

Contract Number 2220278

September 2021 DCH/sml
City of Philadelphia
Department of Revenue

PROVIDER AGREEMENT

CONFORMED

Collection Services

THIS PROVIDER AGREEMENT is executed on _____, and effective as of July 1, 2021, by **The City of Philadelphia** (the “City”), by and through its Department of Revenue and its Law Department (together, the “Department”) and **AllianceOne Receivables Management, Inc.** (“Provider”), a Delaware business corporation, with its registered place of business at 4850 E. Street Road, Suite 300, Trevose, PA 19053,

BACKGROUND

The City and Provider desire that Provider render professional collections services to the City in accordance with the provisions of this Provider Agreement, The City of Philadelphia Professional Services Contract General Provisions for General Consultant Services and all of the other documents and exhibits that together constitute the Contract Documents as defined in the General Provisions. A copy of the General Provisions is attached hereto and incorporated herein by reference.

This is a contract for the collection of delinquent taxes or other debts of the City and/or the School District of Philadelphia, whose taxes the City is also charged with collecting. Those Debts may or may not be secured by liens. The City is retaining Provider to work diligently to enhance the City’s collection of Debts.

The City has determined that its Department of Revenue, rather than its Law Department, should be primarily responsible for day-to-day delinquent collections, and that the Law Department will remain primarily responsible for legal work.

In consideration of the mutual obligations set forth herein, and intending to be legally bound, the City and Provider covenant and agree as follows:

ARTICLE I: DEFINITIONS

The following terms shall have the meaning set forth herein. Capitalized terms not otherwise defined herein shall have the meaning set forth in the General Provisions.

1.1. **Incorporation of Background.** The Background is incorporated by reference herein.

1.2. **Account.** “Account” means a claim of the City or the School District against a Debtor for Debts.

1.3. **City System.** “City System” means the Department of Revenue’s Taxpayer Information Processing System (TIPS), Basis 2 System, Data Warehouse, or any similar or successor City database of information concerning Accounts, Debts, and Debtors.

1.4. **Contingent Fee.** “Contingent Fee” means, with respect to an Account, (i) the amount, if any, that the City or Provider is legally entitled to recover against a Debtor and (ii) any other contingent fee to which Provider is entitled pursuant to this Contract. “Contingent Fee” does not include Expenses, and is calculated solely on the outstanding delinquent debt, interest, penalty, fines, and authorized fees.

1.5. **Contract Documents.** The “Contract Documents” means the Provider Agreement and the General Provisions, all exhibits identified therein and incorporated by reference, and all Amendments to all of the foregoing.

1.6. **Contractual Contingent Fees.** “Contractual Contingent Fees” means, with respect to an Account, the percentage, if any, of the Debts collected by Provider on an Account that the City has agreed to pay Provider as compensation for Provider’s Services.

1.7. **Debts.** “Debts” means any obligation and all interest, penalty, and authorized fees calculated against the principal amount of any obligation due to the City and School District. “Debts” do not include Expenses for purposes of calculating the amount of fees paid to Provider.

1.8. **Debtor.** “Debtor” means a person or entity responsible for Debts.

1.9. **Department.** The “Department” means the Law Department as to all legal and other litigation matters and Department of Revenue as to all other matters, including performance. However, on notice to Provider from the City Solicitor, showing a copy to the Revenue Commissioner, the City may modify “Department” to mean the Law Department. Section 1.18 of the General Provisions is hereby amended to reflect this revised definition.

1.10. **Direct Payment.** “Direct Payment” means a payment of Debts made by or on behalf of a Debtor directly to the City on a Referred Account. Direct Payments include Third-Party Payments unless the context clearly indicates otherwise.

1.11. **Expenses.** “Expenses” means costs, charges, or expenses other than Contingent Fees that under Applicable Law may be incurred by Provider in connection with the collection of Debts from a Debtor and may be properly charged to the Debtor.

1.12. **HIPAA.** “HIPAA” means the federal Health Insurance Portability and Accountability Act, as it may be amended from time to time.

1.13. **Lock Box.** “Lock Box” has the meaning set forth in Section 5.3(a)(iii).

1.14. **Payment Agreement.** “Payment Agreement” means a written agreement between the City and a Debtor, negotiated by Provider consistent with settlement guidelines established by the City, providing for the payment of Debts owed by a Debtor.

1.15. **Provider Collected Account.** “Provider Collected Account” means a Referred Account for which Provider (i) has obtained a Payment Agreement that has been duly executed by a Debtor and Provider on behalf of the City, as to which the Debtor remains current or no more than sixty (60) days delinquent; and (ii) has collected as least one payment from the Debtor thereunder.

1.16. **Referred Accounts.** “Referred Accounts” means all Accounts referred by the Department to Provider for collection of Debts (as defined herein) pursuant to this Contract.

1.17. **Related Party.** “Related Party” means any person or entity that would be an “insider” of Provider as the term is defined in 11 U.S.C. §101(31) if Provider were a debtor in proceedings governed by Title 11 of the United States Code.

1.18. **Responsible Deputy Revenue Commissioner.** “Responsible Deputy Revenue Commissioner” means the Deputy Revenue Commissioner designated by the Revenue Department to supervise Provider’s Services under this Contract. Until further notice, the Responsible Deputy Revenue Commissioner will be Marco Muniz, Deputy Revenue Commissioner for Collections.

1.19. **Responsible Law Department Attorney.** “Responsible Law Department Attorney” means that attorney designated by the Law Department to supervise Provider’s Services under this Contract. Until further notice, the Responsible Law Department Attorney will be Frances Ruml Beckley, Revenue Chief Counsel.

1.20. **Responsible Official.** “Responsible Official” means the City Solicitor as to all legal and other litigation matters and the Revenue Commissioner as to all other matters, including performance. However, on notice to Provider from the City Solicitor, showing a copy to the Revenue Commissioner, the City may modify “Responsible Official” to mean the City Solicitor. Section 1.31 of the General Provisions is hereby amended to reflect this revised definition. Effective until further notice, the City Solicitor and Revenue Commissioner delegate their respective authority to the Revenue Chief Counsel as to all matters except the execution of contracts and contract amendments and settlements requiring higher Law Department approval than the Revenue Chief Counsel.

1.21. **School District.** “School District” means the School District of Philadelphia.

1.22. **Settlement Guidelines.** “Settlement Guidelines” has the meaning set forth in Section 3.2(a).

1.23. **Third-Party Payment.** “Third-Party Payment” means a payment of Debts on behalf of a Debtor by anyone other than a Debtor of record, including but not limited to the Sheriff, a financial institution, a mortgage holder, a title company or a grant maker.

ARTICLE II: TERM

2.1. **Initial Term.** The term of this Contract shall commence on July 1, 2021 and shall expire on June 30, 2022, unless terminated earlier in accordance with the terms of the Contract, or

unless amended from time to time by notice of the City to Provider for periods not to exceed one (1) year each.

2.2. **Additional Term(s)**. This Contract may be amended by the City, in its sole discretion, in accordance with Section 2.2 (Additional Terms) of the General Provisions, which is hereby amended to provide that the City shall provide Provider with written notice of the City's intent to renew the Contract at least ninety (90) days prior to the end of the Initial Term or of any applicable Additional Term. The terms and conditions applicable during the Initial Term shall be applicable during any Additional Term, except as otherwise agreed by the Parties in writing.

2.3. **Pending Collections; Referred Accounts**. With respect to each Account that is a Provider Collected Account, unless the Account is withdrawn from Provider or the Account is paid in full, Provider shall continue to collect Contingent Fees and Expenses under each related Payment Agreement as set forth herein, so long as this Provider Agreement, as amended, remains in effect. For the sole purpose of the administration and collection of payments under Provider Collected Accounts, the term of the Contract may be amended, in the City's sole discretion, in accordance with the terms hereof with respect to such Provider Collected Accounts, until final payment under all related Payment Agreements or amendment of this Contract for up to two annual Additional Terms (one at a time), whichever is later. In the City's discretion, the City may similarly amend the term of the Contract to permit Provider to continue to collect specified Referred Accounts for up to one Additional Term. The City shall not be liable to Provider for any decision not to amend the Contract to add an Additional Term, whether generally or for the purpose of continuing collections on Provider Collected Accounts or other Referred Accounts.

ARTICLE III: SERVICES AND MATERIALS

3.1. Services and Materials.

(a) Provider shall perform the Services and provide the Materials described in the Exhibits listed below, which are attached hereto and incorporated herein by reference, and which are modified as described in this Provider Agreement:

Exhibit PA-1: Scope of Work

Exhibit PA-2: City's Settlement Guidelines for Collections Firms

Exhibit PA-3: Contingent Fee Schedule

(b) The City intends to refer Accounts to Provider from time to time as seems appropriate to the City, for the length of time communicated at the time of the referral. All referrals will be made in writing, which may include electronic referrals. If Provider obtains a judgment, then absent further written direction from the City, Provider will have the lesser of three (3) months or until the end of the Term to collect it or obtain a Payment Agreement.

(c) The City generally intends to leave Provider Collected Accounts with Provider for the length of time communicated at the time of the referral. However, the City reserves the right to retain or recall any Debts or to reallocate them to a different provider, in the City's sole discretion, based on the City's assessment of collections or otherwise. The City may in its discretion withdraw any Referred Accounts from Provider without further compensation from the City. All Referred Accounts that are subject to (i) bankruptcy proceedings, or (ii) a credit to a Debtor's Account due to the City's withholding of payment to the Debtor, for example pursuant to 53 P.S. §§ 16081-16083, 53 P.S. §§ 16084-16089, Section 22-1303(1) of The Philadelphia

Code, or other Applicable Law or agreement, are automatically recalled by the City, though Provider may request re-referral.

(d) An amendment to add an Additional Term shall not serve to extend or renew the referral of a particular Account beyond the length of time stated in the referral. Termination or nonrenewal of the Contract shall terminate all referrals except as otherwise provided in a written agreement.

(e) Unless otherwise established in writing at the time of referral, Provider will not file legal actions or initiate legal proceedings without express written authorization by the Responsible Law Department Attorney. Express written authorization shall include authorizations provided via email.

3.2. **Settlement Guidelines.**

(a) All settlements shall be made with terms that are in accordance with the City's Settlement Guidelines for Collection Firms ("Settlement Guidelines"), a current copy of which is attached hereto as **Exhibit PA-2** and incorporated herein by reference, unless the Responsible Law Department Attorney has directed otherwise in writing.

(b) Additional project specific settlement guidelines may be provided as necessary.

(c) The City may amend the Settlement Guidelines and associated forms in its sole discretion after consultation with Provider.

3.3. **Dealings with Debtors.** Provider shall treat Debtors with respect and in accordance with Applicable Law, including Revenue Department and Law Department policies, at all times. Provider acknowledges that the City has the right to recall any Account at any time and that failure to deal respectfully and promptly with a Debtor or a Debtor's representative will typically result in such a recall.

ARTICLE IV: COMPENSATION

4.1 **Fees.**

(a) As compensation for the Services and Materials, the City covenants and agrees to pay Provider a sum not to exceed SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000.00) for Provider's collection of Debts on Referred Accounts, including Fees and Expenses. Notwithstanding anything in this Contract to the contrary, in no amount shall the amount certified by the Office of the Director of Finance for Services and Materials during the Initial Term and any and all Additional Terms exceed SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000.00). If Provider notifies the City in timely fashion that it is approaching the above maximum amount before the end of the Term, the City will consider amending the Contract to add an appropriate additional amount if appropriations are available.

(b) The above fee shall be earned solely as follows, except as otherwise further limited by this Contract, and for each Referred Account only to the extent actually remitted to the City: a Contingent Fee as detailed in **Exhibit PA-3** on Debts that have been referred to Provider, plus Expenses as set forth in Section 4.3 below. Alternative project-specific Contingent Fees may be set with the written authorization of the Responsible Law Department Attorney.

(c) If Provider has been assigned Discovery Services or Non-Filers, then the initial amount paid by the Debtor along with the compliance filing, as well as any remaining Debts

covered by a payment agreement made with Provider at or before the time of the initial payment or compliance filing, which ever first occurs, will be considered Debt on Referred Accounts without further referral by the City. "Discovery Services or Non-Filers" shall mean any category of cases where the City has requested that Provider endeavor to find and pursue individuals or businesses that have failed to register to pay City taxes, have failed to file returns for City taxes, or have failed to pay City taxes.

