB-SUBCONTRACTING LEVELS

- ☒ % of the dollar value of the MBE/WBE subcontract will be sublet to non-MBE/WBE contractors.
- ☐ % of the dollar value of the MBE/WBE subcontract will be sublet to MBE/WBE contractors.

If MBE/WBE subcontractor will not be sub-subcontracting any of the work described in this Schedule, a zero (0) must be filled in each blank above. If more than 10% percent of the value of the MBE/WBE subcontractor's scope of work will be sublet, a brief explanation and description of the work to be sublet must be provided.

The undersigned will enter into a formal agreement for the above work with the General Bidder, conditioned upon its execution of a contract with the Public Building Commission of Chicago, and will do so within five (5) working days of receipt of a notice of Contract award from the Commission.

By:

4th Solutions Intl.
Name of MBE/WBE Firm (Print)
1/30/2006
Date
(708) 482-4117 x127
Phone

Signature

Name (Print)

JANE M. MORGAN
JANE M. MORGAN

IF APPLICABLE:

By:

Joint Venture Partner (Print)
Date
Phone

Signature

Name (Print)

MBE ___ WBE ___ Non-MBE/WBE ___

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Dept of Procurement

DEPT OF PROCUREMENT

08:41:12 a.m

12-09-2005

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City of Chicago
Richard M. Daley, Mayor

Department of
Procurement Services

Barbara A. Lyspeur
Chief Procurement Officer

City Hall, Room 403
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-4900
(312) 744-2949 (TTY)
<http://www.cityofchicago.org>

November 14, 2005

Jane M. Morgan, President
411 Computers
6160 South East Avenue, Suite 300
La Grange, Illinois 60525

Dear Ms. Morgan:

The City of Chicago Department of Procurement Services ("Department") has undertaken an evaluation of procurement policies and procedures including those utilized within the M/WBE and DBE certification unit. In light of this evaluation and in anticipation of streamlining our procedures, the Department extends your WBE certification until September 1, 2006.

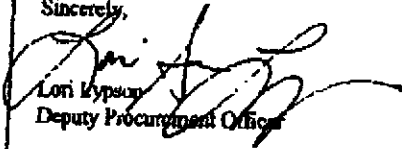
The Department may request additional information from you prior to the expiration of the courtesy period. This information will assist us in making a determination on the recertification of your company. You will receive additional information from the Department in the coming days.

As you know, your firm's participation on contracts will be credited only toward WBE in the following specialty area(s):

Computer Systems Integration; Technology and Computer Consulting; Local Area and Wide Area network Services; Supplier of Computer Related Products

If you have any questions, please contact our office at 312-742-0766.

Sincerely,


Lori Lyspeur
Deputy Procurement Officer

mck



PUBLIC BUILDING COMMISSION OF CHICAGO
Contract No.

**SCHEDULE C - Letter of Intent from MBE/WBE
To Perform As
Subcontractor, Subconsultant, and/or Material Supplier (1 of 2)**

**SCHEDULE C AND SUPPORTING DOCUMENTS MUST BE
SUBMITTED WITH BID**

Name of Project: Public Building Commission of Chicago

Project Number: _____

FROM:

TeamWorks
(Name of MBE or WBE)

MBE _____ WBE ☒

TO:

IBM
(Name of General Bidder) and Public Building Commission of Chicago

The undersigned intends to perform work in connection with the above-referenced project as (check one):

_____ a Sole Proprietor

_____ a Partnership

☒ a Corporation

_____ a Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached Letter of Certification, dated Aug. 30, 2005. In addition, in the case where the undersigned is a Joint Venture with a non-MBE/WBE firm, a Schedule B, Joint Venture Affidavit, is provided.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above-named project.

Training Services

The above-described services or goods are offered for the following price, with terms of payment as stipulated in the Contract Documents.

