CITY OF PHILADELPHIA

PROFESSIONAL SERVICES CONTRACT

COMPUTER AND INFORMATION SERVICES

GENERAL PROVISIONS

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GENERAL PROVISIONS

ARTICLE I: DEFINITIONS

1.1 **ADA.** "ADA" shall have the meaning set forth in Section 14.5 (Americans with Disabilities Act) below.

1.2 **Amendment.** "Amendment" means a written modification or change to any Contract Document signed by both parties.

1.3 **Applicable Law.** "Applicable Law" means all applicable present and future federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth and the United States of America. Applicable Law includes, without limitation, the Philadelphia Home Rule Charter, as amended from time to time, The Philadelphia Code, as amended from time to time, and the specific laws set forth in Article XIV (Terms and Conditions Relating to Certain Applicable Laws) below hereof, each as amended from time to time.

1.4 **Applicant.** "Applicant" means a Person who has filed an application to be awarded a Non-Competitively Bid Contract.

1.5 **Appropriated Fiscal Year.** "Appropriated Fiscal Year" shall have the meaning set forth in Section 5.3 (Crossing Fiscal Years) below.

1.6 **City.** The "City" means the City of Philadelphia, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, and shall encompass, without limitation, its various departments, agencies, boards and commissions including the Department.

1.7 **City Council.** "City Council" means the Council of The City of Philadelphia, as described in Article II of the Philadelphia Home Rule Charter, as it may be amended from time to time. City Council is the legislature of the City.

1.8 **Consultant.** "Consultant" means any Person used by Provider to assist in obtaining a Non-Competitively Bid Contract through direct or indirect communication by such Person with any City Agency or any City officer or employee, if the communication is undertaken by such Person in exchange for, or with the understanding of receiving, payment from the Provider or any other Person; provided, however, that "Consultant" shall not include a full-time employee of the Provider.

1.9 **Contract.** "Contract" means all of the Contract Documents.

1.10 **Contract Documents.** The "Contract Documents" means the General Provisions, the Provider Agreement, any and all other documents or exhibits (including attachments thereto) incorporated by reference in either the General Provisions or the Provider Agreement, and any and all Amendments to any of these documents.

1.11 **Contributions**. "Contributions" shall have the meaning set forth in the Pennsylvania Election Code, 25 P.S. Section 3241.

1.12 **Deliverables.** "Deliverables" means, collectively, the tangible items of work that provider is required to furnish as part of its performance of the Contract, including, without limitation, all Software, Documentation, designs, reports, documents, and materials required under the Contract.

1.13 **Department.** "Department" means the department, board, commission or agency of the City of Philadelphia defined as Department in the heading of the Provider Agreement.

1.14 **Event of Default.** "Event of Default" means those events defined and identified in Section 11.1 (Events of Default) of these General Provisions.

1.15 **Event of Insolvency.** "Event of Insolvency" means (a) the filing of a voluntary petition by Provider under the Federal Bankruptcy Code or any similar state or federal law; or (b) the filing of an involuntary petition against Provider under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days; or (c) Provider's making of an assignment for the benefit of creditors; or (d) the appointment of a receiver for Provider or for the property or assets of Provider, if such appointment is not vacated within forty-five (45) days thereafter; or (e) any other proceeding under any bankruptcy or insolvency or liquidation law, voluntary or otherwise.

1.16 **Fiscal Year**. "Fiscal Year" means the fiscal year of the City, which commences on July 1 of each calendar year and expires on June 30 of the next succeeding calendar year.

1.17 **General Provisions.** The "General Provisions" means this document, which contains standard provisions generally required by the City in its professional service contracts, and any exhibits identified herein.

1.18 **Initial Term**. "Initial Term" shall have the meaning set forth in Section 2.1 (Initial Term) below.

1.19 **Interpretation; number, gender.** The words "herein" "hereof" and "hereunder" and other words of similar import refer to this Contract as a whole, including the all of the Contract Documents, and not to any particular article, section, subsection or clause contained in the Contract Documents. Whenever the context requires, words used in the singular shall be

construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include the masculine, feminine and neuter genders.

1.20 **Materials.** "Materials" means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics and other data, computer tapes, computer programs, computer software, and other tangible work product and materials prepared or developed by or for Provider or for Provider by a Subcontractor and supplied to the City by Provider or a Subcontractor in the performance of the Contract.

1.21 **Non-Competitively Bid Contract**. "Non-Competitively Bid Contract" means a contract for the purchase of goods or services to which the City or a City Agency is a party that is not subject to the lowest responsible bidder requirements of Section 8-200 of the Philadelphia Home Rule Charter, including, but not limited to, a Professional Services Contract, and any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).

1.22 **Party; Parties.** A "Party" means either the City or Provider; the "Parties" means the City and Provider.

1.23 **Person.** "Person" means any individual, sole proprietorship, association, company, firm, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized at law.

1.24 **Provider.** "Provider" means the entity or individual providing Services and Deliverables to the City and defined as Provider in the heading of the Provider Agreement.

1.25 **Provider Agreement.** The "Provider Agreement" means the agreement containing the terms specific to the Provider's engagement.

1.26 **Responsible Official.** The "Responsible Official" means the director, commissioner or other head of the Department.

1.27 **Scope of Services.** "Scope of Services" means the document(s) attached as an exhibit (or as exhibits) to the Provider Agreement, which set(s) forth the Services to be rendered and Deliverables to be provided under the Contract, the time frames within which the Services are to be rendered and the Deliverables are to be provided and other requirements Provider must satisfy in rendering the Services and providing the Deliverables.

1.28 **Services and Deliverables.** "Services," "Deliverables," and "Services and Deliverables" shall have the meanings set forth for these terms in the Provider Agreement.

1.29 **Subcontract.** "Subcontract" means a contract subordinate to the Contract, made between the Provider and a Subcontractor.

1.30 **Subcontractor.** "Subcontractor" means a Person who has contracted with the

Provider for the performance of all or a part of the work, Services or Deliverables which the Provider has contracted to perform under the Contract.

1.31 **Suspension Notice.** "Suspension Notice" means a written notice from the City to Provider pursuant to Section 13.1 (Termination or Suspension for Convenience) below suspending Provider's performance under this Contract.

1.32 **Suspension Period.** "Suspension Period" means the period designated by the City in a Suspension Notice during which the City has suspended Provider's performance under this Contract.