4.2. Direct Payments and Third-Party Payments.

(a) If the City receives a Direct Payment on a Referred Account that includes payment of the Contingent Fee and/or Expenses during the Term and more than seven (7) days after the City's referral of the Account to Provider for collection, then the City shall make payment of a Contingent Fee as detailed in **Exhibit PA-3** plus Expenses to Provider except as otherwise set forth below. On a monthly basis, the City will supply Provider with a tentative invoice of the Direct Payments received during the previous month, which Provider will review, correct, verify and submit to the City.

(a) Provider is not entitled to a Contingent Fee or other payment calculated on any of the following:

(i) Payment of Contingent Fees or Expenses (whether or not via Direct Payments or Third-Party Payments).

(ii) Payments from or on behalf of a Debtor as to any Account withdrawn from Provider, including Accounts automatically withdrawn pursuant to Section 3.1(c) hereof.

(iii) Adjustments made to Referred Accounts for administrative or accounting reasons, to correct errors.

(iv) Direct Payments made by or for a Debtor towards a current City bill or a Debt not referred to Provider for collection, or the amount thereof, even if such amount otherwise would be credited to referred Debts or Contingent Fees based on rules or regulations governing the application of payments, such as "first-in, first-out."

(v) Third-Party Payments that are grants from the City or that utilize funds provided by the City, another government agency, or a non-profit entity.

(vi) Direct Payments or Third-Party Payments on settlement agreements negotiated by the City or by a collections firm other than Provider prior to the referral of the particular debt to Provider.

(b) Provider generally will not receive compensation for Third-Party Payments of Debts. In exceptional cases, where the City agrees that Provider unquestionably caused the transaction that led to a Third-Party Payment, the City, in its sole discretion, may authorize the payment of a Contingent Fee to Provider in the amount to be determined in writing by the Responsible Deputy Revenue Commissioner with the consent of the Responsible Law Department Attorney.

(c) The City shall not compensate Provider for any Direct Payment or Third-Party Payment for which the City is required to pay a Contingent Fee to any other provider.

(d) On pain of forfeiture to the City of its compensation for such Referred Accounts, Provider shall not direct or advise third parties, including but not limited to financial institutions,

mortgage holders or title companies, to make payment directly to Provider or the Lock Box unless Provider's collection activities clearly and unambiguously caused the payment.

4.3. **Expenses.**

(a) Provider shall pay and bear responsibility for all operational expenses, including start-up and winding-down costs and related costs of transition. In no event shall any expenses be billed to the City.

(b) Provider is authorized to seek reimbursement from any Debtor of Expenses incurred by Provider pursuant any Applicable Law, payable to the City, for Referred Accounts assigned to Provider for collection. Provider will invoice Debtors for such Expenses in Provider's statements for the Debts due. Provider will collect such Expenses along with the Debts for the Referred Accounts and remit them in full to the City. In no event shall Provider retain any money designated by a Debtor as payable to the City (or as payable for Debts or Contingent Fees).

(c) Expenses incurred by Provider that are paid or payable to a Related Party shall not be Expenses reimbursable under this Contract unless the City Solicitor shall have agreed to their eligibility in writing prior to the incurrence of the Expenses and after written disclosure of all material terms of Provider's relationship to the Related Party. Expenses shall not be reimbursable in excess of the actual cost paid or incurred by Provider.

(d) Provider shall not be paid a Contingent Fee on any expenses that are collected from a Debtor. Provider may not seek or obtain reimbursement from a Debtor for any amount that is not an authorized Expense.

(e) When submitting collections to the City, Provider shall itemize Expenses charged to and paid by each Debtor. Provider shall also submit a quarterly reconciliation itemizing such Expenses charged and paid. Provider will make timely payment to its Subcontractors pursuant to the terms of written Subcontracts acceptable to the Responsible Law Department Attorney and consistent with the General Provisions.

(f) For any specific account, Provider shall be responsible for any refund of Expenses required by a court order or settlement agreement unless payment for those Expenses has been received by the City and not remitted to Provider or unless otherwise agreed in writing by the Responsible Law Department Attorney.

4.4. **Contingent Fees.** The Contingent Fees collected by Provider shall be the property of the City. When properly documented and invoiced, then subject to the other provisions of this Contract, the City shall make payment in the amount of such Contingent Fees to Provider. In no instance will Provider be entitled to retain or set off any Contingent Fees before remitting them to the City.

4.5. **Manner of Payment.**

(a) The City shall make payment to Provider within sixty (60) days of the date of Provider's invoice to the City as described below. Payment shall be made after Provider's timely submission of monthly invoices to the Responsible Law Department Attorney, in the number, form and content acceptable to the Responsible Law Department Attorney. All payments to Provider shall be made payable to Provider and are contingent upon satisfactory performance of the terms and conditions of this Contract. Provider shall submit its final invoices within fifteen (15) days of receiving the necessary collections reports from the City. The City agrees to supply

Provider with monthly collections reports adequate to verify and prepare its invoices. All payments to Provider shall be in checks drawn or wire transfers approved by the City Treasurer. Direct Payments, Third-Party Payments, and Expenses may be paid or reimbursed solely pursuant to Sections 4.2 and 4.3 hereof.

(b) The City reserves the right to withhold or offset against any funds payable to Provider (i) in the event the City asserts a discrepancy exists for any invoice, or (ii) for Provider's failure to satisfactorily perform the terms of the Contract, as determined by the City. The City shall communicate to Provider in writing reasonable details of any such asserted discrepancies or failures so that Provider may attempt to research and to respond promptly to the City refuting, clarifying or explaining the asserted discrepancies or failures. To the extent an asserted discrepancy or performance issue is resolved to the City's satisfaction, withheld funds shall then be processed promptly for payment. This Section shall not limit any other remedies the City or Provider may have under this Contract.

ARTICLE V: PROVIDER'S RESPONSIBILITIES

5.1. **Fidelity Bond or Crime Insurance.** Pursuant to Section 9.4 (Fidelity Bond; Crime Insurance) of the General Provisions, Provider shall, at its sole cost and expense, obtain and maintain during the Initial Term and any Additional Term(s) of the Contract, a fidelity bond in an amount of One Million Dollars (\$1,000,000), covering Provider's employees who have financial responsibilities related to the receipt and disbursement of funds under the Contract. In lieu of a fidelity bond, Provider may obtain coverage for crime insurance with limits of One Million Dollars (\$1,000,000) per occurrence with no aggregate.

5.2. **Confidentiality and Access to Information.**

(a) All knowledge and information learned by Provider, or any agent or employee of Provider, concerning Debtor files, returns, records, disclosures, audits and investigations, required or authorized in the performance of this Contract shall be strictly confidential, except in accordance with the Contract, proper judicial, administrative or regulatory order, or as otherwise provided by law. This paragraph shall not prevent Provider from releasing public information to members of the public if routinely made available by the City on request.

(b) As to any Services that may be provided under this Contract that are subject to HIPAA and/or other state or federal laws or regulations governing the confidentiality and security of health information, please refer to Section 14.9 (Protected Health Information or "PHI") of the General Provisions, as amended, and the City PHI Terms defined therein.

(c) Provider shall not discuss with the media (nor provide any information to the media regarding) any matter Provider is handling on behalf of the City without prior consultation with and approval of the Responsible Law Department Attorney.

(d) Provider agrees to establish and maintain, to the satisfaction of the City, a secure area or place in which Debtor information, records, etc. shall be stored. Provider also agrees to restrict, to the satisfaction of the City, access to the returns or return information only to those employees or agents of Provider whose duties or responsibilities require access.

(e) Provider agrees to furnish a report to the City, at such time and containing such information as the City may prescribe, that describes the procedures established and utilized by Provider for ensuring the confidentiality of Debtor documents and information.

(f) Provider agrees to train all its employees regarding confidentiality of Debtor information and to furnish information to the City describing the training that is given, including copies of all material distributed. Such training shall include the fact that “browsing” and any viewing of Debtor or Debt records for purposes other than officially authorized business purposes is illegal.

(g) The City shall have the right to send its officers and employees into the offices of Provider and its agents for inspection of the facilities and operations to ensure the safeguard of Debtor returns and return information. On the basis of such inspection, specific measures may be required in cases where Provider and its agents are found not to be in compliance with Contract safeguards.

(h) To the extent permitted by Applicable Law and subject to Section 7.1 (Conflicts) below, Provider is authorized to use information obtained by Provider pursuant to this Contract, for the purpose of assisting any other political subdivision with which Provider has a similar agreement, provided that Provider’s agreement with such other political subdivision (i) prohibits the political subdivision from using the information against the City, (ii) grants Provider like authority to use information obtained by Provider for the benefit of the City, and (iii) provides similar restrictions on the use or dissemination of confidential information. If a third party providing information (e.g. Internal Revenue Service) restricts the sharing of such information, Provider shall abide by such restrictions.

(i) Provider shall furnish to the City in a timely manner all information Provider discovers or obtains that, in its professional judgment, is material and useful in aid of collection from Debtors, in a format or formats appropriate for use by the City in augmenting and updating City records. This shall include a monthly report in electronic format, with fields compatible with the appropriate City System, containing updated address and phone information on Debtors.

(j) Provider certifies (i) that the data processed during the performance of this Contract will be completely purged from all data storage components of Provider’s computer facility at the close of the period of required records retention under Section 6.4 (Retention of Records) of the General Provisions and (ii) that Provider will retain no data thereafter and will make no use of the data after the Term. Provider certifies that any confidential data will be safeguarded to prevent unauthorized disclosures.

5.3. **Handling of Collections.**

(a) **Payments.**

(i) Provider will accept payments from Debtors of Debts and Expenses solely via checks, money orders, checks-by-phone, and/or electronic transfer. Provider may accept credit or debit card payments in its discretion. Provider may also require a Debtor to pay any convenience or service fee charged by the credit and debit card company but the fee shall not exceed 3% for credit cards and \$4.50 per transaction for debit cards. Under no circumstances will Provider charge a convenience or service fee to any Debtor in excess of the convenience or service fees charged by the credit and debit card processing company. Provider will not accept cash for any purpose.

(ii) Notwithstanding the foregoing, in Provider’s direction, payments, including cash payments, may be made directly to an accredited bank which has agreed, at Provider’s request and without expense to the Debtor, to accept Debtor walk-in payments at

designated bank branches of Debts and Expenses due for Referred Accounts. Provider shall provide a list of such banks and bank branches to the City, and shall forward all payment instruments received by such banks to Lock Box within two (2) business days of receipt by the bank.

(iii) Provider will instruct Debtors to send their payments of Debts and Expenses on Referred Accounts directly to Provider's office or to a bank lockbox (the "Lock Box") to be specified and owned by the City (with equal and concurrent viewing access by the City and Provider) but to be paid for by Provider, including all return and other bank account charges related to the Lock Box; to make all funds payable to the "City of Philadelphia"; and to include the relevant Debtor name and Account number(s) on each payment instrument. All bank charges of any kind related to the Lock Box referenced in this paragraph are the responsibility of Provider, who may request either to be billed directly or to be provided with contemporaneous copies of all bills to the City. The City will support Provider in requesting such bills from the bank. Under no circumstance will Provider deposit or transfer Debts or Eligible Expenses into Provider's own account even temporarily, whether or not an escrow account, except that Provider may utilize a sweep account on terms authorized by the Responsible Law Department Attorney in writing.

(b) Endorsement and Deposit.

(i) Provider will forthwith endorse and remit all payments received for Referred Accounts to the Lock Box to the credit of the City, irrespective of the stated payee. Any conditionally restricted payment instrument received by Provider, which does not pay an Account in full or which has other restrictions unacceptable to the City, will be endorsed to countermand the restriction or returned to the payor in return for a new unconditional, unrestricted check or draft.

(ii) Provider will remit the entire amount of all payments received to the Lock Box without deducting any Contingent Fee or any other amount to which Provider may be entitled. Provider will be liable to the City and School District, at two (2) percentage points greater than the interest rate on their respective most recent bond offering backed by general funds or general revenues, for any failure to forward payments (or any part thereof) to the Lock Box on or before two business days after Provider receives them.

(iii) No later than fourteen (14) days after each deposit date, Provider shall remit an electronic payment file for each deposit date in a format provided by the Department of Revenue for the funds deposited into the Lock Box, with each payment file being exactly equal to that day's deposit.

(iv) The electronic payment file shall include the certification of an identified individual that to the best of that individual's knowledge and belief the information provided is true and complete and, to the extent it relates to expenses, that the expenses were incurred by Provider and are Expenses (as defined herein) that should be posted pursuant to the Contract as owing from the Debtor.