\$188,465



City of Chicago
Richard M. Daley, Mayor

Department of
Procurement Services

Mary A. Dempsey
Interim Chief Procurement Officer

City Hall, Room 403
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-4900
(312) 744-2949 (TTY)
<http://www.cityofchicago.org>

August 30, 2005

Alison Chung, President
ALC Enterprises, Inc. d/b/a Teamwerks, Inc.
111 East Wacker Dr. - Suite 1200
Chicago, Illinois 60601

Dear Ms. Chung:

The City of Chicago Department of Procurement Services ("Department") has undertaken an evaluation of procurement policies and procedures including those utilized within the M/WBE and DBE certification unit. In light of this evaluation and in anticipation of streamlining our procedures, the Department extends your MBE/WBE certification until February 16, 2006.

The Department may request additional information from you prior to the expiration of the courtesy period. This information will assist us in making a determination on the recertification of your company. You will receive additional information from the Department in the coming days.

As you know, your firm's participation on contracts will be credited only toward MBE/WBE in the following specialty area(s):

Technology, Computer, Telecommunications and Wiring Consulting

If you have any questions, please contact our office at 312-742-0766.

Sincerely,

Lori Ann Lypton
Deputy Procurement Officer

LAL/gk



PUBLIC BUILDING COMMISSION OF CHICAGO
Contract No.**SCHEDULE C - Letter of Intent from MBE/WBE**
To Perform As
Subcontractor, Subconsultant, and/or Material Supplier (1 of 2)**SCHEDULE C AND SUPPORTING DOCUMENTS MUST BE**
SUBMITTED WITH BIDName of Project: OPERATION VIRTUAL SHIELD

Project Number: _____

FROM:

QUANTUM CROSSING, LLC(A SUBCONTRACTOR TO DIVANE BROS. ELECTRIC CO. MBE X WBE(Name of MBE or WBE)

TO:

I. B. M.and Public Building Commission of Chicago(Name of General Bidder)

The undersigned intends to perform work in connection with the above-referenced project as (check one).

_____ a Sole ProprietorX

a Corporation

_____ a Partnership_____ a Joint VentureThe MBE/WBE status of the undersigned is confirmed by the attached Letter of Certification, dated 09/22/2005. In addition, in the case where the undersigned is a Joint Venture with a non-MBE/WBE firm, a Schedule B, Joint Venture Affidavit, is provided.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above-named project.

FURNISH AND INSTALL CAMERAS AND RELATED SUPPORT EQUIPMENT AT
LOCATIONS AS DETERMINED BY OWNER.

The above-described services or goods are offered for the following price, with terms of payment as stipulated in the Contract Documents.

LUMP SUM VALUE OF \$3,200,000.00

PUBLIC BUILDING COMMISSION OF CHICAGO

Contract No.

SCHEDULE C - Letter of Intent from MBE/WBE

To Perform As

Subcontractor, Subconsultant, and/or Material Supplier (2 of 2)

PARTIAL PAY ITEMS

For any of the above items that are partial pay items, specifically describe the work and subcontract dollar amount:

If more space is needed to fully describe the MBE/WBE firm's proposed scope of work and/or payment schedule, attach additional sheet(s).

SUB-SUBCONTRACTING LEVELS

-0- % of the dollar value of the MBE/WBE subcontract will be sublet to non-MBE/WBE contractors.

-0- % of the dollar value of the MBE/WBE subcontract will be sublet to MBE/WBE contractors.

If MBE/WBE subcontractor will not be sub-subcontracting any of the work described in this Schedule, a zero (0) must be filled in each blank above. If more than 10% percent of the value of the MBE/WBE subcontractor's scope of work will be sublet, a brief explanation and description of the work to be sublet must be provided.

The undersigned will enter into a formal agreement for the above work with the General Bidder, conditioned upon its execution of a contract with the Public Building Commission of Chicago, and will do so within five (5) working days of receipt of a notice of Contract award from the Commission.