1.33 **Termination Notice.** "Termination Notice" means a written notice from the City to Provider pursuant to Section 13.1 (Termination or Suspension for Convenience) below terminating this Contract.

ARTICLE II: TERM

2.1 **Initial Term.** The initial term of the Contract shall be as stated in the Provider Agreement.

2.2 **Additional Terms**.

(a) Licenses to Software (as defined in the Provider Agreement) and other licensed Services and Deliverables under the Contract shall be governed by the terms and conditions set forth in the Provider Agreement.

(b) The City may, at its sole option, amend the Contract to add on an annual basis up to three (3) successive one year terms ("Additional Terms"), unless any shorter term (or terms) is specified in the Provider Agreement. Unless otherwise stated in the Provider Agreement, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). The City shall give Provider thirty (30) days written notice of its intent to amend the Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term shall be subject to councilmanic appropriation of funds. There shall be no liability or penalty to the City for electing not to amend the term of the Contract to add Additional Terms. Each Additional Term of the Contract shall be deemed to constitute a separate the Contract, whose term shall not exceed one year.

ARTICLE III:
PROVIDER'S DUTIES AND COVENANTS

3.1 **Performance Requirements.** Provider shall provide all Services and Deliverables, in accordance with the Contract and shall exercise an industry standard degree of professional skill and competence in performing under the Contract. All payments to Provider are contingent upon satisfactory performance of the terms and conditions set forth in the Contract as

determined by the Responsible Official.

3.2 **Compliance with Applicable Law.** Provider shall comply with the requirements of all Applicable Law in the performance of the Contract. Provider shall inform the Responsible Official, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of receipt thereof, and shall correct any violations within the time prescribed by law, or immediately in the case of any emergency.

3.3 **Additional Services and Deliverables.** Provider shall not perform or provide, and shall not be paid for, any Services or Deliverables not included in the Contract (the "Additional Services and Deliverables") unless it receives written pre-authorization from the Responsible Official, which specifies the Additional Services and Deliverables to be performed and/or provided and the compensation to be paid for any Additional Services and Deliverables. In no event shall the rates charged by Provider for such additional Services and Deliverables exceed Provider's then current standard rates. The City shall have no responsibility for any costs incurred by Provider for such additional Services and Deliverables not specifically approved in advance and authorized in writing by the Responsible Official.

3.4 **Subcontracts.**

(a) Provider shall not delegate or enter into any Subcontracts with any Subcontractor for the performance of its obligations under the Contract, in whole or in part, without on each occasion obtaining the prior written consent of the Responsible Official.

(b) Provider shall submit to the Responsible Official copies of all proposed Subcontract(s) to be entered into by Provider, along with Provider's written request for the City's consent. All such subcontracts must specify that:

(1) work performed by the Subcontractor shall be in accordance with the terms of the Contract;

(2) nothing contained in such Subcontract shall be construed to impair the rights of the City under the Contract;

(3) the City's consent to or approval of any Subcontract shall not create any obligation of the City to any Subcontractor;

(4) nothing contained in such Subcontract, or under the Contract, shall create any obligation of the City to any Subcontractor;

(5) the City shall be expressly designated a third party beneficiary of the Subcontract;

(6) upon request by the City (at the City's sole option) and upon receipt of written notice from the City stating that the Contract between the

City and Provider has been terminated, the Subcontractor agrees that it will continue to perform its obligations under the Subcontract for the benefit of the City in accordance with the terms and conditions of the Contract, provided the City pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of the Contract between the City and Provider at the same rate or in the same amount as set forth in the Subcontract for Services and Deliverables after such date of termination;

(7) the Subcontractor shall be bound by the same requirements as Provider including, without limitation, confidentiality, maintenance and preservation of records, and audit by government representatives, under the Contract;

(8) the Subcontractor agrees (i) to assign and transfer to the City all of its rights to sales and use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or the Contract, (ii) that, other than as directed by the City, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (iii) that the City, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by the assignment;

(9) the Subcontractor shall not be indebted to the City (to satisfy this requirement, the Provider shall include subsection 4.1(g) (No Delinquencies), with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to the Contract);

(10) the Subcontractor shall comply with Section 17-400 of The Philadelphia Code (to satisfy this requirement, the Provider shall include subsection 14.3 (a) (The Philadelphia Code, Section 17-400) hereof, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to the Contract); and

(11) the Subcontractor shall comply with Section 17-104 of The Philadelphia Code (to satisfy this requirement, the Provider shall include subsection 14.8 (b) (The Philadelphia Code, Section 17-104) hereof, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to the Contract).

(c) No permitted Subcontract shall relieve Provider of any obligation under the Contract. Provider shall be as fully responsible for the acts and omissions of its Subcontractors or

persons either directly or indirectly employed by them, as it is for the acts and omissions of Provider or persons directly or indirectly employed by Provider.

(d) Any purported Subcontract in violation of this Section or of any other Section in the Contract shall be of no force and effect.

(e) City-Related Agencies. If Provider is a City-Related Agency, as defined at Philadelphia Code subsection 17-1401(9), Provider shall abide by the provisions of Philadelphia Code Section 17-1400 in awarding any contract(s) pursuant to this Contract as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Subsection 17-1406(8) shall apply to Provider as if Provider were listed in that subsection.

(1) Unless approved by the City to the contrary, any approvals required by the Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed by Provider by its General Counsel; any approvals required to be performed by the Director of Finance shall be performed by Provider by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by Provider by its Executive Director.

3.5 **Relationship with the City.** Neither Provider's personnel nor any of Subcontractor's personnel shall be employees of the City. Provider shall notify the City of any of Provider's personnel or any of Subcontractor's personnel which have any contractual relationship or agency relationship with the City.

3.6 **Time Frame for Submissions.** Provider shall perform any and all Services and shall submit any and all Deliverables required by the Contract within the time frames set forth in the Scope of Services attached as an exhibit to the Provider Agreement or as mutually agreed upon in writing by the City and Provider. Absent any such written time frames, Provider shall perform its obligations under the Contract diligently and promptly.

3.7 **Prompt Payment by Provider.** Provider agrees to pay promptly all persons, firms, or corporations which have furnished labor or supplies in connection with the Services and Deliverables, including without limitation Subcontractors and suppliers. Provider shall provide, upon request of the City, evidence that these persons or entities have been fully paid.