(c) Invoice. Provider shall invoice the City on a monthly basis, with separate invoices for Lock Box collections, for other collections, and for Expenses.

(i) Each invoice shall include the information required in Section 5.3(a), accompanied by a certification of an identified individual that to the best of that individual's

knowledge and belief Provider has collected or caused the collection of the amounts identified (or incurred the identified Expenses) and is entitled under the Contract to the amounts claimed.

(ii) Each invoice shall be submitted to the persons and addresses and in the format (hard copy and/or electronic format) designated by the Responsible Law Department Attorney.

(iii) The City will compensate Provider solely via a contingent fee in the amount of Contingent Fees based on the amounts collected from each payor, and compensable to Provider subject to 4.1 and 4.2 hereof, plus the amount of Expenses compensable to Provider subject to 4.3, less the cost of any return items and related bank charges not already borne by Provider, less the amount of any Contingent Fees or Expenses refunded by the City under court order or settlement, less any Contingent Fees or Expenses paid to Provider on receipts paid via conditionally restricted payment instruments which restrictions were not successfully countermanded under Section 5.3(b)(i) hereof. Invoices shall be accompanied by an individually signed certification that Provider is entitled under the Contract to all amounts claimed.

(iv) The City may request back-up documentation for some or all of the claimed items. By way of example and not limitation, the City may request proof that claimed expenses were Expenses incurred by Provider.

(d) Monthly Statement of Collection. With its invoices, Provider shall furnish a Monthly Statement of Collection in the form and format, and to the persons and address, designated by the Responsible Law Department Attorney.

(e) Payment Contingent on Compliance with Provider's Own Debts. The City or the City Controller's Office may review the Provider's City and School District accounts to determine whether Provider has properly filed its tax returns and whether Provider has any outstanding tax or other liabilities to the City or School District, and may also review the nature and extent of Provider's efforts to collect from Debtors as to which Provider has requested or received Direct Payment or Third-Party Payment credit. Upon request, Provider shall provide certification from any jurisdiction in which it does business, that Provider is complaint with taxes and other debts in that jurisdiction. Failure to file and pay liabilities when due to the City or other jurisdiction, or to submit to a requested audit or certification, shall constitute a breach of this Contract. If Provider has delinquent liabilities to the City or School District or has refused to supply a requested certification, the Controller's Office may direct that no payment be made to Provider until Provider has demonstrated that it is not delinquent and retains no inappropriate Direct Payment or Third-Party Payment credit.

(f) Insufficient Funds.

(i) In the event that Provider or the City subsequently determines that a Debtor's payment instrument that was submitted to Provider has been returned due to insufficient funds, Provider will notify the Debtor and will request a replacement check or money order, together with a returned-check fee in the amount of twenty dollars (\$20.00).

(ii) Provider shall provide a weekly file for the Law Department and the Department of Revenue, in a format acceptable to both, that shall include the original file information from the returned payment instrument so that the Revenue Department can adjust the returned item from the account for purposes of an audit trail.

(iii) If Provider collects the returned-check fee, it shall remit it to the City, and shall include the designation period “TBD” in the next payment file pursuant to Section 5.3(b)(iii). If Provider has borne the returned-check cost itself, it may include this cost as an Expense and invoice it to the City when it has been paid by or for the Debtor.

(iv) If the Debtor fails to provide a replacement check or money order within a reasonable time, then the City will deduct from outstanding payments due Provider an amount equal to the Contingent Fee paid to Provider on the Referred Account subject to the returned check.

5.4. Referred Accounts.

(a) Unless recalled or otherwise specified by the City in writing, Provider is hereby authorized to collect the Referred Accounts until recalled or the expiration date of the Term, including any Additional Terms.

(b) Upon the expiration or termination of a referral, Provider’s authority to collect such Account shall lapse automatically and Provider shall transmit forthwith to the City Provider’s file with respect to the Account and all contents thereof, including correspondence, notes, etc. If requested by the City, Provider also will transfer to the City electronically any information concerning the Account maintained in Provider’s database or databases.

(c) The City will not compensate Provider for any collections after the expiration of a referral. Provider shall not be entitled to collect a fee or receive any other payment with respect to an Account after its expiration date.

(d) In the event that Provider determines that an Account is uncollectible, Provider shall give notice to the Responsible Law Department Attorney.

5.5. Reporting Requirements. In addition to the other reports and information provided to the City hereunder, Provider shall provide reports to the Responsible Law Department Attorney, the Responsible Revenue Deputy Commissioner, or either’s Department with such content and format as either may from time to time reasonably require.

5.6. Meeting Requirements. Upon request of the City Solicitor, the Revenue Commissioner, the Responsible Law Department Attorney, or the Responsible Revenue Deputy Commissioner, Provider shall attend such meetings as deemed necessary to discuss performance and related issues concerning the Contract. At such meetings, designees of both the Law Department and the Department of Revenue may attend.

5.7. Financial Statements. Provider shall submit financial statements to the City annually as audited, compiled, or reviewed by an independent auditor reasonably acceptable to the City. The City reserves the right to require a full audit for good cause shown. To the extent permitted by Applicable Law, all such information shall be maintained as confidential and not disclosed or distributed to any third party, other than counsel, without prior written consent of Provider or a court order.

5.8. Participation. Except as otherwise agreed in writing by the City’s Office of Economic Opportunity, Provider will utilize the Minority and Woman Business Enterprises identified below as Subcontractors for the Services and in the percentages and amounts indicated therein, in a good-faith attempt to meet the ranges established by the City in accordance with Executive Order 01-21 relating to the participation of M/W/DSBEs in this Contract, and

otherwise to comply with Provider's commitments under Section 14.3 of the General Provisions (Executive Order 01-21: Minority, Woman and Disabled Business Enterprise Participation), as amended. The amounts are contingent on Provider's earning the amount set forth in Subsection (a) of Section 4.1 (Fees) above.

<u>Name</u>	<u>M/W/DSBE</u>	<u>Percentage and Amount of Total Contract</u>	<u>Type of Service</u>
Corporate Connection International LLC	WBE	15% / \$97,500.00	Office Supplies
PMT Solutions, LLC	MBE	13% / \$84,500.00	Document Services/ Collection Support

ARTICLE VI: TERMINATION

6.1. **Termination.** The City may terminate this Contract in accordance with the General Provisions.

6.2. **Referred Accounts.** Upon termination, the authority of Provider to collect Referred Accounts shall automatically expire, and Provider shall comply with the provisions of Section 5.4(b) hereof.

6.3. **Pending Collections.** In the City's discretion, with respect to accounts that are Provider Collected Accounts or are in litigation or prepared for litigation on the date of expiration or termination of this Contract, Provider will enter into an amendment for the sole purpose of the administration and collection of payments under Provider Collected Accounts and/or Accounts in litigation, to enable Provider to continue to collect on some or all of such Accounts for up to an additional twelve (12) months. Payments to Provider shall be made by the City in accordance with Article IV hereof.

6.4. **Post-Termination Collections.**

(a) In the event this Contract is terminated by the City for reasons other than Provider's default and provided that Provider complies with Section 5.4(b) hereof, City shall reimburse Provider for Expenses incurred in connection with Referred Accounts, if and only to the extent that the City collects net funds (after paying any fees or expenses due to any new provider) on such an Account during the remaining term of the Contract had it not been terminated and, in the City's sole discretion upon the Parties' entry into a Contract amendment to that effect, for up to an additional twelve (12) months thereafter.

(b) Promptly following termination, Provider shall provide to the City a report showing an itemization of Expenses incurred in connection with such Accounts. Subject to the terms of Section 6.4(a), the City shall reimburse Provider for Expenses with respect to any such Accounts not later than sixty (60) days following its receipt of any net funds with respect to any such Account. The City shall have no obligation to pursue such Accounts.

6.5. **Coordination and Cooperation with Successor.** Provider will fully cooperate with the City and any successor provider and with all City collections providers following the termination or expiration of this Contract. Notwithstanding any other provision of this Contract, under no circumstances will the City compensate Provider and another provider for the same Debts or Expenses in a combined amount greater than the compensation required under the City's contract

with either provider. In the event both Provider and another provider appear entitled to compensation, Provider will negotiate with such other provider and agree on an equitable share, or will accept the share (if any) that the City determines is equitable.

ARTICLE VII: CONFLICTS; OTHER REPRESENTATIONS

7.1. **Conflicts.** The City acknowledges that Provider, presently and in the future, may represent other governmental entities in matters of taxpayer administration and debt collection and that claims against the same Debtor may be pursued by Provider on behalf of more than one governmental entity, subject to Provider's duties under Section 5.2 (Confidentiality and Access to Information) hereof. In the event the City or Provider determines that such multiple representation in a single matter could materially limit Provider's representation of the City's interests, or that such representation could lead to an aggregate settlement of claims of the City and another governmental entity, Provider will consult with the Law Department as to the implications of common representation and the advantages and risks involved and shall thereafter (i) obtain the City's consent thereto; or (ii) discontinue representation of the City and the other governmental entity as to such matter.

ARTICLE VIII: NOTICE

8.1. **Notice.** Any notice required or permitted to be given under the Contract shall be given in writing and shall be personally delivered by hand with receipt obtained, by a national overnight express carrier (such as Federal Express), or sent by registered or certified United States mail, return receipt requested, addressed as follows:

IF TO CITY:

Attn.: Niccole Bracey, Conformance Manager
Revenue Department
1401 JFK Boulevard
Philadelphia, PA 19102
Email: Niccole.Bracey@phila.gov

IF TO PROVIDER:

Attn: Ryan Wilcox, VP Business Development
AllianceOne Receivables Management, Inc.
4850 E. Street Road, Suite 300
Trevose, PA 19053
Email: ryan.wilcox@allianceoneinc.com

ARTICLE IX: OTHER PROVISIONS

9.1. **Interpretation: Order of Precedence.** In the event of a conflict or inconsistency between the terms of this Provider Agreement and any term, condition or provision contained in any Exhibit hereto, or any attachment to such Exhibit (including, without limitation, any proposal of Provider), the terms of this Provider Agreement shall control.

9.2. **Hiring.** No solicitation of City personnel regarding hiring should occur without the prior approval of the Responsible Department Official. No business arrangements of any kind should be entered into with City personnel without full disclosure and the prior approval of the

Law Department. Provider agrees to comply with all ethical and legal requirements established by the City or other Applicable Law.

9.3. **Modifications to General Provisions.** The General Provisions are amended in accordance with the following Exhibit, which is attached hereto and incorporated herein by reference:

Exhibit PA-4: Modifications to the General Provisions

9.4. **Acknowledgement of the General Provisions.** Provider specifically acknowledges that Provider has read and understands the terms and conditions contained in the General Provisions and acknowledges that by executing this Provider Agreement, Provider shall be legally bound by all of the terms of this Contract, including, but not limited to, those set forth in the General Provisions.

[The remainder of this page has been left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound by all of the Contract Documents, have caused the Contract to be executed by their respective duly authorized officers as of the date in the heading of this Provider Agreement.

APPROVED AS TO FORM

DIANA P. CORTES, CITY SOLICITOR

THE CITY OF PHILADELPHIA

Through: **The Department of Revenue**

DocuSigned by:
Per: Daniel W. Cantú-Hertzler
F9EFBF13599B43A...
Name: Daniel W. Cantú-Hertzler
Title: Senior Attorney

DocuSigned by:
By: Frank Breslin
39FCA75DF74D431...
Name: Frank Breslin
Title: Commissioner

Through: **The Law Department**

DocuSigned by:
By: Diana P. Cortes
9284CA9B0A474B0...
Name: Diana P. Cortes
Title: City Solicitor

ALLIANCEONE RECEIVABLES MANAGEMENT, INC.

DocuSigned by:
By: Tim Casey
C80CED251D264BF...
Name: Tim Casey
Title: CEO

DocuSigned by:
By: Harry Neerenberg
F5F9BDE945044B8...
Name: Harry Neerenberg
Title: CFO



City of Philadelphia Contract Routing Slip

External Negotiation/Encumbrance & Budget Verification (Conformance Manager)

1. Review contract as signed by vendor and consult with supervisor.

Click the check box to attach additional documentation, if required.

2. Confirm Encumbrance then forward in ACIS to Budget Verification.
 3. Confirm Budget Verification completed in ACIS.
- Send to Law.