By:

Quantum Crossing LLC

Name of MBE/WBE Firm (Print)

2-3-2006

Date

312-467-0065

Phone

IF APPLICABLE:

By:

Joint Venture Partner (Print)

Date

Phone

Roger J. Martinez

Signature

ROGER J. MARTINEZ

Name (Print)

Signature

Name (Print)

MBE ___ WBE ___ Non-MBE/WBE ___

2006-02-06 10:57

02/06/2006 10:17

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DIVANE BROS

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PAGE 03/04

02/06/2006 10:00

030

QUANTUM

PAGE 01



City of Chicago
Richard M. Daley, Mayor

Department of
Procurement Services

Barbara A. Lempkin
Chief Procurement Officer

City Hall, Room 403
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-4900
(312) 744-2949 (TTY)
<http://www.cityofchicago.org>

September 22, 2005

Roger Martinez, President
Quantum Crossings, L.L.C.
455 North CityFront Plaza, Suite 3100
Chicago, Illinois 60611

Dear Mr. Martinez:

The City of Chicago Department of Procurement Services ("Department") has undertaken an evaluation of procurement policies and procedures including those utilized within the M/WBE and DBE certification unit. In light of this evaluation and in anticipation of streamlining our procedures, the Department extends your MBE certification until April 1, 2006.

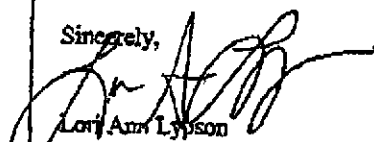
The Department may request additional information from you prior to the expiration of the courtesy period. This information will assist us in making a determination on the recertification of your company. You will receive additional information from the Department in the coming days.

As you know, your firm's participation on contracts will be credited only toward MBE in the following specialty area(s):

Electrical Contractor; Cabling and Wireless Networking Installation;
Telecommunications and Management Consulting

If you have any questions, please contact our office at 312-742-0766.

Sincerely,


Lori Ann Lyson
Deputy Procurement Officer

mck



08/25/2005 13:28

030

QUANTUM

PAGE 01



City of Chicago
Richard M. Daley, Mayor

Department of
Procurement Services

Eric J. Orrip
Chief Procurement Officer

City Hall, Room 403
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-4900
(312) 744-2949 (TTY)

<http://www.cityofchicago.org>

Roger Martinez, President
Quantum Crossings, L.L.C.
465 North CityFront Plaza, Suite 3100
Chicago, Illinois 60611
(312) 467-0065

Re: 3rd ANNIVERSARY CERTIFICATION

Certification Effective:

November 4, 2004

Certification Expires:

November 1, 2007

ANNUAL Affidavit Certificate Expires:

November 1, 2006

Dear Mr. Martinez:

Congratulations on your continued eligibility for certification as an MBE by the City of Chicago. Re-validation of Quantum Crossings, L. L. C.'s certification is required by November 1, 2006.

As a condition of continued certification during this five year period, you must continue to file a No-Challenge Affidavit within 60 days of the date of expiration. Please note that you must include a copy of your most current Corporate Federal Tax Returns. Failure to file this Affidavit will result in the termination of your certification.

You must also notify the Office of Business Development of any changes in ownership or control of your firm or any other matters or facts affecting your firm's eligibility for certification.

The City may commence actions to remove your firm's eligibility if you fail to notify us of any changes in ownership, management or control, or otherwise fail to cooperate with the City in any inquiry or investigation. Removal of eligibility procedures may also be commenced if your firm is found to be involved in bidding or contractual irregularities.

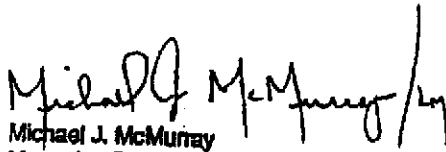
Your firm's name will be listed in the City's Directory of Disadvantaged Business Enterprises, Minority Business Enterprises and Women Business Enterprises in the specialty area(s) of:

Electrical Contractor; Cabling and Wireless Networking Installation;
Telecommunications and Management Consulting

Your firm's participation on City contracts will be credited only toward MBE goals in your area(s) of specialty. While your participation on City contracts is not limited to your specialty, credit toward MBE goals will be given only for work done in the specialty category.