3.8 **Sales and Use Tax.** The City is not subject to federal, state, or local sales or use taxes or to federal excise tax. Provider hereby assigns to the City all of its right, title and interest in any sales or use tax which may be refunded as a result of any materials purchased in connection with the Contract, and unless directed by the City, Provider shall not file a claim for any sales or use tax refund subject to this assignment. Provider authorizes the City, in its own name or the name of Provider, to file a claim for a refund of any sales or use tax subject to this assignment.

ARTICLE IV: PROVIDER'S REPRESENTATIONS AND COVENANTS

4.1 **Provider's Representations and Covenants.** Provider makes the following representations and covenants upon which the City relies as a material to enter into the Contract:

(a) **Good Standing.**

If Provider is not an individual, Provider is a business corporation, limited liability company, partnership, limited partnership or other business entity duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization. Provider is duly licensed, qualified and in good standing in the Commonwealth of Pennsylvania and in all jurisdictions in which it conducts business activities relating in any way to the performance of the Services and delivery of the Deliverables under this Contract, including, but not limited to, the jurisdiction in which Provider is organized. If Provider is a not-for-profit corporation or otherwise an entity determined to be tax exempt pursuant to Section 501(c) of the Internal Revenue Code by the Internal Revenue Service, then Provider has procured, and shall maintain in full force and effect, all consents and approvals necessary in connection with such tax-exempt and non-profit status.

(b) **Authority to Act.** Provider has full legal power and authority to execute and deliver this Contract, and provide the Services and Materials as set forth herein. Provider has duly authorized by all necessary actions the execution and delivery of this Contract on behalf of Provider by the individual or individuals signing the Provider Agreement. This Contract is the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with the terms set forth herein. The execution and delivery of this Contract by Provider will not result in a default under or a breach or violation of (1) Provider's certificate or articles of incorporation or bylaws, partnership agreement, limited liability company operating agreement or other pertinent organizational documents, as applicable; (2) any Applicable Law or any judgment, decree order, license, permit or other instrument or obligation to which Provider is now a party or by which Provider may be bound or affected; and (3) Provider's tax exempt status, if applicable. No consent, approval or authorization is required of any regulatory authority or governmental agency, or of any shareholder, partner, member, manager or other party related to Provider.

(c) **Legal Obligation.** This Contract has been duly authorized, executed and delivered by Provider, by and through individuals duly authorized to execute this Contract on behalf of Provider, and constitutes the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with its terms.

(d) **No Litigation Preventing Performance.** There is no litigation, claim, consent order, settlement agreement, investigation, challenge or other proceeding pending or threatened against Provider, its properties or business or any individuals acting on Provider's behalf, including, without limitation, Subcontractors, which seek to enjoin or prohibit Provider from entering into or performing its obligations under the Contract.

(e) **Requisite Licensure and Qualifications**. Provider and all of the Persons

acting on Provider's behalf, including, without limitation, Subcontractors, in connection with the Services and Deliverables under this Contract, possess and, at all times during the Term of this Contract, shall possess all licenses, certifications, qualifications or other credentials required in accordance with Applicable Law and the terms of this Contract, to perform the Services and provide the Deliverables. Provider shall provide the City with copies of all licenses, credentials and certifications required under this Section within five (5) days of request by the City.

(f) **No Adverse Interests.** Except as disclosed in writing and approved in advance by the Responsible Official, neither Provider nor any of its directors, officers, members, partners or employees, has any interest, or will acquire any interest, directly or indirectly, that conflicts in any manner or degree with the performance or rendering of the Services and Deliverables.

(g) **No Indebtedness to the City.** Provider and any entities under common control with Provider or controlled by Provider are not currently indebted to the City, and will not at any time during the term of the Contract (including any Additional Term(s)) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Provider shall remain current during the term of the Contract with all such payments and shall inform the Responsible Official in writing of Provider's receipt of any notices of delinquent payments within five (5) days after receipt. In addition to any other rights or remedies available to the City at law or in equity, Provider acknowledges that any breach or failure to conform to this representation and covenant may, at the option of the City, result in the withholding of payments otherwise due to Provider and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of the Contract for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination). In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

(h) **Business Privilege License.** If Provider is a "business" as defined in The Philadelphia Code, Section 19-2601, Provider has and shall maintain a valid business privilege license, issued by the City's Department of Licenses and Inspections, to do business in the City of Philadelphia.

(i) **Subcontractor Licensure; No Indebtedness to the City.** Each Subcontractor holds a valid current business privilege license to do business in Philadelphia, if required by Applicable Law. To the best of Provider's knowledge, information and belief, the representations made in the Subcontract that the Subcontractor is not indebted to the City are true and correct.

(j) **Non-Suspension; Debarment.** Provider and all of the individuals acting on Provider's behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or

the federal government, or any department, agency or political subdivision of any of the foregoing. If Provider cannot so warrant, then Provider shall submit to the Responsible Official a full, complete written explanation as to why Provider cannot so warrant. Provider shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of Pennsylvania Office of Inspector General for investigation of Provider's compliance with the terms of this or any other contract between Provider and the City which results in the suspension or debarment of Provider. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Provider shall not be responsible for costs of investigations which do not result in Provider's suspension or debarment.

(k) **Contributions.** In accordance with Section 17-1402 of The Philadelphia Code, Provider represents on behalf of itself and its Subcontractor(s) that no contribution(s) have been made and none shall be made during the term of the Contract by Provider, any Subcontractor, or any party from which a contribution can be attributed to the Provider or Subcontractor, that would render the Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Philadelphia Code Sections 17-1404(1) and 17-1405; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and shall make the Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 4.1(k) (Contributions), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Subsection 4.1(k) (Contributions) and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

(1) Pursuant to the attribution rules of Section 17-1405, Provider shall, during the term of the Contract and for one year thereafter, disclose any contribution of money or in-kind assistance the Provider, Subcontractor or any Consultant has made during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

a) Such disclosure shall be made on a form provided by the Department awarding the Contract, and the form shall be signed and filed with such Department within five (5)

business days of the contribution. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Provider or of a Consultant.

b) It shall not be a violation of Paragraph 4.1(k)(1) above if Provider fails to disclose a contribution made by a Consultant because the Provider was unable to obtain such information from the Consultant, provided the Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

1) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the contract, and before the Consultant communicated with a City department or office, official or employee on behalf of the Provider;

2) Including in such agreement a provision requiring the Consultant to provide the Provider in a timely manner with all information required to be disclosed under the provisions of Philadelphia Code Section 17-1400, and providing, in effect, that the agreement will be terminated by the Provider if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Provider as of the date of such termination;

3) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Provider to comply with the provisions of Philadelphia Code Section 17-1400; and

4) Invoking the termination provisions of the written agreement in a full and timely manner.