Approve as to Form – Attorney Upload Document (Optional)

Click the check box to attach additional documentation, if required.

After AATF – Forward in ACIS

- Forward in ACIS to Initial Certification.

Finance Certification

- Attach the Endorsement Sheet then forward in ACIS to Finance Review.



Finance Review

- Review then forward in ACIS to Department Signs Contract.

After Departmental Review – Forward in ACIS

- Forward in ACIS to Conformance.

Conformance Review (Conformance Clerk)

- Conform Contract and Conform in ACIS.

Exhibit PA-2

CITY'S SETTLEMENT GUIDELINES FOR COLLECTIONS FIRMS

1. Provider shall treat Debtors with respect and in accordance with Applicable Law at all times.
2. All agreements **must** be in writing. You should retain the original of the agreement and forward a copy to the Debtor.
3. All agreements must state the particular debts under settlement. The transmittal of moneys must comply with Section 5.4 of the Provider Agreement.
4. Provider should attempt to collect 100% of the outstanding Debts to the extent reasonably possible. Except as set forth below, all payment agreements must come within the following minimum guidelines:

a.) Lump Sum Payment: Provider will require payment of at least the following within no more than ninety (90) days of the payment agreement:

- (i) 100% of Debt principal; and
- (ii) 100% of accrued interest; and
- (iii) 10% of accrued penalty; and
- (iv) 100% of lien charges and any court costs and fees for dishonored payments.

In appropriate circumstances in Provider's discretion, up to 90% of accrued penalty may be abated, along with all interest and penalty accruing prior to timely repayment.

b.) Six-Month Agreement: Provider will require payment of at least the following within no more than six (6) months of the payment agreement:

- (i) 100% of Debt principal; and
- (ii) 100% of accrued interest; and
- (iii) 20% of accrued penalty; and
- (iv) 100% of lien charges and any court costs and fees for dishonored payments.

In appropriate circumstances in Provider's discretion, up to 80% of accrued penalty may be abated, along with all interest and penalty accruing prior to timely repayment.

c.) One-Year Agreement: Provider will require payment of at least the following within no more than twelve (12) months of the payment agreement:

- (i) 100% of Debt principal; and
- (ii) 100% of accrued interest; and
- (iii) 40% of accrued penalty; and
- (iv) 100% of lien charges and any court costs and fees for dishonored payments.

In appropriate circumstances in Provider's discretion, up to 60% of accrued penalty may be abated, along with all interest and penalty accruing prior to timely repayment.

- d.) Longer Agreement: Provider may authorize payment agreements of longer than twelve (12) months only upon written authorization of the Responsible Deputy Revenue Commissioner. In such cases, Provider will require payment of at least the following within no more than thirty (30) months of the payment agreement:
- (i) 100% of Debt principal; and
 - (ii) 100% of accrued interest; and
 - (iii) 60% of accrued penalty; and
 - (iv) 100% of lien charges and any court costs and fees for dishonored payments; and
 - (v) Financing interest on all of the amounts required under paragraphs (i) through (iv) above at the judgment rate set forth in 42 Pa. C.S. § 8101 and 41 P.S. § 202 from the date of the payment agreement to the date of timely payment in full of those amounts.

In appropriate circumstances in Provider's discretion, with the required authorization, up to 40% of accrued penalty may be abated, along with interest and penalty on the Debt principal accruing following the payment agreement prior to timely repayment.

5. Notwithstanding the guidelines set forth in Section 4:
- a.) The Responsible Deputy Revenue Commissioner shall have the authority to authorize waiver of (i) up to \$500.00 in lien charges, court costs and fees for dishonored payments, (ii) up to \$15,000 of interest, (iii) up to \$35,000 of penalty, or (iv) any combination of the foregoing; and
 - b.) Any waiver of more than the amounts listed in subsection (a) that would otherwise accrue by the end of the payment agreement, must be approved in writing by the Responsible Law Department Attorney.
6. Situations will arise in which a delinquent Debtor is unable to pay within the above stated guidelines. When such situations arise, Provider must request the approval of the Responsible Law Department Attorney and must provide the following from the Debtor:
- a.) Statement of Financial Condition
 - b.) Federal Tax forms for the preceding three (3) years (including but not limited to 1040, W-2, and supporting schedules).

The Law Department will review the submitted package and will decide whether to approve an appropriate settlement option or recall the Account.

7. Upon completion of a Debtor's responsibilities under a payment agreement where less than one hundred percent (100%) of Debt has been collected, an Approval of Settlement Litigated Claim ("SLC") form must be completed, and specific reference must be made as to how and why principal, interest, penalty, or other amount should be abated, based on a memorandum created at the time of entry into the payment agreement and updated at the time of completion of payments.

Exhibit PA-3

CITY OF PHILADELPHIA

CONTINGENT FEE SCHEDULE FOR OPPORTUNITY No. 21210405115407

The City is proposing the following contingent fees pursuant to Opportunity 21210405115407 (General Collections RFP). The specific lines of work assigned to vendors, and referrals within those lines of work, will be at the City's discretion.

Lockbox rates are for payments received in City lockboxes (bank accounts) assigned to each vendor, while direct payment rates apply to payments received directly by Revenue from taxpayers.

Debt Type	Referral Type	Lockbox Rates	Direct Payment Rates
Overdue, Nondelinquent Real Estate Taxes	First Placement (until delinquency)	6.00%	6.00%
Delinquent Real Estate (non-sheriff sale)	Co-counsel - Sequestration	12%	12%
	Collection Agency – Small balances	10%	10%
Small Commercial Establishment Fees (SCE)	Any Placement	13.00%	5.00%
Water	First Placement (Under \$12,000)	13.00%	11.50%
	First Placement (Over \$12,000, Stormwater, Vacant, and/or Landlord/USTRA)	16.00%	12.00%
	Second Placement (Under \$12,000)	16.00%	12.00%
	Second Placement (Stormwater and/or Vacant)	13.00%	11.50%
Business Taxes/Non-Filers	First Placement	13.00%	5.00%
	First Placement (Provider has City Office ¹)	14.00%	9.00%
	Second Placement	16.00%	12.00%
Discovery	Any Placement	16.00%	16.00%
Litigation	Any Placement, following court filing	20.00%	20.00%
L&I Agency Receivables	Any Placement	16%	16%
Non-Tax	Any Placement	As stated in written referral	As stated in written referral

¹ A "City Office" is a business office within the City of Philadelphia, acceptable to the Responsible Deputy Revenue Commissioner, where taxpayers may make payments and receive service during normal business hours at a location that is convenient to public transportation.

Exhibit PA-4

MODIFICATIONS TO THE GENERAL PROVISIONS

The General Provisions are modified as follows:

A. “Executive Order 03-12” is modified to read “Executive Order 01-21” each time it appears. This is the City’s updated Antidiscrimination Policy Relating to the Participation of Minority, Woman and Disabled Owned Businesses in City Contracts.

B. In Section 9.1 (Insurance Policies), Paragraph (1) (Limit of Liability) of Subsection (d) (Professional Liability Insurance) shall read as follows:

(1) Limit of Liability: \$10,000,000, with a deductible not to exceed \$1,000,000 for individual actions (\$2,500,000 for class actions).



THE CITY OF PHILADELPHIA
PROFESSIONAL SERVICES CONTRACT
GENERAL PROVISIONS
FOR
GENERAL CONSULTANT SERVICES

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GENERAL PROVISIONS

ARTICLE I: DEFINITIONS

- 1.1. **ADA** has the meaning set forth in Section 14.5 (Americans with Disabilities Act) below.
- 1.2. **Additional Services and Materials** has the meaning set forth in Section 3.3 (Additional Services and Materials; Change in Scope of Services) below.
- 1.3. **Additional Term** has the meaning set forth in Section 2.2 (Additional Terms) below.
- 1.4. **Amendment** means a written modification or change to any Contract Document signed by both Parties and, as to the City, approved by the Law Department.
- 1.5. **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 Charter, the Code, and the specific laws set forth in Article XIV (Additional Representations and Covenants of Provider Relating to Certain Applicable Laws) below hereof, each as amended from time to time.
- 1.6. **Applicant** means a Person who has filed an application to be awarded a Non-Competitively Bid Contract.
- 1.7. **Appropriated Fiscal Year** has the meaning set forth in Section 5.3 (Crossing Fiscal Years) below.
- 1.8. **Certification of Restrictions on Lobbying**, if required in the Provider Agreement, means a certificate in the form attached to the Provider Agreement.
- 1.9. **Charter** means the Philadelphia Home Rule Charter, as it may be amended from time to time.
- 1.10. **City** means The City of Philadelphia, a corporation and body politic existing under the laws of the Commonwealth, and includes its various executive and administrative departments, agencies, boards and commissions, including the Department and City Council. The City is a City of the First Class under the laws of the Commonwealth.
- 1.11. **City Council** means the Council of The City of Philadelphia, as described in Article II of the Charter. City Council is the legislature of the City.
- 1.12. **City Data** means any and all records, documents and data furnished by the City to Provider in relation to the work required under the Contract; and all deliverables, work product(s), items of work and other Materials created by Provider as part of, or to perform work required under, the Contract. "City Data" does not, however, include any information that was known to Provider, prior to the commencement of its performance of the Contract, free of any obligation to keep it confidential; is proprietary to Provider; was generally known to the public at the time of receipt by Provider, or becomes generally known to the public through no act or omission of

Provider; or was independently developed by Provider, unrelated to work performed for the City, and without knowledge or use of any information obtained from the City.

1.13. **Code** means The Philadelphia Code of Ordinances, as it may be amended from time to time.

1.14. **Commonwealth** means the Commonwealth of Pennsylvania.

1.15. **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 Provider or any other Person; provided, however, that “Consultant” shall not include a full-time employee of Provider.

1.16. **Contract** means the agreement of the Parties evidenced by the Contract Documents. References to this “Contract” shall mean this Contract as the same may be in effect at the time such reference becomes operative.

1.17. **Contract Cost Principles** means the “City of Philadelphia Contract Cost Principles and Guidelines,” as amended from time to time. This document specifies the Department’s guidelines for the qualitative and quantitative evaluation of contract services and materials, the determination of allowable costs, and the standards to determine the allowability of individual cost items. Copies are available from the Department upon request.

1.18. **Contract Documents** means these General Provisions, the Provider Agreement, and any and all other documents or exhibits incorporated by reference in either the General Provisions or the Provider Agreement, and any and all Amendments to any of these documents.

1.19. **Contributions** has the meaning set forth in the Pennsylvania Election Code (25 P.S. § 3241).

1.20. **Department** means the department, board, commission or agency of the City of Philadelphia defined as the Department in the introductory paragraph of the Provider Agreement.

1.21. **Event of Default** means an event defined and identified in or pursuant to Section 11.1 (Events of Default) below.

1.22. **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; (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; (c) Provider’s making of an assignment for the benefit of creditors; (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; (e) any other proceeding under any bankruptcy or insolvency law or liquidation law, voluntary or otherwise; (f) Provider proves unable to pay its obligations as they mature; or (g) Provider is insolvent as otherwise defined under any Applicable Law.

1.23. **Fiscal Year** means the fiscal year of the City, which starts on July 1 of each calendar year and expires on the following June 30.

1.24. **General Provisions** means this document, entitled “The City of Philadelphia Professional Services Contract General Provisions for General Consultant Services,” which contains the standard provisions required by the City in its consultant professional services

contracts, and all exhibits or documents identified or incorporated in these General Provisions, as it or they may be amended from time to time.

1.25. **Initial Term** has the meaning set forth in Section 2.1 (Initial Term) below.

1.26. **Interpretation; Number; Gender.** The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Contract as a whole, including all of the Contract Documents, and not to any particular article, section, subsection or clause contained in the Contract Documents. Unless the context requires otherwise, 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.

1.27. **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 software, and other tangible work product or materials prepared or developed by Provider in connection with the Services, or for Provider by a Subcontractor in connection with the Services, and supplied to the City by Provider or its Subcontractor pursuant to this Contract.

1.28. **Non-Competitively Bid Contract** has the meaning set forth in Section 17-1401 of the Code.

1.29. **Party** means either the City or Provider; “Parties” means the City and Provider.

1.30. **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.

1.31. **Provider** means the Person providing Services and Materials to the City as defined in the heading of the Provider Agreement.

1.32. **Provider Agreement** means the instrument by that name, part of the Contract Documents, which sets forth terms, covenants and conditions specific to Provider’s engagement.