Thank you for your continued interest in the City's Minority, Women and Disadvantaged Business Enterprise Programs.

Very truly yours,


Michael J. McMurray
Managing Deputy Procurement Officer

MJM/emc



PUBLIC BUILDING COMMISSION OF CHICAGO
Contract No.

SCHEDULE D - Affidavit of General Contractor Regarding MBE/WBE Participation
(1 of 2)

Name of Project: Operation Virtual Shield

STATE OF ILLINOIS

COUNTY OF COOK

SS

In connection with the above-captioned contract, I HEREBY DECLARE AND AFFIRM that I am the

Robert Legatze

Title

and duly authorized representative of

IBM Corporation

Name of General Contractor
whose address is

71 50. Wacker Drive

in the City of Chicago, State of ILLINOIS

and that I have personally reviewed the material and facts submitted with the attached Schedules of MBE/WBE participation in the above-referenced Contract, including Schedule C and Schedule B (if applicable), and the following is a statement of the extent to which MBE/WBE firms will participate in this Contract if awarded to this firm as the Contractor for the Project.

Name of MBE/WBE Contractor	Type of Work to be Done in Accordance with Schedule C	Dollar Credit Toward MBE/WBE Goals	
		MBE	WBE
<u>Catapult Consulting</u>	<u>Project Management</u>	\$ 46,550	\$
<u>411 Solutions</u>	<u>IT Hardware</u>	\$	\$ 1,481,000
<u>Team Works</u>	<u>Training</u>	\$	\$ 153,465
<u>Quantum Consulting</u>	<u>Installation</u>	\$ 5,200,000	\$
		\$	\$
		\$	\$
		\$	\$
Total Net MBE/WBE Credit		\$ 3,246,550	\$ 1,667,465
Percent of Total Base Bid		22.7 %	11.67 %

The General Contractor may count toward its MBE/WBE goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of the ownership and control of the MBE/WBE partner.

PUBLIC BUILDING COMMISSION OF CHICAGO
Contract No.SCHEDULE D - Affidavit of General Contractor Regarding MBE/WBE Participation
(2 of 2)

SUB-SUBCONTRACTING LEVELS

- ☒ % of the dollar value of the MBE/WBE subcontract will be sublet to non-MBE/WBE contractors.
- ☒ % of the dollar value of the MBE/WBE subcontract will be sublet to MBE/WBE contractors.

If MBE/WBE subcontractor will not be sub-subcontracting any of the work described in this Schedule, a zero (0) must be filled in each blank above.

If more than 10% of the value of the MBE/WBE subcontractor's scope of work will be sublet, a brief explanation and description of the work to be sublet must be provided.

The undersigned will enter into a formal agreement for the above work with the above-referenced MBE/WBE firms, conditioned upon performance as Contractor of a Contract with the Commission, and will do so within five (5) business days of receipt of a notice of Contract award from the Commission.

By:

IBM Corporation
Name of Contractor (Print)
2-6-06
Date
312-529-3828
Phone

Robert Legatke
Signature
Robert Legatke
Name (Print)

IF APPLICABLE:

By:

Joint Venture Partner (Print)

Date

Phone/FAX

Signature

Name (Print)
MBE ___ WBE ___ Non-MBE/WBE ___

SCHEDULE 15.1 INSURANCE

The Vendor shall provide and maintain at Vendor's own expense, until the expiration or termination of the Agreement (except as otherwise provided herein), including during any time period following termination if Vendor is required to perform any Services (e.g. Termination Assistance Services period), the types of insurance specified below, insuring all operations related to this Agreement, whether performed by the Vendor or Subcontractors.