(2) The Provider shall, during the Term of the Contract and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Provider, any officer, director or management employee of the Provider, or any

Person representing the Provider, to give money, services, or any other thing of value (other than a Contribution as defined in Section17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section17-1401) given to any Person in response to any such request. The Provider shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

a) Such disclosure shall be made on a form provided by the

Department awarding the contract, and the form shall be signed and filed with the Department within (5) five business days after a request was made or a payment in response to a request was made, as the case may be.

b) The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

The above representations, warranties and covenants shall continue throughout the Term of this Contract. In the event said representations, warranties and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate.

(l) **Executive Order 02-04, Gifts.**

(a) Pursuant to Executive Order 02-04, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment or loan from any of the following sources:

1) A person seeking to obtain business from, or who has financial relations with, the City;

2) A person whose operations or activities are regulated or inspected by any City agency;

3) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;

4) A person seeking legislative or administrative action by the City; or

5) A person whose interests may be substantially affected by the performance or nonperformance of the official's or

employee's official duties.

(b) Provider understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

ARTICLE V: COMPENSATION

5.1 **Certification of Available Funds.** Provider acknowledges that payments under the Contract may not exceed the amount that the City's Finance Department certifies as available for the Contract. A copy of the form signed by the Finance Department showing the amount of currently available funds will be attached to the fully executed Contract returned to Provider. During the Initial Term and any Additional Term(s) of the Contract, the City reserves the right to fund the balance of the Contract amount in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in the Contract. Provider agrees that the City shall not be obligated to fund the Contract except out of funds certified by the Finance Department as currently available, even if those funds are less than the maximum amount stated in the Contract. If sufficient funds are not certified as available at any time, the City may exercise its options described in Section 5.2 (Unavailability of Funds) hereof.

5.2 **Unavailability of Funds.** If funding for the Contract from any source is not obtained and continued at an aggregate level sufficient to allow for payment for the Services and Deliverables under the Contract, the City may exercise one of the following options without liability or penalty to the City:

(a) Terminate the Contract effective upon a date specified in a Termination Notice; or

(b) Continue the Contract by reducing, through written notice to Provider, the amount of the Contract and Services and Deliverables, consistent with the nature, amount, and circumstances of available funding.

The City's exercise of either option under this Section shall not affect any obligations or liabilities of either party accruing prior to such termination or reduction of Services or Deliverables. Provider shall be compensated in accordance with the terms of the Contract for Services and Deliverables, satisfactorily performed and delivered prior to such termination under this Section.

5.3 **Crossing Fiscal Years.** If any portion of the compensation set forth in the Contract is to be paid in any City fiscal year (July 1 - June 30) following the fiscal year in which the Initial Term or any Additional Term of the Contract commences (in either case, "Commencement FY"), Provider understands and agrees that the portion of the compensation under the Contract payable with City funds for the period following the Commencement FY is subject to appropriation by City Council. If, for any reason, funds for that portion of the

compensation are not appropriated in any year, the Contract and the City's liability under the Contract shall automatically terminate at the end of the then current Commencement FY; provided, however, that Provider shall be compensated in accordance with the terms of the Contract for Services and Deliverables, satisfactorily performed and delivered prior to the end of the then current Commencement FY.

5.4 **Allowability of Cost Items**. All payments by the City to Provider under this Contract shall be subject to the limitations on the allowability of cost items imposed by the Contract Cost Principles.

ARTICLE VI:
AUDIT; INSPECTION RIGHTS; RECORDS

6.1 **City Audit.** From time to time during the Initial Term and any Additional Term(s) of the Contract, and for a period of five (5) years after termination of the Contract, the City may audit Provider's performance under the Contract. Audits may be conducted by representatives of the Department or other authorized City representatives including, without limitation, the City Controller. If so requested, Provider shall submit to the City all vouchers or invoices presented for payment pursuant to the Contract, all cancelled checks, work papers, books, records and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to the Contract. All such vouchers or invoices, work papers, books, records, accounts, cancelled checks, documentation and justification shall be subject to periodic review and audit by the City.

6.2 **Inspection.** All Services and Deliverables shall be subject to inspection and review by City, federal and state representatives, as may be applicable, or their designees, at the offices of Provider in the City, or in another location with the City's consent. Provider shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of this Contract. Such inspection and review of Provider's Services and Materials, including, without limitation, programs and facilities, shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, meetings with consumers, review of staffing ratios and job descriptions, and meetings with any of Provider's staff members who are either directly or indirectly involved in providing Services or Materials.

6.3 **Availability of Records.** Provider shall make available, within the City, at reasonable times during the term of the Contract and for the period set forth in Section 6.3 (Retention of Records) hereof, all records pertaining to the Contract for the purpose of inspection, audit or reproduction by any authorized representative of the Responsible Official, and where applicable, as specified in the Provider Agreement, the Pennsylvania Auditor General any other federal and state auditors.

6.4 **Retention of Records.** Provider shall retain all records, books of account and documentation pertaining to the Contract, for a period of five (5) years following termination of the Contract; however, if any litigation, claim or audit is commenced prior to expiration of the five

(5) year period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal; if Applicable Law requires or permits a longer period, then the records shall be retained for such longer period.

6.5 **Audits Pursuant to Section 6-400 of the Home Rule Charter.** Any Provider that is an Agency, as defined in Section 6-400 of the Philadelphia Home Rule Charter, shall permit the City Controller to audit its affairs as authorized in Section 6-400 during the Initial Term or any Additional Term. Under Section 6-400, an Agency is any entity a) that receives funds from the City, and either b) that is created by, or whose board of directors is in whole or part appointed by, one or more City officials or bodies; or c) that is organized pursuant to legal authority granted to it by City ordinance.