1.33. **Responsible Official** means the director, commissioner or other head of the Department.

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

1.35. **Services** means the work to be performed under this Contract as specified in the Provider Agreement.

1.36. **Subcontract** means a contract made between Provider and a Subcontractor providing for the completion of some part or parts of the Services or Materials by a Subcontractor.

1.37. **Subcontractor** means a Person performing under a contract with Provider some part of the Services or Materials.

1.38. **Suspension Notice** means notice of full or partial suspension of the Contract served by the City on Provider pursuant to Section 13.1 (Termination or Suspension for Any Reason) below.

1.39. **Suspension Period** has the meaning set forth in Section 13.4 (Suspension) below.

1.40. **Term** means the Initial Term and any Additional Term.

1.41. **Termination Notice** means notice of full or partial termination of the Contract served by the City on Provider pursuant to Section 13.1 (Termination or Suspension for Any Reason) below.

ARTICLE II: TERM

2.1. **Initial Term.** The initial term (“Initial Term”) of this Contract is set forth in Section 2.1 of the Provider Agreement. The Initial Term cannot exceed one (1) year without authorization by ordinance of City Council.

2.2. **Additional Terms.**

(a) The City may, at its sole option, amend this Contract to add one (1) or more terms (each an “Additional Term”), such that the Initial Term and all Additional Terms combined do not exceed four (4) years, unless otherwise expressly set forth in the Provider Agreement. No Additional Term can exceed one (1) year without authorization by ordinance of City Council. The City shall give Provider thirty (30) days’ written notice of its intent to amend this Contract to add an Additional Term prior to each Additional Term.

(b) In addition, the City may amend the Contract to add one or more Additional Terms to maintain necessary Services and Materials for the City pending the procurement process for a new contract for additional services and materials or solely to complete existing work.

(c) There shall be no liability or penalty to the City for electing not to amend the term of this Contract to add one or more Additional Terms.

(d) Unless otherwise stated in the Provider Agreement or in any Amendment, the same terms and conditions applicable in the Initial Term apply in each Additional Term.

(e) Each Additional Term shall be subject to the availability of funds appropriated by City Council for such Additional Term. Each Additional Term of this Contract is a separate contract between the City and Provider.

ARTICLE III: PROVIDER’S DUTIES AND COVENANTS

3.1. **Performance Requirements.** Provider shall provide all Services and Materials in accordance with this Contract and applicable professional standards. All payments to Provider are contingent upon satisfactory performance of the terms and conditions set forth in this Contract, as determined by the Responsible Official in his or her sole discretion.

3.2. **Compliance with Applicable Law.** Provider shall comply with the requirements of all Applicable Law with respect to Provider’s activities, Services, Materials and facilities used in connection with any aspect of this Contract. Provider shall inform the Responsible Official, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of Provider’s 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 Materials; Change in Scope of Services.** At any time during the Term of this Contract, the City may, by written change order or request delivered by notice to Provider, make changes to the Scope of Services under this Contract, and the Parties will, if

appropriate, negotiate an adjustment in compensation, subject to the availability of funds appropriated by City Council, if necessary. Provider shall not commence to perform or provide, and the City shall not pay for, any services or materials not included in this Contract (the "Additional Services and Materials") unless and until Provider receives written pre-authorization (by change order or other request) from the Responsible Official that specifies the Additional Services and Materials to be provided. In no event shall the rates charged by Provider for said Additional Services and Materials exceed the lowest of (a) Provider's then current standard rates for such Services or Materials; (b) such rates as the City and Provider may have negotiated for this Contract, as set forth in the Contract Documents; or (c) the lowest rate or rates that Provider may then be charging to other purchasers of like Services and Materials. If Provider requests changes to the Scope of Services, Provider must demonstrate to the satisfaction of the City, in its sole discretion, that the changes are necessary and not due to the acts or omissions of Provider. The City shall pay Provider additional compensation above the limit set forth in the Provider Agreement only if and when an Amendment to this Contract is duly executed by the Parties. The City shall have no responsibility or liability whatsoever for any fee, or for costs incurred by Provider for any services, materials or other costs or expenses, other than the Services and Materials and any duly approved Additional Services and Materials.

3.4. **Responsibility.**

(a) Notwithstanding the acceptance and approval by the City of any Services performed or Materials provided, Provider shall continue to be responsible for the professional quality, technical accuracy and the coordination of all Materials and Services provided by Provider under this Contract. Provider shall, without additional compensation, correct any errors, defects, deficiencies or omissions in Provider's Materials and Services.

(b) The City's review, approval or acceptance of, or payment for, any of the Materials and Services required under this Contract shall not constitute any representation, warranty, or guaranty by the City as to the substance or quality of the matter reviewed, approved or accepted and shall not be construed to operate as a waiver or estoppel of any of the City's rights or privileges under this Contract or of any cause of action arising out of the performance of this Contract. No Person shall have any right to rely in any way on the City's review, approval or acceptance of Provider's Services or Materials. Provider shall be and remain liable in accordance with this Contract and Applicable Law for all damages to the City caused by Provider or the Services or Materials provided by Provider. Review, approval or acceptance by the City or the Responsible Official under this Contract shall not constitute approval otherwise required by any City department, board, commission or other regulatory agency in the exercise of such department's, board's, commission's or agency's independent regulatory authority or police powers under Applicable Law.

(c) Without limiting Provider's responsibility as set forth above, if any act or omission of Provider or error or deficiency or omission in the Services or Materials provided by Provider requires any change in the Scope of Services or any portion thereof, Provider shall promptly complete such change at no additional cost to the City.

3.5. **Relationship with the City.** Neither Provider's personnel nor any Subcontractor personnel shall be employees of the City. Provider shall notify the City of any Provider personnel or any Subcontractor personnel who have any employment or other 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 Materials required by this 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 this Contract diligently and promptly and before the scheduled expiration of the Term.

3.7. **Prompt Payment by Provider.** Provider agrees to pay promptly all Persons which have furnished labor or supplies in connection with the Services, the Materials or this Contract, including, without limitation, Subcontractors and suppliers. Provider will pay Subcontractors within the time period required under Section 14.3 (Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation) below, to the extent it applies. Provider shall provide, upon request of the City, reasonable evidence that these Persons have been fully and timely paid.

3.8. **Sales and Use Tax.** The City is not subject to federal, state or local sales or use taxes or federal excise tax. Provider hereby assigns to the City all of its right, title and interest in any sales or use tax that may be refunded as a result of any materials, including any Materials, purchased or services, including any Services, rendered in connection with this Contract; and unless directed otherwise 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.

3.9. **Subcontracts.**

(a) Provider shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, in whole or in part, without on each occasion first obtaining the 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, effective on the date of the Subcontract, that:

(1) Work performed by Subcontractor shall be in conformity with the terms of this Contract.

(2) Nothing contained in such Subcontract shall be construed to impair the rights of the City under this 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 this Contract, shall create any obligation of the City to any Subcontractor.

(5) The City is 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 this Contract between the City and Provider has been terminated, Subcontractor will continue to perform its obligations under the Subcontract for the benefit of the City in conformity with the terms and conditions of this Contract, provided the City pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of this Contract between the City and Provider at the same rate or in

the same amount as set forth in the Subcontract for those Services and Materials provided by Subcontractor after such date of termination.

(7) Subcontractor shall be bound by the same terms, covenants and conditions as Provider under this Contract, including, without limitation, confidentiality, maintenance and preservation of records, and audit by government representatives.

(8) Subcontractor presently, fully and unconditionally assigns, transfers and sets over to the City all of Subcontractor's right, title and interest in and to any 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 this Contract, and otherwise has all obligations to the City that Provider has pursuant to Section 3.8 (Sales and Use Tax) above.

(9) Subcontractor shall not be indebted to the City and shall have all obligations to the City that Provider has pursuant to Subsection 4.1(g) (No Indebtedness to the City) below.

(10) Subcontractor shall comply with Chapter 17-400 (Payment or Reimbursement of Employee Expenses Associated with the Use of Exclusionary Private Organizations) of the Code and shall have all obligations to the City and to Provider that Provider has pursuant to Section 14.2 (Chapter 17-400 of The Philadelphia Code: Exclusionary Private Organizations) below.

(11) Subcontractor shall comply with Section 17-104 (Prerequisites to the Execution of City Contracts) of the Code and shall have all obligations to the City that Provider has pursuant to Sections 14.6 (Northern Ireland) and 14.8 (Business, Corporate and Slavery Era Insurance Disclosure) below.

(12) Subcontractor shall comply with Chapter 17-1300 (Philadelphia 21st Century Minimum Wage and Benefits Standard) of the Code to the extent it is applicable to a Subcontractor that is also a Service Contractor (as defined in Chapter 17-1300) providing Services under the Subcontract, and to subcontractors at any tier that are also Service Contractors providing Services under this Contract. Provider shall notify its Subcontractors of these provisions; shall expressly incorporate this paragraph and Section 14.10 (Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard) below, with appropriate adjustments for the identity of the parties, in each Subcontract; and shall require its Subcontractors to include such terms in any lower-tier subcontract that is, or may become, covered by Chapter 17-1300.

(13) Subcontractor is and shall remain eligible for contracts with the City subject to Chapter 17-1400 (Non-Competitively Bid Contracts; Financial Assistance) of the Code, and shall have all obligations to Provider that Provider has to the City pursuant to Section 14.11(Chapter 17-1400 of The Philadelphia Code: Contributions and Other Mandatory Disclosures) below.

(c) No permitted Subcontract shall relieve Provider of any obligation under this Contract. Provider shall be as fully responsible for the acts and omissions of its Subcontractors and Persons either directly or indirectly employed or retained by them as it is for the acts and omissions of Provider and Persons directly or indirectly employed or retained by Provider.

(d) Any purported Subcontract made in violation of this Section 3.9 or of any other Section in this Contract shall be null and voidable, at the City's option.

(e) City-Related Agencies. If Provider is a City-Related Agency, as defined in Section 17-1401 of the Code, then:

(1) Provider shall abide by the provisions of Chapter 17-1400 (Non-Competitively Bid Contracts; Financial Assistance) of the Code 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 Section 17-1406(8) shall apply to Provider as if Provider were listed in that subsection.

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

ARTICLE IV: PROVIDER'S REPRESENTATIONS AND WARRANTIES

4.1. **Provider's Representations and Warranties.** Provider makes the following representations and warranties upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract, including, but not limited to, those set forth in this Article IV. The representations and warranties stated below shall continue throughout the Term of this Contract. In the event any representation or warranty is or becomes untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation or warranty is untrue or inaccurate. *False statements to the City in or in connection with this Contract, in or pursuant to any representation or warranty made in this Article IV or otherwise, are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, which may include fines and imprisonment.*

(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 and in all jurisdictions in which it conducts business activities relating in any way to the performance of the Services and delivery of the Materials 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 further

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) **No Litigation Preventing Performance.** There is no litigation, claim, consent order, settlement agreement, arbitration, agency proceeding, 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, in which any Person seeks to enjoin or prohibit Provider from entering into or performing its obligations under this Contract.

(d) **Requisite Licensure and Qualifications.** Provider and all Persons acting on Provider's behalf, including, without limitation, Subcontractors, in connection with the Services and Materials 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 Materials. Provider shall provide the City with copies of all licenses, credentials and certifications required under this Section 4.1 within five (5) days of request by the City.

(e) **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 would or may conflict in any manner or degree with the performance or rendering of the Services and Materials.

(f) **No Indebtedness to the City.** Provider and any and all entities controlling Provider, 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 this 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 this Contract under all such agreements and payment plans and shall inform the Responsible Official in writing of Provider's receipt of any notices of delinquent payments under any such agreement or payment plan 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, warranty, and covenant may, at the option of the City, result in the withholding of payments otherwise due to Provider under this Contract or any other agreement with the City under which the City may then owe payment of any kind, 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 or the termination of this Contract for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination), or both.

(g) **Commercial Activity License.** If Provider is a "business" as defined in Section 19-2601 of the Code, Provider has and shall maintain during the Term of this Contract, a valid, current Commercial Activity License, issued by the City's Department of Licenses and Inspections, to do business in the City.

(h) **Subcontractor Licensure; No Indebtedness to the City.** Each Subcontractor, if any, holds and shall maintain during the term of the Subcontract, a valid, current Commercial Activity License to do business in the City, if required by Applicable Law. To the best of

Provider's knowledge, information and belief, the representations made in any Subcontract that Subcontractor is not indebted to the City are true and correct.