A. Insurance to Be Provided:

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by Applicable Law covering all Vendor Personnel who are to provide Services under this Agreement and Employers Liability coverage with limits of not less than \$500,000 each accident or illness. Coverage extensions shall include other states endorsement, alternate employer, longshore and harbor worker, and voluntary compensation endorsement, when applicable.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$25,000,000 per occurrence, for bodily injury, personal injury, and property damage liability. Areas of coverage shall include the following but are not limited to: All premises and operations, products/completed operations (for a minimum of three (3) years following expiration or termination of the Agreement or any Termination Assistance Period, explosion, collapse, underground, separation of insureds, defense, and contractual liability. The PBC and the City are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the Services.

Subcontractors performing Services for the Vendor shall maintain Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence, for bodily injury, personal injury, and property damage liability, with the same terms hereinabove.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with the Services or this Agreement, the Vendor shall provide Automobile Liability Insurance with limits of not less than \$5,000,000 per occurrence, for bodily injury and property damage, if applicable. The PBC and the City are to be named as additional insureds on a primary, non-contributory basis.

Subcontractors performing Services for the Vendor shall maintain Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence, for bodily injury and property damage, and shall name as additional insureds under such policy on a primary,

noncontributory basis, the PBC and the City.

4) Railroad Protective Liability Insurance

When any Services are to be performed adjacent to or on railroad or transit property, Vendors shall provide, with ~~with~~ respect to Services performed by Vendor or its Subcontractors, Railroad Protective Liability Insurance issued in the name of the railroad or transit entity. The policy shall have limits of \$2,000,000 per occurrence, and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

5) All Risk Blanket Builders Risk Insurance

When the Vendor or any Subcontractor undertakes any Construction Work, including improvements, betterments, and/or repairs, the Vendor shall provide All Risk Blanket Builders Risk Insurance to cover at replacement cost the Goods, and Construction Work materials, supplies, equipment, machinery and fixtures that are or will be part of, or used in connection with, the Project. The PBC and the City shall be named as additional insureds and loss payees.

6) Miscellaneous Errors and Omissions/Professional Liability

Professional Liability for Errors and Omissions with limits of no less than \$10,000,000 per occurrence and in the aggregate, such policy to remain in effect for a period of at least two (2) years after completion of the Services, with an additional one (1) year extension thereof. Coverage shall, at a minimum, include performance of or failure to perform electronic data processing Services, and performance or failure to perform other computer and information technology Services. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, the start of Services under the Agreement.

Subcontractors performing Services shall maintain Professional Liability for Errors and Omissions with limits of no less than \$2,000,000 per occurrence and in the aggregate. Coverage shall, at a minimum, include performance of or failure to perform electronic data processing Services, and performance or failure to perform other computer and information technology Services. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, the start of Services under the Agreement.

7) Professional Liability

When any architects, engineers, construction managers, Project managers or any other professional consultants employed by Vendor perform Services in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$10,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, the start of the Services under the Agreement. Such policy must remain in effect for at least two (2)

years after completion of the Services. A claims made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

Subcontractors performing Services for the Vendor as architects, engineers, construction managers, Project managers, or any other professional consultants shall maintain Professional Liability Insurance covering acts, errors, or omissions with limits of not less than \$2,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or proceed, the start of the Services under the Agreement.

6) Contractors Pollution Liability

When any Construction Work is performed which may cause a pollution exposure, including abatement. Contractors Pollution Liability shall be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise in connection with the Construction Work, with limits of not less than \$10,000,000 per occurrence. Coverage shall include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, continuation of the Services under the Agreement. A claims made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The PBC and the City are to be named as additional insureds.

Subcontractors performing Construction Work shall maintain Contractors Pollution Liability with limits of not less than \$2,000,000 per occurrence and shall cover bodily injury, property damage and other losses caused by pollution conditions that arise in connection with the Construction Work. Coverage shall include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, continuation of the Services under the Agreement. The PBC and the City are to be named as additional insureds.