ARTICLE VII: ASSIGNMENT

7.1 **Assignment By Provider.** Provider shall not assign the Contract, or any part of the Contract, or any right to any monies to be paid under the Contract, without on each occasion obtaining the prior written consent of Responsible Official. In no case shall approval by the City of the assignment of any monies to be paid under the Contract relieve Provider from its obligations hereunder or change the remaining terms of the Contract. Any purported assignment in violation of this Article shall be of no effect.

7.2 **Applicability in Case of Bankruptcy or Insolvency.** A receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings shall comply with the requirements set forth in Section 7.1 (Assignment by Provider) hereof.

7.3 **Personal Services.** Provider acknowledges that the Services are the personal services of Provider and that the City shall have no obligation to accept performance by a third party without the Responsible Official's prior and express written consent.

ARTICLE VIII: INDEPENDENT CONTRACTOR; INDEMNIFICATION; LITIGATION COOPERATION

8.1 **Independent Contractor.** Provider is an independent contractor and shall not in any way or for any purpose be deemed or intended to be an employee or agent of the City. Neither Provider nor its employees or Subcontractors shall in any way represent that they are acting as employees, officials or agents of the City.

8.2 **Indemnification.** Provider shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Provider’s act or omission or negligence or fault, or the act or omission or negligence or fault of Provider’s agents, Subcontractors, suppliers, employees or servants, in connection with the Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or

adverse effects on the environment, intentional acts, failure to pay such Subcontractors and suppliers, or any breach of the Contract.

8.3 **Litigation Cooperation.** If, at any time, the City becomes involved in a dispute or receives notice of a claim or is involved in litigation concerning the Services and Deliverables provided under this Contract, the resolution of which requires the services or cooperation of Provider, and Provider is not otherwise obligated to indemnify and defend the City pursuant to the provisions of Section 8.2 (Indemnification) above, Provider agrees to provide such services and to cooperate with the City in resolving such claim or litigation as Additional Services and Materials under Section 3.3 (Additional Services and Deliverables) above.

8.4 **Notice of Claims.** If Provider receives notice of a legal claim against it in connection with this Contract, Provider shall submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, within ten (10) business days of receipt of notice of the claim, to the Responsible Official.

ARTICLE IX: CONFIDENTIALITY

9.1 **Confidentiality.** During the Initial Term and any Additional Term(s) of the Contract and thereafter, Provider, Provider's Subcontractors, or others under Provider's direction or supervision, shall not issue, publish or divulge any information, documents or data developed or used in the performance of the Services and Deliverables in any public statement, thesis, writing, lecture or other verbal or written communication without the prior written consent of City.

ARTICLE X: DISPUTES

10.1 **Disputes.** The Parties agree to use their best efforts to resolve disputes that may arise under the Contract through informal negotiation and cooperation. If the Parties are unable to resolve any dispute arising under the Contract, unless the Parties mutually agree otherwise, the dispute shall be decided by the Responsible Official or his/her designee, who shall mail or otherwise furnish a copy of the decision to Provider in accordance with the Notice Section of the Provider Agreement within fifteen (15) business days of his/her receipt of Provider's written statement of the dispute and request for resolution. The decision of the Responsible Official shall be final and conclusive unless within five (5) business days from the date of receipt of the copy of the decision, Provider mails or otherwise furnishes to the City's Chief Information Officer ("CIO"), with a copy to the Responsible Official, a written appeal addressed to the CIO as follows:

Mayor's Office of Information Services
1234 Market Street
18th Floor
Philadelphia, PA 19107

If the Responsible Official under the Contract is the CIO, then the written appeal is to be

addressed to the Procurement Commissioner as follows:

Procurement Commissioner
Municipal Services Building
Room 120
1401 JFK Boulevard
Philadelphia, PA 19102-1687

Such written appeal shall be decided by the CIO (or his/her designee), or the Procurement Commissioner (or his/her designee) with fifteen (15) business days of receipt, which decision shall be final and conclusive unless otherwise determined by a court of competent jurisdiction. In connection with any appeal proceeding under this Section, Provider shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. This Article shall not be construed to limit the provisions of Articles XI (Events of Default) or XII (Remedies) hereof.

ARTICLE XI:
EVENTS OF DEFAULT

11.1 **Events of Default.** **E**ach of the following shall be an Event of Default under the Contract:

(a) Failure by Provider to comply with any provision of the Contract.

(b) Occurrence of an Event of Insolvency with respect to Provider.

(c) Falseness or inaccuracy of any warranty or representation of Provider contained in the Contract or in any other document submitted to the City by Provider.

(d) Any act, omission, or misrepresentation which renders the Provider ineligible for a City contract or renders the contract voidable under Philadelphia Code Section17-1400;

(e) Misappropriation by Provider of any funds provided under the Contract or failure by Provider to notify the City upon discovery of any misappropriation.

(f) A violation of law which results in a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Provider, its directors, employees, or agents (1) directly or indirectly relating to the Contract or the Services or Deliverables provided, whether or not such offense is ultimately adjudged to have occurred or (2) which adversely affects the performance of the Contract.

(g) Indictment of or issuance of charges against Provider, its directors, employees or agents for any criminal offense or any other violation of Applicable Law directly relating to the Contract or Services or Deliverables or which adversely affects the performance of the Contract in accordance with its terms whether or not such offense or violation is ultimately

adjudged to have occurred.

(h) Debarment or suspension under federal, state or local law or regulations.

11.2 **Notice and Cure.**

The City agrees that the City will not exercise any right or remedy provided for in Section 12.1 (The City's Remedies) hereof because of any Event of Default unless the City shall have first given written notice of the Event of Default to Provider, and Provider, within a period often (10) days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Event of Default; provided, however, that no such notice from the City shall be required nor shall the City permit any period for cure if:

(a) Provider has temporarily or permanently ceased providing Services and Deliverables;

(b) The Event of Default creates an emergency which requires, in the City's sole discretion, immediate exercise of the City's rights or remedies;

(c) The City has previously notified the Provider in the preceding twelve-month period of any Event of Default under the Contract;

(d) An Event of Default occurs as described in 11.1(e) or 11.1(f); or

(e) Provider has failed to obtain or maintain the insurance or any bond required under the Contract.

Nothing contained in this Section shall limit the City's rights under Article XII (Remedies) hereof.