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

(j) **Additional Representations and Warranties.** The enumeration of representations and warranties in this Article IV does not negate or limit Provider's other representations, warranties, and covenants under the Contract, including elsewhere in the General Provisions.

ARTICLE V: COMPENSATION

5.1. **Certification of Available Funds.** Provider acknowledges that payments under this Contract shall not exceed the amount certified by or on behalf of the City's Director of Finance as available for this Contract. A copy of the form signed by the Office of the Director of Finance 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 this Contract, the City reserves the right to fund any remaining balance of this Contract amount in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in this Contract. Provider agrees that the City shall not be obligated to fund this Contract except out of funds certified by or on behalf of the City's Director of Finance as currently available, even if those funds are less than the maximum amount stated in this 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) below.

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

- (a) Terminate this Contract effective upon a date specified in a Termination Notice; or
- (b) Continue this Contract by reducing, through written notice to Provider, the amount of this Contract and Services and Materials, consistent with the nature, amount and circumstances of available funding.

The City's exercise of either option under this Section 5.2 shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction of Services or Materials. Provider shall be compensated in accordance with the terms of this Contract for Services and

Materials satisfactorily performed and delivered prior to such termination or modification of this Contract under this Section 5.2.

5.3. **Crossing Fiscal Years.** If any portion of the compensation set forth in this Contract is to be paid in any City fiscal year following the fiscal year in which the Initial Term or any Additional Term of this Contract commences (in either case, “Appropriated Fiscal Year”), Provider understands and agrees that the portion of the compensation under this Contract payable with City funds for any period following the Appropriated Fiscal Year is subject to the discretion of City Council as to future appropriations. If, for any reason, funds for any such portion of the compensation are not appropriated by City Council in any Fiscal Year following the Appropriated Fiscal Year, this Contract and the City’s liability under this Contract shall automatically terminate at the end of the then current Appropriated Fiscal Year; provided, however, that Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to the end of the then current Appropriated Fiscal Year, subject to the other provisions of this Article V.

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

ARTICLE VI: AUDITS; INSPECTION RIGHTS; RECORDS

6.1. **City Audit.** From time to time during the Term, and for a period of five (5) years after the expiration or termination of this Contract, the City may audit any and all aspects of Provider’s performance under this Contract, including, but not limited to, its billings and invoices. Audits may be conducted by representatives, agents or contractors of the City, including the Department, or other authorized City representatives, including, without limitation, the City Controller. If requested by the City, Provider shall submit to the City all vouchers or invoices presented for payment pursuant to this 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 this Contract. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review or audit by the City.

6.2. **Inspection.** All Services and Materials shall be subject to inspection and review by City, state and federal 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, in the City at reasonable times during the Term of this Contract and for the period set forth in Section 6.4 (Retention of Records) below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any authorized representative (including any agent or contractor and the City Controller) of the City, the Commonwealth of Pennsylvania Auditor General, and any other federal and state auditors, as may be applicable.

6.4. **Retention of Records.** Provider shall retain all records, books of account and documentation pertaining to this Contract for the period set forth in Section 6.1 (City Audit) above. If any litigation, claim or audit is commenced prior to expiration of said 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, or if Applicable Law requires 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 (Auditing Department) of the 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 that a) receives funds from the City; and either b) is created by, or whose board of directors is in whole or part appointed by, one or more City officials or bodies, or c) is organized pursuant to legal authority granted to it by City ordinance.

ARTICLE VII: ASSIGNMENT

7.1. **Assignment By Provider.** Provider shall not assign this Contract, or any part of this Contract, or delegate performance of this Contract (other than to its own work forces), without obtaining the prior written consent of the Responsible Official. The decision whether to consent to an assignment, the timing of consent, if any, and conditions to such consent, if any, shall each be in the City's sole discretion. Any consent to the assignment of any monies to be paid under this Contract shall not relieve Provider from the faithful performance of any of its obligations under this Contract or change any of the terms and conditions of this Contract. Any purported assignment in violation of this provision shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 7.1, an assignment includes the acquisition of Provider, or a controlling interest therein, through a corporate or other merger, and the appointment of a receiver or bankruptcy trustee, and the transfer of this Contract or Provider in any bankruptcy or other insolvency proceeding.

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

7.3. **Personal Services.** Provider acknowledges that the Services and Materials are the personal services of Provider and 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 agents, 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 the City and 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 and expenses), 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, independent contractors, suppliers, employees or servants in connection with this 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 any Subcontractors and suppliers, any breach of this Contract, loss of data, data security breach, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

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 Materials 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 Materials; Change in Scope of Services) 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: INSURANCE

9.1. **Insurance Policies.** Unless otherwise approved by the City's Risk Management Division in writing, Provider shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider's performance of the Services and the delivery of the Materials. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days' prior written notice to be given to the City in the event coverage is materially changed, cancelled or non-renewed. The City, its officers, employees and agents, shall be named as additional insureds on the General Liability Insurance policy. Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

(a) **Workers' Compensation and Employers' Liability:**

(1) **Workers' Compensation: Statutory Limits.**

(2) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.

(3) Other states insurance including Pennsylvania.

(b) General Liability Insurance:

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk warrants.

(2) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as insureds; cross liability; and broad form property damage (including completed operations).

(c) Automobile Liability Insurance:

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(2) Coverage: Owned, non-owned and hired vehicles.

(d) Professional Liability Insurance:

(1) Limit of Liability: \$1,000,000 with a deductible not to exceed \$50,000.

(2) Coverage: Errors and omissions including liability assumed under Contract.

(3) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under this Contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.

9.2. **Self-Insurance.** Provider may self-insure any of the coverages required under this Contract only with the prior written approval of the Responsible Official and the City's Risk Manager. If Provider wants to self-insure any of the coverages listed above, it shall submit to the Responsible Official and the City's Risk Management Division, prior to Provider's commencement of Services or delivery of any Materials hereunder, a certified copy of Provider's most recent audited financial statement and such other evidence of its qualifications to act as self-insurer (e.g., state approval) as the Responsible Official or the City's Risk Manager may request. If the City grants such approval, Provider understands and agrees that the City, its officers, employees and agents shall be entitled to receive the same coverages and benefits under Provider's self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth or otherwise acceptable to the City. If at the time of commencement of any Term of this Contract, Provider self-insures its professional liability or workers' compensation and employers' liability coverage, Provider may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Contract by Provider to the City, or to limit

Provider's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Provider hereunder.

9.3. **Evidence of Insurance Coverage.** Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted. The original certificates of insurance must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia
Office of the Director of Finance
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1579
(Fax No.: 215-683-1705)

A copy of the certificates of insurance shall be submitted to the Responsible Official at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's Risk Management Division at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) days' written notice to Provider.

9.4. **Fidelity Bond; Crime Insurance.** When required in the Contract Documents, Provider shall, at its sole cost and expense, obtain and maintain during the Initial Term and any Additional Term(s) of this Contract, a fidelity bond in an amount equal to the greater of (a) Ten Thousand Dollars (\$10,000) or (b) the amount specified in the Provider Agreement, covering Provider's employees who have financial responsibilities related to the receipt and disbursement of funds under this Contract. In lieu of a fidelity bond, Provider may obtain coverage for crime insurance with limits that are the greater of (a) \$10,000 or (b) the amount specified in the Provider Agreement. The fidelity bond or crime insurance, whichever is obtained by Provider, shall name the City as a beneficiary. Evidence of the existence of the fidelity bond or crime insurance shall be submitted to the City prior to the commencement of Services in conformity with the requirements of Section 9.3 (Evidence of Insurance Coverage) above.

ARTICLE X: OWNERSHIP OF MATERIALS; PROPRIETARY INFORMATION; CONFIDENTIALITY

10.1. **Ownership of Materials.**

(a) Subject to Applicable Law, all Materials shall be the sole and absolute property of the City and the City shall have title thereto and unrestricted use thereof. To the extent that any Materials relating to this Contract developed by or for Provider embody a copyrightable work, including, but not limited to, a "compilation" as that term is used in 17 U.S.C. § 101, as amended from time to time, the City and Provider agree that such copyrightable work(s) shall be considered as one or more "works made for hire" by Provider for the City, as that term is used in 17 U.S.C. §§ 101 and 201(b), as amended from time to time. To the extent that any Materials relating to this

Contract developed by or for Provider embody one or more copyrightable works but are neither a “compilation” nor any other form of “work made for hire,” Provider hereby assigns, and agrees to execute instruments evidencing such assignment, all copyrights in all of such works to the City. Provider shall cause all Materials developed or produced by Provider and any Subcontractor in connection with this Contract which embody a copyrightable work to bear the following designation: “© ___ The City of Philadelphia” [complete then current year in blank line].

(b) Provider shall make available to the City, upon the City’s request, a copy of any Materials prepared by or for Provider in performance of this Contract, at no cost to the City.

(c) All computer programs, tapes and software developed under this Contract shall be compatible with specifications set by the Department.

(d) Provider hereby grants, and shall require its Subcontractors to grant, to the City a royalty-free, nonexclusive and irrevocable right to publish, translate, reproduce, deliver, perform and authorize others to do so, all studies, media, curricula, reports and other Materials not owned by the City under this Contract but which relate to the performance of the Services, Materials or this Contract; provided, however, that Provider shall not be required to grant such right to the City with respect to any Materials for which Provider would be liable to pay compensation to third parties because of such grant.

10.2. Non-Disclosure and Destruction of Data. Provider and its employees, agents, Subcontractors, suppliers, and any person or entity acting on its behalf (a) will maintain in strict confidence all City Data; (b) will not, without the City’s written permission, issue, divulge, disclose, publish, communicate, or distribute any City Data to any person or entity except as may be strictly necessary to perform under the Contract; (c) will not, without the City’s written permission, in any way use any City Data for their businesses, research, or other advantage or gain (except as may be strictly necessary to perform under the Contract), including, without limitation, any use of City Data in any presentation, demonstration, or proposal to perform work, to the City or to others, that may be conducted or created as part of their business activities or otherwise; and (d) except as required by Applicable Law, will immediately upon termination of the Contract return all City Data to the City, destroy any and all copies of any City Data that are in their possession, whether on paper or in electronic or other form and, if requested by the City in writing, will certify in writing that there has been full compliance with this Section 10.2. See also Section 14.9 (Terms and Conditions Relating to Protected Health Information).

ARTICLE XI: EVENTS OF DEFAULT

11.1. Events of Default. Each of the following shall be an Event of Default by Provider under this Contract:

(a) Failure by Provider to comply with any provision of this 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 this Contract or in any other document submitted to the City by Provider.

(d) Any act, omission, or misrepresentation which renders Provider ineligible for a City contract or renders the Contract voidable under Chapter 17-1400 of the Code.

(e) Misappropriation by Provider of any funds provided under this 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 this Contract or the Services or Materials provided under this Contract, whether or not such offense is ultimately adjudged to have occurred; or (2) which adversely affects the performance of this Contract.

(g) Indictment of or other issuance of formal criminal charges against Provider, its directors, employees or agents for any criminal offense or any other violation of Applicable Law directly relating to this Contract or Services or Materials, or which adversely affects Provider's performance of this Contract in accordance with its terms, whether or not such offense or violation is ultimately adjudged to have occurred.

(h) Debarment or suspension of Provider or any agent, employee or Subcontractor of Provider under a federal, state or local law, rule or regulation.

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) below 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 of ten (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 Materials.

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

(c) The City has previously notified Provider in the preceding twelve (12) month period of any Event of Default under this Contract.

(d) An Event of Default occurs as described in Section 11.1(e), 11.1(f) or 11.1(h) above.

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

Nothing contained in this Section 11.2 shall limit the City's rights under Article XII (Remedies) below.

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 Cure) above, then the City may, but shall not be obligated to, take any or all of the following actions without further notice to or demand on Provider and without waiving or releasing Provider from any of its obligations under this Contract:

(1) Perform (or cause a third party to perform) this 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. 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 thereon from the date the City or its agent incurs such costs. The City shall not in any event be liable for

inconvenience, expense or other damage incurred by Provider by reason of the City's performance or paying such costs or expenses, and the obligations of Provider under this 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 payment of, 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.

(4) Exercise any other right the City has or may have at law, in equity, or under this 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 Cure) above, then the City may, but shall not be obligated to, without waiving or releasing Provider from any of its obligations under this Contract, terminate or suspend this Contract in whole or in part, as set forth more fully in Article XIII (Termination and Suspension) below. In the event of partial termination or suspension, Provider shall continue the performance of this Contract to the extent not terminated or suspended.