9) Valuable Papers Insurance

When any plans, designs, drawings, media, data, specifications and documents are produced pursuant to the Services or used under this Agreement, Valuable Papers Insurance shall be maintained in an amount to insure against any loss up to a limit of \$100M to pay for the re-creation and reconstruction of such plans, designs, drawings, media, data, specifications and documents.

10) Property

The Vendor shall be responsible for any and all loss or damage to Vendor's or Subcontractors' tangible personal property (including material, equipment, tools and/or supplies) owned, rented, or used by the Vendor or Subcontractors in connection with Services performance. The Vendor shall be responsible for all loss and damage to PBC or City tangible personal property at replacement cost.

11) Marine Insurance

When Vendor undertakes any marine operation in connection with this Agreement, Vendor must provide Marine Protection & Indemnity coverage with limits of not less than \$1,000,000. Coverage must include property damage and bodily injury to third parties, injuries to crew members if not provided through other insurance; damage to wharves, piers and other structures, and collision. The PBC and the City are to be named as an additional insured.

B. Additional Requirements

The Vendor will furnish the PBC, Department of Procurement Services, Suite 200, 50 West Washington Street 60602, original Certificates of Insurance evidencing the coverage required in this Schedule 15.1 to be in force on the Effective Date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term. The receipt of any certificate does not constitute agreement by the PBC that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the PBC to obtain certificates or other insurance evidence from Vendor shall not be deemed to be a waiver by the PBC of Vendor's obligations hereunder. The Vendor shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Vendor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the PBC retains the right to stop Services until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance carriers of such policies shall provide for sixty (60) days prior written notice to be given to the PBC in the event coverage is substantially changed, canceled, or non-renewed, except in respect of Professional Liability insurance. Regarding Railroad Protective Liability Insurance 60 days prior written notice of cancellation is applicable for any statutorily permitted reason other than nonpayment of premium; regarding nonpayment of premium, ten (10) days prior written notice is applicable.

Any and all deductibles or self insured retentions on referenced insurance coverages must be borne by Vendor.

The Vendor agrees that insurers must waive their rights of subrogation against the PBC and the City, their employees, elected officials except in respect of Professional Liability insurance.

The Vendor expressly understands and agrees that any coverages and limits furnished by Vendor will in no way limit the Vendor's liabilities and responsibilities specified within the Agreement documents or by

Applicable Law.

The Vendor expressly understands and agrees that any insurance or self insurance programs maintained by the PBC and City will not contribute with insurance provided by the Vendor under the Agreement.

The insurance required herein will not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of Applicable Law.

The Vendor shall require all Subcontractors (at every tier) to provide the insurance required herein. All Subcontractors (at every tier) shall be subject to the same insurance requirements of Vendor unless otherwise specified herein.

If the Vendor or Subcontractors desire additional coverages, the Vendor and the Subcontractor shall be responsible for the acquisition and cost of such additional protection.

The PBC maintains the right to modify, delete, alter or change these requirements

Schedule 19.7
Termination Assistance Services

Table of Contents

I.	Introduction	2
II.	Termination Assistance Services	2
	A. Transition Plan	2
	B. Optional Services	4
III.	Hiring Vendor Employees	4
IV.	Equipment and Transitioned Materials	5
	A. Equipment Purchase	5
	B. Return of Transitioned Materials	5
V.	Third Party Services	5
VI.	Confidentiality	5