ARTICLE XII: REMEDIES

12.1 **The City's Remedies.**

(a) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 11.2 (Notice and Grace) hereof, then the City may, but shall not be obligated to, without further notice to or demand on Provider and without waiving or releasing Provider from any of its obligations under the Contract:

(1) perform (or cause a third party to perform) the Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the City.

a) Provider shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or a third party)

pursuant to this Section 12.1(a)(1), together with interest at the highest legal rate permitted in the Commonwealth of Pennsylvania thereon from the date of the City's incurring of such costs. The City shall not in any event be liable for inconvenience, expense or other damage incurred by Provider by reason of such performance or paying such costs or expenses and the obligations of Provider under the Contract shall not be altered or affected in any manner by the City's exercise of its rights under this Section 12.1.

(2) withhold, or offset against, any funds payable to or for the benefit of Provider;

(3) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Provider; or

(4) exercise any other right it has or may have at law, in equity, or under the Contract.

(b) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 11.2 (Notice and Grace) hereof, then the City may, but shall not be obligated to, without waiving or releasing Provider from any of its obligations under the Contract, terminate the Contract in whole or in part, as set forth more fully in Article XIII (Termination) hereof. In the event of partial termination, Provider shall continue the performance of the Contract to the extent not terminated. If the Contract is terminated, the City shall issue a written Termination Notice which shall set forth the effective date of the termination.

(c) The Services purchased from Provider are unique and not readily available. Accordingly, Provider acknowledges that, in addition to all other remedies to which City is entitled, the City shall have the right, to the fullest extent permitted under Applicable Law, to enforce the terms of the Contract without limitation, by a decree of specific performance or by injunction restraining a violation, or attempted or threatened violation, of any provision of the Contract.

12.2 **Concurrent Pursuit of Remedies; No Waiver.**

(a) The City may exercise any or all of the remedies set forth in this Article XII, each of which may be pursued separately or in connection with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted to Provider shall operate as a waiver of any of the City's rights in connection with the Contract.

(b) The rights and remedies of the City as described in this Article XII and as described elsewhere in the Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under the Contract at law or in equity.

ARTICLE XIII:
TERMINATION AND SUSPENSION

13.1 **Termination or Suspension for Convenience.** In addition to its rights under Articles V (Compensation) and XII (Remedies) above, the City shall have the right to terminate this Contract or suspend Provider's performance under this Contract at any time during the Term of this Contract, for any reason, including, without limitation, the convenience of the City. If this Contract is terminated solely for the City's convenience, the City shall issue a written Termination Notice, which shall set forth the effective date of the termination. If this Contract is suspended solely for the City's convenience, the City shall issue a written Suspension Notice, which shall set forth the effective date of the suspension.

13.2 **Responsibilities upon Termination or Suspension.**

(a) Upon receipt of a Termination Notice or a Suspension Notice under any provision of this Contract, Provider and its agents, employees and Subcontractors, shall

(1) take immediate action in an orderly manner to discontinue Services and demobilize work forces to minimize the incurrence of costs.

(2) upon request by the City by notice to Provider, collect, assemble and transmit to the City all Deliverables as may exist as of the effective date of the termination or suspension. All such Deliverables shall be clearly labeled and indexed to the satisfaction of the Responsible Official and delivered to the Responsible Official by the Provider on or before the date set forth in the Termination Notice for delivery of the Deliverables or, if no such date is set forth in the Termination Notice, then before the effective date of termination set forth in the Termination Notice. There will be no retaining or charging liens or the like in favor of the Provider.

(3) begin Disentanglement as set forth in Section 5.0 (Disentanglement) of Exhibit 6 (Hosting Services).

(b) The City's termination or suspension of this Contract shall not affect any obligations or liabilities of either party accruing prior to such termination or suspension.

(c) There shall be no liability, cost or penalty to the City for termination or suspension of this Contract.

13.3 **Payment of Provider upon Termination or Suspension.**

(a) Upon termination or suspension of this Contract by the City for an Event of

Default, Provider shall be entitled to payment of an amount, to be determined by the City and subject to audit, as shall compensate it for the work satisfactorily performed prior to the termination date; provided, however, that:

(1) no allowance shall be included for termination expenses or for anticipated profits, unabsorbed or under absorbed overhead, or unperformed Services; and

(2) the City shall deduct from any amount due and payable to Provider prior to the termination date, but withheld or not paid, the total amount of additional expenses incurred by the City in order to satisfactorily complete the work required to be performed by Provider under the Contract, including the expense of engaging another provider for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for default.

(b) In the event of termination or suspension of this Contract by the City for the City's convenience, Provider shall be paid an amount as shall compensate Provider for the portion of the Services and Deliverables Conditionally or Finally Accepted by the City in accordance with the Provider Agreement prior to the date of termination. The City shall not pay Provider any amount for Provider's termination or suspension expenses or for anticipated profits, unabsorbed or under absorbed overhead or unperformed Services.

ARTICLE XIV: TERMS AND CONDITIONS RELATING TO CERTAIN APPLICABLE LAWS

The provisions of this Article are not intended to limit the generality of the other provisions of the Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

14.1 **Non-Discrimination; Fair Practices.** This Contract is entered into under the terms of the Philadelphia Home Rule Charter, as it may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. In addition, Provider shall, in performing this Contract, comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 04-86 (prohibiting discrimination on the basis of Human Immunodeficiency Virus infection), as each may be amended from time to time and which, as applicable, prohibit, among other things, discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familiar status, genetic information or domestic or sexual violence victim status, or other act or practice made unlawful under Chapter 9-1100 or under the nondiscrimination laws of the United

States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 14.1 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

14.2 **The Philadelphia Code, Chapter 17-400.**

(a) In accordance with Section 17-400 of The Philadelphia Code, as it may be amended from time to time, Provider agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(b) Provider agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Section 17-400 of The Philadelphia Code. Provider's failure to so cooperate shall constitute, without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

14.3 **Minority, Woman and Disabled Business Enterprise Participation.**

(a) **Executive Orders 02-05 and 14-08.** In accordance with Executive Orders 02-05 and 14-08 (the "Antidiscrimination Policy"), the City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and inclusion of Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE"), and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") in City contracts. The purpose of this Antidiscrimination Policy is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City's procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City Contracts and City Related Special Projects. Provider agrees to comply with the requirements of the Antidiscrimination Policy, and where participation ranges are established by OEO, Provider agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