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

12.2. **Concurrent Pursuit of Remedies; No Waiver.** The City may exercise any or all remedies set forth in this Article XII, 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 Article XII 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.

ARTICLE XIII: TERMINATION AND SUSPENSION

13.1. **Termination or Suspension for Any Reason.** 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, in whole or in part, for any stated reason, including, without limitation, the convenience of the City. The City shall give written notice to Provider of any full or partial termination or suspension, stating the reason(s) for its action, setting forth the effective date of the termination or suspension and describing any partial termination or suspension.

13.2. Provider's Responsibilities Upon Termination or Suspension.

(a) Upon the City's service 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 Materials, and demobilize work forces to minimize the incurrence of costs; and

(2) Upon request by the City by notice to Provider, collect, assemble and transmit to the City all Materials in such state of completion as may exist as of the effective date of the termination or suspension. All such Materials shall be clearly labeled and indexed to the satisfaction of the Responsible Official and delivered to the Responsible Official by Provider on or before the date set forth in the Termination Notice for delivery of the Materials 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. Provider waives and releases any and all right to any retaining or charging liens or similar right or remedy in favor of Provider.

(b) The City's termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of 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 such 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) Provider is not entitled to be compensated for termination expenses or for anticipated profits, unabsorbed or underabsorbed 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 fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Services and Materials required to be performed by Provider under this 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 an Event of Default.

(b) In the event of termination or suspension of this Contract by the City for the City's convenience, Provider shall be paid such an amount as shall compensate Provider for the portion of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of termination. The City shall not pay Provider any amount for Provider's termination or suspension expenses or anticipated profits, unabsorbed or underabsorbed overhead or unperformed Services and Materials not satisfactorily delivered.

(c) In no event shall Provider be entitled to payment beyond the maximum amounts set forth elsewhere in the Contract.

13.4. Suspension.

(a) Suspension after an Event of Default, or pending investigatory or criminal proceedings concerning an event that would constitute an Event of Default if resolved contrary to the interests of Provider or a Person for which Provider may be responsible, shall not constitute a waiver or release of any liability of Provider for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy.

(b) Provider acknowledges that the City shall have the right, in its sole discretion, to suspend Provider's performance in the event City Council does not appropriate funds for the performance of this Contract.

(c) If the City issues a Suspension Notice to Provider, such suspension shall continue from the effective date specified in the Suspension Notice until a date specified in the Suspension Notice which shall be not more than one hundred eighty (180) days after the effective date (the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a Termination Notice pursuant to Section 13.1 (Termination or Suspension for Any Reason) above; or issue a new Suspension Notice; or by notice to Provider, instruct Provider to resume the delivery of Services and Materials pursuant to this Contract upon the expiration of the Suspension Period. The City may exercise its right to amend the Contract to add an Additional Term without waiving the suspension; but in the absence of the City's notice of intent to enter into such amendment, Provider shall terminate Services and Materials at the end of the Term even if the Suspension Period has not yet expired.

(d) After issuing a Suspension Notice, the City shall pay any invoices submitted by Provider for Services rendered prior to the commencement of the Suspension Period or otherwise payable by the City to Provider under this Contract, subject to all the City's rights and remedies against Provider, including, but not limited to, its rights of set off and its right to review and accept Services and Materials prior to payment therefor.

ARTICLE XIV: ADDITIONAL REPRESENTATIONS AND COVENANTS OF PROVIDER RELATING TO CERTAIN APPLICABLE LAWS

In addition to the representations, warranties, and covenants made by Provider in Article IV (Provider's Representations and Warranties) above and elsewhere in the General Provisions and other Contract Documents, Provider further represents, warrants and covenants that, to the extent of their applicability to Provider, Provider is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Provider thereby certifies to such compliance. Provider further certifies that the representations, warranties, and covenants provided pursuant to this Article XIV shall continue to remain true throughout the Term of this Contract and for any other period of time required by such laws. *False statements to the City in or in connection with this Contract, in or pursuant to any representation or covenant made in this Article XIV or otherwise, are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, which may include fines and imprisonment.* 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. The provisions of this Article XIV are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

14.1. **Non-Discrimination; Fair Practices.** In performing this Contract, Provider must comply with the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time. In addition, to the extent those provisions do not explicitly prohibit or cover certain types of discriminatory conduct, in performing this Contract, Provider has broader obligation under this Contract. In connection with providing any service or fulfilling any duty under this Contract, Provider shall not discriminate or permit discrimination against any individual

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, familial status, genetic information; domestic or sexual violence victim status; or Acquired Immune Deficiency Syndrome (“AIDS”) status. In the event of any breach of this Section 14.1, 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. Chapter 17-400 of The Philadelphia Code: Exclusionary Private Organizations.

(a) In accordance with Chapter 17-400 of the Code, 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 (the “Commission”) in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the 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. Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation. In accordance with Executive Order 03-12 (the “Antidiscrimination Policy”), the City, acting through its Office of Economic Opportunity (“OEO”), has established an antidiscrimination policy that relates to the solicitation and participation 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 by exercising its Best and Good Faith Efforts to include M/W/DSBEs in its contract, 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.

(a) General Requirements. In furtherance of the purposes of the Antidiscrimination Policy, Provider agrees to the following:

(1) Provider, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) (“M/W/DSBE Subcontract(s)”) with M/W/DSBEs as participants under this Contract 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)”).

(2) Provider shall secure the prior written approval of the 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 participants, or changes or reductions in the dollar amounts and/or percentage value paid to its M/W/DSBE participants.

(3) Unless otherwise specified in a M/W/DSBE Subcontract between Provider and its M/W/DSBE participant, as described in Section 14.3(a)(1) above, Provider shall, within five (5) business days after receipt of a payment from the City for services performed under the Contract, deliver to its M/W/DSBE participant its proportionate share of such payment for services performed by the M/W/DSBE participant. In connection with payment of its M/W/DSBE participants, Provider agrees to fully comply with the City’s electronic payment reporting process, the Contract Compliance Reporting System (referred to as “CCRS” or “B2G”) which is an electronic payment verification system; failure to verify payment in this system may result in withholding of payments.

(4) 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 participants proportionately, which increase shall be reflected in the M/W/DSBE Subcontract(s) described in Section 14.3(a)(1) above. OEO may from time to time request documentation from Provider evidencing compliance with this provision.

(5) 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 M/W/DSBE Subcontracts, participation summary reports, M/W/DSBE participant invoices, telephone logs and correspondence with M/W/DSBE participants, cancelled checks and certification of payments. Provider shall maintain all documentation related to this Section 14.3 for a period of five (5) years from the date of Provider’s receipt of final payment under the Contract.

(6) 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.

(7) 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:

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

(B) Withhold payment(s) or any part thereof until corrective action is taken. If corrective action is not taken to the satisfaction of OEO, the City may, without institution of a lawsuit, deduct money in an amount equal to the M/W/DSBE shortfall, which amount shall be collected and considered not as a penalty, but as liquidated damages for Provider’s failure to comply with the Contract.

(8) No privity of contract exists between the City and any M/W/DSBE participant identified herein and the City does not intend to give or confer upon any such M/W/DSBE

participant(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 participant 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 participants.

(b) Special Requirements Applicable to Non-Profit Providers. In the event Provider is a non-profit, the Contract may not be subject to M/W/DSBE participation ranges, but Provider shall demonstrate its compliance with the Antidiscrimination Policy by providing annually to OEO the following information:

(1) A statement identifying the race, gender, disability status and ethnic composition of its workforce and board of directors;

(2) A list of the non-profit's five highest dollar value M/W/DSBE suppliers of products and services; and

(3) The non-profit's written "equal opportunity statement," an assurance of the non-profit's efforts to maintain a diverse workforce and board of directors and operate a fair and effective supplier diversity program.

(c) Criminal Liability for Fraudulent or False Statements. Provider hereby verifies that all information submitted to the City in connection with the Antidiscrimination Policy is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, which may include payment of a fine of at least \$1,000 and a term of imprisonment of not more than two (2) years. Provider also acknowledges that under 18 Pa.C.S. § 4107.2(a)(4), it is a felony in the third degree, punishable by a term of imprisonment of not more than seven (7) years in addition to the payment of any fines or restitution, if, under this Contract, Provider fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

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 this Contract or from providing Services or Materials under this Contract. By executing and delivering this Contract, Provider covenants to comply with all provisions of the Americans with Disabilities Act (42 U.S.C. §§ 12101-12213) (the "ADA"), and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Provider; (b) to the benefits, Services, Materials, activities, facilities and programs provided in connection with this Contract; (c) to the City or the Commonwealth; (d) to the benefits, services, activities, facilities and programs of the City or the Commonwealth; and (e) if any funds under this Contract are

provided by the federal government, to federal funds, benefits, services, activities, facilities and programs applicable to this Contract. 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 ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, 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 Code, Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract, any investments, licenses, franchises, management agreements or operations in Northern Ireland; and (2) agrees that 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, Subcontractor or subconsultant 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 Code. Provider expressly understands and agrees that any false certification or representation in connection with this Section 14.6 and any failure to comply with the provisions of this Section 14.6 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 Code) or in equity.

14.7. 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, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia’s Executive Order entitled, “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; 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.

14.8. Business, Corporate and Slavery Era Insurance Disclosure.

(a) In accordance with Section 17-104 of the Code, Provider, after execution of this Contract, will complete an affidavit certifying and representing that Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of 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.

(b) Provider expressly understands and agrees that any false certification or representation in connection with this Section 14.8 and/or any failure to comply with the provisions of this Section 14.8 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law, including, but not limited to, Section 17-104 of the Code, or equity and the Contract will be deemed voidable.

14.9. Terms and Conditions Relating to Protected Health Information.

(a) The City is a “hybrid entity” as defined in 45 CFR §164.103 and has designated certain portions of the City as “Covered Units” that perform covered functions and are subject to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”). The Covered Units are listed on the City’s website at <http://www.phila.gov/privacy>. Other parts of the City may also be subject to HIPAA to the extent they provide services to a Covered Unit or another covered entity involving the creation, receipt, maintenance, or transmission of protected health information.

(b) To meet its obligations under HIPAA, the City requires its business associates to agree to the Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (<https://secure.phila.gov/eContract> under the “About” link). The City PHI Terms are hereby incorporated in this Section 14.9 as if fully set forth herein.

(c) Provider is subject to, and shall comply with, the City PHI Terms if: (i) the Contract contains language affirming that Provider is subject to the City PHI Terms or that Provider is the City’s business associate; or (ii) Provider, directly or through an agent or Subcontractor, performs functions or provides services that make it the City’s “business associate” as such term is defined in 45 CFR § 160.103 (regardless of whether the Contract expressly affirms such relationship).

14.10. Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard.

(a) If Provider or any Subcontractor at any tier is an Employer subject to the requirements of Chapter 17-1300 of the Code, as that term is defined in Section 17-1302 and described in Section 17-1303 of the Code, then, absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal requirements, it shall provide and cause any subcontractors at any tier that are also Employers to provide their respective covered Employees, as that term is defined in Section 17-1302 of the Code, with at least the minimum wage standard and minimum benefits standard and notice thereof, as required under applicable law. A summary of the current requirement is as follows:

(1) Term of Contract and Effective Date of Minimum Wage Rates.

(A) For contracts with a term of one year or less, the rate applicable on the effective date of the contract is the rate for the entire term of the contract.

(B) For renewals and amendments with a term of one year or less, the rate applicable on the effective date of the renewal or amendment is the rate for work performed during the term of the renewal or amendment and remains the rate throughout the term of the renewal or amendment.

(C) For contracts, renewals and amendments with a term longer than one year, the applicable rate on the effective date of the contract shall apply until the next June 30. On the next July 1, the new rate effective on that July 1 date shall apply during the period from July 1 through the following June 30. Each July 1, the rate may increase.

(2) Minimum Wage Rates. Absent a waiver, an Employer subject to Chapter 17-1300 shall pay each Employee an hourly wage, excluding benefits, equal to:

Effective Date between April 19, 2019, and June 30, 2019, \$12.40;

Effective Date between July 1, 2019, and June 30, 2020, \$13.25;

Effective Date between July 1, 2020, and June 30, 2021, \$13.75;

Effective Date between July 1, 2021, and June 30, 2022, \$14.25;

Effective Date between July 1, 2022, and June 30, 2023, \$15.00; and

Effective Date starting July 1, 2023, and thereafter, \$15.00 multiplied by the CPI Multiplier, provided that the minimum wage shall not be less than the previous year's minimum wage. The CPI Multiplier is calculated annually by the City's Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers All Items Index for Philadelphia, Pennsylvania, by the most recently published Consumer Price Index for all Urban Consumers ("CPI-U") of each calendar year. The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's website.

