

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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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-minimus 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-minimus 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 Indemnitee, 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 Agreements. 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)

SCHEDULE 1.2

Defined Terms

<u>Defined Term:</u>	<u>Defined In:</u>
Acceptance	Section 5.2(e)
Acceptance Criteria	Section 5.2(a)
Acceptance Testing	Section 5.2(b)
Acceptance Process	Section 5.2(a)
Act	Schedule 4.1
activities	Schedule 4.1
Acts	Schedule 4.1
Additional Fees	Section 3.3
Administrator	Section 8.3
Affected Products	Section 16.2(e)
Agents	Section 12.7(b)
Agreement	Prologue
Applicable Law	Section 14.1
Apprentices	Schedule 4.1
As-Built Drawings	Schedule 4.1
Assumption	Section 9.4(a)
At Risk Amount	Section 3.1(f)(iii)(1) and Schedule 3.1(f)
Back Bone Network	Schedule 2.3(b)
Base Term	Section 19.1
Base Time	Schedule 3.1(f)
Benchmark	Section 3.8(b)
Benchmarking or Benchmarked	Section 3.8(a)
Benchmark Standard	Section 3.8(c)
Bond	Schedule 4.1
Camera Systems	Schedule 2.3(b)
CBD	Section 1.1(b)(i)
Central Business District	Section 1.1(b)(i)
Change	Section 9.4(a)
Change Claim	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
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:

Defined In:

Project Managers	Section 8.3
Project Plan	Section 2.4(a)
Project Timetable	Section 2.4(a)
Proposal	Recital B
Punch List	Schedule 4.1
Punch List Construction Work	Schedule 4.1
QAP	Section 2.4(b)
Quality Control Standards	Section 2.4(b)
Reassignment Waivers	Section 8.3
Receiving Party	Section 12.1(a)
Recipient	Section 13.1(a)
Recovery Schedule	Schedule 4.1
Refusal	Section 18.2(f)
Reimbursable Expenses	Section 7.2(b)
Remobilization Costs	Section 7.7
Renewal Term	Section 19.1
Reports	Section 9.3
Representative Sample	Section 3.8(a)
Response	Section 9.4(a)
Retainage	Schedule 7.1
Revise and Resubmit	Schedule 4.1
RFQ/P	Recital A
Root Cause Analysis	Section 3.2
Samples	Schedule 4.1
Schedule	Schedule 4.1
Scheduled Maintenance Time	Schedule 3.1(f)
Severity Level	Section 3.2
Service Facilities	Section 10.1
Service Levels	Section 3.1(f)(i)
Service Level Credit	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