(1) In furtherance of the purposes of the Antidiscrimination Policy, Provider agrees to the following:

a) Provider, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) with M/W/DSBEs as participants

under this Contract ("Participant Agreement(s)") for the services and in the dollar amount(s) and percentage(s) as specified in the M/W/DSBE Participation Exhibit to this Contract (the "Contract Commitment(s)").

b) Provider shall secure the prior written approval of the Office of Economic Opportunity ("OEO"), before making any changes or modifications to any Contract Commitments made by Provider herein, including, without limitation, substitutions for its MBEs, WBEs and/or DSBEs, changes or reductions in the services provided by its M/W/DSBE Subcontractors, or changes or reductions in the dollar and/or percentage amounts paid to its M/W/DSBE Subcontractors.

c) Unless otherwise specified in a Participant Agreement as described in (1) (a) above, Provider shall, within five (5) business days after receipt of a payment from the City for work performed under the Contract, deliver to its M/W/DSBE Subcontractors the proportionate share of such payment for services performed by its M/W/DSBE Subcontractors. In connection with payment of its M/W/DSBE Subcontractors, Provider agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

d) Provider shall, in the event of an increase in units of work and/or compensation under the Contract, increase its Contract Commitment(s) with its M/W/DSBE Subcontractors proportionately, which increase shall be reflected in the Participant Agreement(s). OEO may from time to time request documentation from Provider evidencing compliance with this provision.

e) Provider shall submit, within the time frames prescribed by the City, any and all documentation the City may request, including, but not limited to, copies of Participant Agreements, participation summary reports, M/W/DSBE Subcontractor invoices, telephone logs and correspondence with M/W/DSBE Subcontractors, cancelled checks and certification of payments. Provider shall maintain all documentation related to this Section for a period of five (5) years from the date of Provider's receipt of final payment under the Contract.

f) Provider agrees that the City may, in its sole discretion,

conduct periodic reviews to monitor Provider's compliance with the terms of this Antidiscrimination Policy.

g) Provider agrees that in the event the City determines that Provider has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract which includes termination of the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

1) Debar Provider from proposing on and/or participating in any future contracts for a maximum period of three (3) years.

2) Recover as liquidated damages, i.e., without institution of a civil lawsuit, one percent (1%) of the total dollar amount of the Contract, which amount shall include any increase by way of amendments to the Contract, for each one percent (1%) (or fraction thereof) of the shortfall in Contract Commitment(s) to Provider's M/W/DSBE Subcontractors.

h) No privity of contract exists between the City and any M/W/DSBE Subcontractor identified herein and the City does not intend to give or confer upon any such M/W/DSBE Subcontractor(s) any legal rights or remedies in connection with the subcontracted services pursuant to the Antidiscrimination Policy or by reason of this Contract except such rights or remedies that the M/W/DSBE Subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with this Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE Subcontractors.

(2) In the event the Provider is a non-profit, the Contract is not subject to M/W/DSBE participation ranges, but Provider shall demonstrate its compliance with the Antidiscrimination Policy in the following manner:

a) Provide to the OEO annually, a written diversity program identifying the race, gender and ethnic composition of its board of directors, its employment profile, a list of all vendors that the non-profit does business with in its M/W/DSBE procurement program (e.g., "M/W/DSBE Supplier Diversity Program") and a statement of the geographic area(s) where its services are most concentrated; and

b) Demonstrate, to the OEO's satisfaction, that the non-profit's organization makes appropriate efforts to maintain a diverse workforce and board of directors and operates a fair and effective M/W/DSBE procurement program.

(3) It is understood that false certification or representation made in connection with this Antidiscrimination Policy may be subject to prosecution under Title 18 Pa.C.S. Sections 4107.2 and 4904.

(b) **The Philadelphia Code Section 17-1402.** In accordance with Section 17-1402 (f) of The Philadelphia Code, the Provider shall during the Term of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider that a particular Person could be used by the Provider to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises.

(1) The Provider shall also disclose the date the advice was provided, and the name of such particular Person.

(2) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five business days after the Provider was so advised.

The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

14.4 **Federal Laws.** Provider shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. § 794), The Age Discrimination Act of 1975, (42 U.S.C. §§ 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

14.5 **Americans With Disabilities Act.** Provider understands and agrees that no

individual with a disability shall, on the basis of the disability, be excluded from participation in the Contract or from activities or Services provided under the Contract. As a condition of accepting and executing the Contract, Provider shall comply with all provisions of the Americans With Disabilities Act (the "Act"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Provider, (b) to the benefits, Services, activities, facilities and programs provided in connection with the Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, if any funds under the Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, facilities, activities, facilities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of "The Americans With Disabilities Act," as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

14.6 **Northern Ireland.**

(a) In accordance with Section 17-104 of The Philadelphia Code, Provider by execution of this Contract certifies and represents that (1) Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) does not have, and will not have at any time during the Term of this Contract (including any extensions of the Term), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) no product to be provided to the City under this Contract will originate in Northern Ireland, unless Provider has implemented the fair employment principles embodied in the MacBride Principles.

(b) In the performance of this Contract, Provider agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

(c) Provider agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Provider expressly understands and agrees that any false certification or representation in connection with this Section 14.6 (The Philadelphia Code 17-104) and any failure to comply with the provisions of this Section 14.6 (The Philadelphia Code 17-104) shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of The Philadelphia Code) or in equity. In addition, Provider understands that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

14.7 **Business, Corporate and Slavery Era Insurance Disclosure.** In accordance with

Section 17-104 of The Philadelphia Code, the Provider, after execution of this Agreement, will complete an affidavit certifying and representing that the Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of the Provider or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

The Provider expressly understands and agrees that any false certification or representation in connection with this Paragraph and/or any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

14.8 **Limited English Proficiency.** Provider understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to Services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Provider shall comply with all provisions of Title VI of the Civil Rights Act of 1964, the President of the United States of America Executive Order No. 12250, the Mayor of the City of Philadelphia's Executive Order "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Provider, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

14.9 **Protected Health Information**.