I. Introduction

Vendor shall provide to PBC or PBC's designee the Services described herein (the "Termination Assistance Services") commencing six months prior to the expiration of the Term or on such earlier date as PBC may request, and continuing for up to 12 months or for such time as the PBC determines that Termination Assistance Services are necessary following the effective date of the expiration or earlier termination of the Term (the "Termination Assistance Period"). Except to the extent expressly set forth below in this Section I, Vendor shall provide Termination Assistance Services to PBC or its designee in accordance with the Agreement and this Schedule regardless of the reason for the expiration or termination of the Term. Vendor shall continue to provide all Services requested by PBC while the Parties are attempting to resolve any disputes in accordance with the Agreement, and during any related litigation, or agreed upon alternative dispute resolution procedure. Notwithstanding any provision to the contrary, however, Vendor shall be permitted to suspend the Termination Assistance Services if PBC has defaulted on its obligation to pay undisputed amounts in accordance with the Agreement, and has failed to cure such default within ninety (90) days after notice from Vendor specifying such default. Such suspension shall last only until PBC has paid such defaulted amount. At PBC's request, Vendor shall provide Termination Assistance Services to the PBC and any applicable Sister Agencies. Vendor shall perform the Termination Assistance Services as if they were Services under the Agreement and such Termination Assistance Services shall be held to the same provisions of the Agreement as Services including the provisions relating to Standards, Service Levels, degree of accuracy, quality, completeness, timeliness, responsiveness and cost-effectiveness during the Termination Assistance Period. Termination Assistance Period is defined as the period of time requested by the PBC for Vendor to provide additional Services including termination Assistance Services.

II. Termination Assistance Services

As part of the Termination Assistance Services, Vendor will timely transfer the control and responsibility for all functions and Services then-currently being performed for the PBC under the Agreement to the PBC and/or the PBC's designees, including the execution of any documents reasonably necessary to effect such transfers. Vendor shall also provide to PBC the Transitioned Materials (as defined below) and provide other Termination Assistance Services as required by the PBC.

A. Transition Plan

As part of the Services, Vendor will create and present to PBC for its approval, a plan for the delivery of the Termination Assistance Services (the "Termination Assistance Plan") six months prior to the expiration of the Term or within 45 days after Vendor's receipt of notice of termination by PBC which Vendor will comply with during the Termination Assistance Period. The Termination Assistance Plan shall include at a minimum, the following:

1. An identification of the current Services and functions

2. Procedures describing in detail how such Services and functions are performed
3. A list of all the PBC owned Goods, Software, Custom Software and Updates used in providing the Services
4. A list of all the Vendor owned Goods, Software, Custom Software and Updates used in providing the Services
5. A schedule and plan for Vendor's return to PBC of the foregoing
6. A list of all the Deliverables under the Agreement and their current status
7. A list of all the Subcontractors and their roles and responsibilities
8. A list of all the Reports due up until the end of the Termination Assistance Period;
9. An updated list compiled using commercially reasonable efforts of all PBC Confidential Information, City Materials, City Data and Hardware in which Vendor has in its possession and a schedule and plan for Vendor's return to PBC of the foregoing;
10. An updated and current list identifying all current versions of the Vendor Owned materials and Vendor Owned System Software (if any) used to provide the Services;
11. Any not yet tendered Vendor Pass Through Licenses and Warranties and the costs associated with such (if applicable);
12. All Construction Work Design Documents, Submittals, and As-Built Drawings in their current form;
13. Current version of sketches (if any) on equipment installations;
14. An up to date list of any Critical Licensed Software and version level; Vendor shall update the Termination Assistance Plan based on any feedback received from PBC within [ten (10)] business days from receipt of feedback from the PBC
15. Review all enhancements or developments in process or planned for the System;
16. Provide hard and soft copies of the System configuration;
17. Services activities to continue without undue disruption;
18. the orderly transfer of the Services to PBC and/or its designee(s).

19. Deliver to the PBC or PBC's designee all PBC owned source code, object code and documentation (if any) for the Software then in Vendor's possession;
20. Deliver to the PBC licenses as required by the Master Agreement.

B. Optional Services

PBC may request Vendor to provide any of the services listed below. PBC agrees to pay vendor for providing such services and at the hourly rates listed in Schedule 7.1 (Fees).