(a) The City of Philadelphia is a "Covered Entity" under the federal Health Information Portability and Accountability Act (HIPAA). The City has designated the following certain City agencies as covered healthcare components of the City ("Covered Components"): The Ambulatory Health Services Unit of the Department of Public Health (DPH), the Office of Behavioral Health/Intellectual Disability Services (OBH/IDS), the Riverview Home managed by the Office of Supportive Housing, the Philadelphia Nursing Home managed by DPH, the Benefits Administration Unit of the Office of Human Resources, and the Emergency Medical Services Unit of the Philadelphia Fire Department. This list is subject to change, and any component of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Subarticle 14.9**.**

(b) To the extent this Contract (i) is entered into with the City acting on behalf of a Covered Component, and/or (ii) requires the performance of services that will be delivered to or used by a Covered Component of the City (whether or not the City agency issuing the Contract is a Covered Component) and (iii) Provider is a Business Associate with respect to the City, Provider shall comply with the City's "Terms and Conditions Relating to Protected Health Information" posted on the City's website (at https://secure.phila.gov/eContract/ under the "About" link) ("City PHI Terms"). The City PHI Terms are hereby incorporated in this Subarticle 14.9 as if fully set forth herein. (A printed version of the City PHI Terms, in the City's sole discretion, may also be attached to this Contract.)

14.10 **Philadelphia 21st Century Minimum Wage and Benefits Standard.** If Provider is an Employer, as defined at Philadelphia Code Section 17-1303, with the exclusion of subcontractors and their employees, Provider shall comply with the minimum compensation standards by providing its employees with an hourly wage, excluding benefits, at least 150 percent of the federal minimum wage, and to extent the Provider provides health benefits to any of its employees, the Provider shall provide each full-time, non-temporary, non-seasonal covered employee health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Provider, as more fully set forth at Philadelphia Code Chapter 17-1300. The Provider shall promptly provide to the City all documents and information verifying its compliance with the requirements of Chapter 17-1300. Furthermore, Provider shall notify each affected employee what wages are required to be paid pursuant to Chapter 17-1300.

Prior to commencement of the contract's term or execution by the City, each Provider subject to Chapter 17-1300 will certify to the satisfaction of the City that its employees are paid the minimum wage standard as provided by Chapter 17-1300.

A Provider subject to Chapter 17-1300 shall comply with all its requirements as they exist on the date when the Provider entered into its agreement with the City or when such agreement is amended. A Provider subject to Chapter 17-1300 who fails to comply with its provisions may, after notice and hearing before the Finance Director or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts for up to three (3) years. Furthermore, the Council may, by resolution adopted after a public hearing, determine that there are reasonable grounds to believe that an employer subject to Chapter 17-1300 has failed to comply with its provisions, and that if such failure is established, then debarment would be an appropriate remedy for such failure. A copy of any such adopted resolution shall be forwarded to the Finance Director, or such other officer or agency designated by the Mayor, who shall without undue delay provide appropriate notice and opportunity for hearing, and after such hearing, make a final determination as to whether there has been a violation of Chapter 17-1300 and whether debarment, as provided by Chapter 17-1300, should be imposed. Such debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300. The debarment procedure by Council resolution shall be in addition to any other procedure for debarment established under Chapter 17-1300.

The Office of Labor Standards may grant a partial or total waiver of Section 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Philadelphia Code.

ARTICLE XV: MISCELLANEOUS

15.1 **Governing Law.** The Contract and all disputes arising under the Contract shall be governed, construed and decided in accordance with the laws of the Commonwealth of Pennsylvania.

15.2 **Amendments; Waiver.** The Contract may not be changed, amended, augmented, rescinded, or discharged (other than by performance), in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing, no waiver of any provision of the Contract shall be deemed: (a) to be a waiver of any other provision in the Contract; or (b) to be a waiver of any breach of the obligations under the Contract. Any forbearance by a party in seeking a remedy for any noncompliance or breach by the other party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

15.3 **Integration.** These General Provisions together with the other Contract Documents contain all the terms and conditions agreed upon by the Parties, and no other contract, oral or otherwise, regarding the subject matter of the Contract shall be deemed to exist or to bind any party hereto or to vary any of the terms contained in the Contract.

15.4 **No Joint Venture.** The Parties do not intend to create, and nothing contained in the Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Provider.

15.5 **No Third Party Beneficiaries.** Nothing in the Contract express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than the Parties, any rights, remedies, or other benefits under or by reason of the Contract.

15.6 **Counterparts.** The Contract may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

15.7 **Number and Gender.** Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be deemed to include and designate the masculine, feminine or neuter gender.

15.8 **Severability and Partial Invalidity.** The provisions of the Contract shall be severable. If any provision of the Contract or the application thereof for any reason or circumstances shall to any extent be held to be invalid or unenforceable, the remaining provisions of the Contract or the application of such provision to persons or entities other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of the Contract shall be valid and enforceable to the fullest extent permitted by law.

15.9 **Survival.** Any and all provisions set forth in the Contract which, by its or their nature, would reasonably be expected to be performed after the termination of the Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with the Contract; Provider's representations and covenants set forth in Article IV (Provider's Representations and Covenants) hereof; the obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.2 (Indemnification) hereof; and the rights and obligations set forth in Article IX (Confidentiality) hereof shall survive the termination or expiration of the Contract.

15.10 **Interpretation; Order of Precedence.** In the event of a conflict or inconsistency between the terms of these General Provisions and the terms of the Provider Agreement, the terms of these General Provisions shall control, except to the extent (if any) that the Provider Agreement contains an express change, by specific reference, to the General Provisions.

15.11 **Headings.** The headings do not in any way define, limit, describe or amplify the provisions of the Contract or the scope or intent of the provisions, and are not part of the Contract.

15.12 **Statutory and Other Citations.** All statutory or other citations of law referenced in the Contract shall refer to the statute referenced, as it may be amended or superseded from time to time.

15.13 **Days.** Any references to a number of days in the Contract shall mean "calendar" days, unless business days are specified.

15.14 **Forum Selection Clause; Consent to Jurisdiction.** The Parties agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to the Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two forums. The Parties further agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two forums, and the Parties expressly consent to the jurisdiction and venue of these two forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in the Notice section of the Provider Agreement.

15.15 **Waiver of Jury Trial**. Provider hereby waives trial by jury in any legal proceeding involving, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to the Contract or the relationship created or evidenced hereby. This provision is a material inducement for City to enter into the Contract.

15.16 **Notices**. All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and

shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (*e.g.*, Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case notices shall be sent to the addresses set forth in the Provider Agreement, or to such other address as either Party may specify to the other by a notice complying with the terms of this Section 15.16 (Notices).