1. A schedule, describing in detail how such Services and functions will be either transferred back to the PBC or the PBC's designee;
2. A plan describing in detail how such Services and functions will be either transferred back to the PBC or the PBC's designee
3. For the Deliverables which have not yet been completed, if any, a detailed description of what needs to be completed with respect to the Deliverables;
4. Configuration management for the servers;
5. Analysis of potential risk factors relating to the transition of the Services and suggested strategies to mitigate such risks.
 - a) Vendor shall update the Termination Assistance Plan based on any feedback received from PBC within [ten (10)] business days from receipt of feedback from the PBC. Identify, record and provide release levels for Software used in providing the Services; Provide all necessary and relevant maintenance services;
 - b) Provide reasonable training to the PBC or its designee regarding the System and to use any equipment, Software or processes to be transitioned; and Provide all training materials and documentation.

III. Hiring Vendor Employees

Within 45 days of Vendor's receipt of termination notice or no later than 45 days prior to the expiration of the Term, PBC or PBC's designee shall be permitted to hire, without interference from Vendor (including counter-offers within 90 days after Vendor's receipt of notice of termination or non-renewal), any Vendor employees primarily assigned to or performing the Services as of the date Vendor receives notice of termination, or, in the case of expiration, within the 12-month period prior to expiration; provided that the effective date of hire or the commencement of responsibilities with PBC shall in no event be prior to the expiration or termination date of this Agreement. However, PBC may immediately hire any Vendor employees where Vendor or such employee has terminated employment for any reason. Vendor shall waive its rights, if any, under contracts with such personnel restricting the ability of such personnel to be recruited or hired by PBC or its designee. PBC or its designee shall have reasonable access to such Vendor employees for interviews, evaluations and recruitment. PBC

shall conduct the above described hiring activity in a manner that is not unnecessarily disruptive of Vendor's performance of its obligations under this Agreement or this Schedule.

IV. Equipment and Transitioned Materials

A. Equipment Purchase

With respect to equipment (i) owned or leased by Vendor used to provide the Services, PBC or its designee shall have the right (but not the obligation) to purchase, or assume the lease for, such equipment. Such equipment shall be transferred in good working condition, reasonable wear and tear excepted. In the case of Vendor-owned equipment, among all applicable warranties, Vendor grants to PBC a warranty of title and a warrant that such equipment is free and clear of all liens and encumbrances. Such conveyance by Vendor to PBC shall be at then-current fair market value. In the case of leased equipment, Vendor shall represent and warrant that the lease is not in default and that all payments thereunder have been made through the date of transfer.

B. Return of Transitioned Materials

Vendor shall return to PBC, if not previously returned, all Transitioned Materials including any equipment in condition at least as good as the condition thereof on the date provided to Vendor, ordinary wear and tear excepted.

V. Third Party Services

Vendor shall use commercially reasonable efforts so that the Subcontractors continue to provide the Services being provided by Subcontractors during the Termination Assistance Period. Vendor shall inform PBC of any software licenses, equipment leases, subcontracts and other significant agreements used by Vendor to perform the Services (collectively, the "Vendor Agreements"). As to the Vendor Agreements, PBC or its designees shall have the right, at PBC's option, to assume any or all of the Vendor Agreements and if PBC chooses to assume any such Vendor Agreements, PBC shall assign the Vendor's rights and delegate Vendor's obligations in the designated Vendor Agreement. Vendor shall pay any charge or fee imposed in a Vendor Agreement for assignment. Vendor represents and warrants that Vendor is not and shall be in default of such Vendor Agreements and that all payments for which Vendor is responsible have been made thereunder through the date of assignment.

VI. Confidentiality

Prior to providing Transfer Assistance Services to a designee of the PBC, Vendor will have the right to receive from such designee written assurances that (i) the designee will maintain at all times the confidentiality of any Vendor Confidential Information to which it might have or be provided access, or learned by such designee in the course of receiving Transfer Assistance Services, and (ii) that the designee will, to the extent reasonably required for designees performance of the Services for PBC and subject to Vendor's prior written agreement as to any particular item of Confidential Information, use such Confidential Information solely for the purposes for which PBC is authorized to use such Confidential Information under the Agreement, and subject to any reasonable restrictions Vendor may require. Vendor Confidential Information will be marked as such by Vendor before disclosure to the PBC.