(3) Minimum Benefits. Absent a waiver, if the Employer is subject to Chapter 17-1300, to the extent the employer provides health benefits to any of its employees, the Employer shall provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer. The Employer shall also provide to each covered Employee at least the minimum number of earned sick leave days required by Section 17-1305(2) of the Code.

(b) Absent a waiver, if Provider is subject to Chapter 17-1300, Provider shall promptly provide to the City all documents and information as the City may require verifying its compliance and that of all covered Employers providing Services under the Contract with the requirements of Chapter 17-1300. Each covered Employer shall notify each affected Employee what wages and benefits are required to be paid pursuant to Chapter 17-1300.

(c) Absent a waiver, if Provider is subject to Chapter 17-1300, Provider shall take such steps as are necessary to notify its covered Subcontractors of the requirements of this Section 14.10 and to cause such covered Subcontractors to notify lower-tier covered subcontractors of these requirements, including, without limitation, by incorporating this Section 14.10, with appropriate adjustments for the identity of the parties, in its Subcontracts with such covered Subcontractors.

(d) A Provider or Subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and a hearing before the Director of Finance 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, whether as a prime contractor or a subcontractor, for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract.

(e) Without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, the failure of a Provider or Subcontractor at any tier subject to Chapter 17-1300 to comply with these provisions 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 or in equity.

(f) Provider's covered Employees shall be deemed third-party beneficiaries of Provider's representation, warranty, and covenant to the City under this Section 14.10 only, and the covered Employees of a Subcontractor at any tier that is also a covered Employer performing Services directly or indirectly under a Subcontract at any tier shall be deemed third-party beneficiaries of their Employer's representation, warranty, and covenant to Provider or such Subcontractors at any tier, as the case may be, under this Section 14.10.

(g) The City may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code.

14.11. Chapter 17-1400 of The Philadelphia Code: Contributions and Other Mandatory Disclosures.

(a) Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made and agrees that none shall be made during the Term of this Contract by Provider, any Subcontractor, or any party from which a contribution can be attributed to Provider or Subcontractor that would render Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Sections 17-1404(1) and 17-1405 of the Code; 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 Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all the remedies set forth in this Section 14.11, 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 Section 14.11, 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.

(b) Provider shall, during the Initial Term of the Contract, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance that Provider, or any Consultant utilized by Provider in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Provider, or such Consultant pursuant to the attribution rules of Section 17-1405 of the Code, during such time period to a candidate for nomination or election to any public office in the City or to an individual who holds such office, or to any political committee or party in the City, or to any group, committee or association organized in support of any such candidate, office holder, political committee or party, and the date and amount of such contribution.

(1) It shall not be a violation of this Section 14.11(b) if Provider fails to disclose a contribution made by a Consultant because Provider was unable to obtain such information from the Consultant, provided Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(A) 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 Provider;

(B) Including in such agreement a provision requiring the Consultant to provide Provider in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by 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 Provider as of the date of such termination;

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

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

(c) Provider shall, during the Initial Term of the Contract, any Additional Term, and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked Provider, any officer, director or management employee of Provider, or any Person representing Provider, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401 of the Code) to any Person, and any payment of money, provision of services, or any other thing of value (other than such a Contribution) given to any Person in response to any such request. 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.

(d) Provider shall, during the Initial Term, and any Additional Term, of the Contract disclose the name and title of each City officer or employee who directly or indirectly advised Provider, any officer, director or management employee of Provider, or any Person representing Provider that a particular Person could be used by Provider to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. Provider shall also disclose the date the advice was provided, and the name of such particular Person.

(e) The disclosures required by Sections 14.11(b), (c) and (d) shall be made utilizing the online disclosure update process through Provider's eContract Philly account which can be accessed on the City's website at www.phila.gov/contracts by clicking on eContract Philly. Such disclosures shall be timely made before the statutory deadline for the reporting period in which any disclosable event occurred. The disclosure reporting schedule is set forth in Section 17-1402(1)(e)(v) of the Code. In the case of updates to political contributions made by Provider required by Section 14.11(b), the attribution rules of Section 17-1405 of the Code shall apply to determine what contributions must be disclosed under this provision as contributions of Provider or of a Consultant. Provider is advised that any individual who submits an update on eContract

Philly must be an authorized signatory of Provider, authorized to make the required updated disclosures.

(f) Reports generated automatically by the online process for the updated disclosures required by Sections 14.11(b), (c) and (d) will be automatically forwarded to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department and the Department of Records.

14.12. Executive Order 10-16: Gifts.

(a) Pursuant to Executive Order 10-16, no City officer or employee may accept or receive a payment, subscription, advance, forbearance, rendering or deposit of money, services, entertainment, invitation, food, drink, travel, lodging or anything of value, unless consideration of equal or greater value is received, from any person who, at time or within twelve (12) months preceding the time a gift is received:

(1) Is seeking, or has sought, official action from the officer or employee;

(2) Has operations or activities regulated by the officer's or employee's agency, department, office, board or commission, or, in the case of gifts to members of the Mayor's Cabinet, has operations or activities that are regulated by any agency, department, office, board or commission within the Executive and Administrative branch; or

(3) Has a financial or other substantial interest in acts or omissions taken by the officer or employee, which the officer or employee could substantially affect by his or her official action.

(b) Additionally, no City officer or employee shall accept or receive a gift of any value from any person that engages in lobbying on behalf of a principal for economic consideration, and is registered as such, pursuant to the requirements of Section 20-1202 of the Code or any other Applicable Law, including any attorney-at-law while engaged in lobbying.

(c) 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, Provider 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.

(d) All City employees presented with gifts or gratuities as indicated in Executive Order 10-16 are required to report these actions to the appropriate authorities. All Providers that are solicited for gifts or gratuities by City employees must report these incidents to the appropriate authorities, including, but not limited to, the Office of the Inspector General.

14.13. Chapter 17-1900 of The Philadelphia Code: Equal Benefits Ordinance.

(a) Unless Provider is a government agency, this is a "Service Contract" as that term is defined in Section 17-1901(4) of the Code. If the Service Contract is in an amount in excess of \$250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits that Provider extends to spouses of its employees to life partners of such employees. Provider certifies that (1) it is in compliance with the requirements of Chapter 17-1900; (2) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900; and (3) such

employment benefits are currently, or will be made available within the time required by Section 17-1902(2), or that Provider does not provide employment benefits to the spouses of married employees.

(b) Provider acknowledges and agrees that the following terms are included in this Contract:

(1) Provider shall notify its employees of the employment benefits available to life partners pursuant to Chapter 17-1900 of the Code.

(2) Noncompliance by Provider with the requirements of Chapter 17-1900 of the Code shall be a material breach of this Contract.

(3) Discrimination or retaliation by Provider against any employee on account of having claimed a violation of Chapter 17-1900 of the Code shall be a material breach of this Contract.

(4) In addition to any other rights and remedies available to the City pursuant to this Contract at law or in equity, a material breach of this Contract related to Chapter 17-1900 of the Code may result in the suspension or debarment of Provider from participating in City contracts for up to three (3) years.

(c) An overview offering guidance on the applicability of, and requirements placed on City contractors by Chapter 17-1900 of the Code is available on the City's website (at <https://secure.phila.gov/eContract/> under the "About" link) (see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors").

14.14. **The Appropriations Act.** If this Contract is funded in whole or part by federal grant funding appropriated by the Health Resources and Services Administration (HSRA), Provider shall comply with the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Division B, Pub. L. 115-245 (the "Appropriations Act"), as may be amended from time to time, which, among other things, restricts the use of federal grant funds for abortions and health benefits coverage that includes coverage of abortion.

ARTICLE XV: MISCELLANEOUS

15.1. **Governing Law.** This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth, without giving effect to principles of Pennsylvania law concerning conflicts of laws.

15.2. **Amendments; Waiver.** This Contract may not be amended, supplemented, altered, modified or waived, 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 in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under this 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.** The Contract Documents forming this Contract, including the Provider Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.

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

15.5. **No Third-Party Beneficiaries.** With the exception of the remedy provided to third-party beneficiaries by Section 14.10(e) above, nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including, but not limited to, third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.

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

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

15.8. **Survival.** Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, including, without limitation: Provider's representations, warranties, and covenants set forth in Article IV (Provider's Representations and Warranties) above; audit, inspection and record retention requirements set forth in Article VI (Audits; Inspection Rights; Records) above; Provider's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.2 (Indemnification) above; the Parties' rights and obligations set forth in Article X (Ownership of Materials; Proprietary Information; Confidentiality) above; and Provider's continuing obligations related to Section 14.11 (Chapter 17-1400 of The Philadelphia Code: Contributions and Other Mandatory Disclosures) above.

15.9. **Determination of Disputes.** Any dispute arising between the City and Provider under or with respect to either Party's covenants, obligations, powers, rights or duties under this Contract shall be submitted to and decided by the Responsible Official or his or her designee. The Responsible Official or his or her designee shall render and reduce to writing his or her decision and furnish a copy to Provider by notice under this Contract. In connection with any dispute under

this Contract, the Responsible Official shall offer Provider an opportunity to offer evidence in support of its position concerning the subject matter of the dispute. This Section 15.9 shall not be construed to limit the benefit to the City of Articles XI (Events of Default) or XII (Remedies) above.

15.10. **Interpretation; Order of Precedence.** In the event of a conflict or inconsistency between the terms of the Contract Documents, the terms of the General Provisions shall govern, followed by the terms of the Provider Agreement, and lastly by any exhibit, attachment, or other document incorporated by reference into the Contract. The foregoing notwithstanding, the Provider Agreement or an Amendment may expressly supersede, create exception to, or otherwise modify the General Provisions by specific reference thereto in the Provider Agreement, an Amendment, or an exhibit to either specifically labeled for such purpose.

15.11. **Headings.** The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.

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

15.13. **Days.** Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.

15.14. **Forum Selection Clause; Consent to Jurisdiction.** The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this 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 (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) 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 Section 5.1 (Notice) of the Provider Agreement.

15.15. **Waiver of Jury Trial.** Provider hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which the City relied in entering into this 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 delivery by electronic mail if delivered by electronic mail; 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 Section of the Provider Agreement entitled "Notice," 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.

CONTRACT SUMMARY AND ENDORSEMENT	DATE 2/8/2022
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TO THE LAW DEPARTMENT: The attached bid and award described below is referred to you for certification as to form, and where annual surety bond is on file, to have Contractor post satisfactory bond.

CONTRACTOR AllianceOne Receivables Management, Inc.	FINANCE CONTR. NO. 22 20278	LAW DEPT. NO. 22 20278
	AMT. OF CONTRACT \$650,000.00	ANN. SURETY BOND
DESCRIPTION Disc. & Del. Collections	PERIOD COVERED 7/1/2021 - 6/30/2022	

ENDORSEMENT

OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION Examined: Keisha Mills <i>KM 2/9/22</i> (For the Director of Finance) (Date)	OFFICE OF THE CITY CONTROLLER Examined: (For the City Controller) (Date)
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This contract approved as to availability of funds under the budget and appropriations pursuant to section 8-200 (2) (d) of the Home Rule Charter:

<i>[Signature]</i> 2/14/2022 (For the Director of Finance) (Date)	 (For the City Controller) (Date)
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DOCUMENT NO.	ACCOUNT CODE					DEPARTMENT OR AGENCY	AMOUNT CHARGEABLE TO ACCOUNT
	FUND	DEPT	ELEMENT	SUB ELEMENT	CLASS		
MDXX22000462 01	080	36	12	02	0250	REVENUE	\$50,000.00
MDXX22000462 02	080	36	15	02	0250	REVENUE	\$250,000.00
TOTAL							\$300,000.00

Partial Certification.

Page 1 of 1

Certificate Of Completion

Envelope Id: 27B854242C174336B32A7A3995CF2D56

Status: Completed

Subject: Contract #2220278 AllianceOne Receivables Management, Inc.

Source Envelope:

Document Pages: 125

Signatures: 5

Envelope Originator:

Certificate Pages: 4

Initials: 0

City of Philadelphia - Law Draft Contracts

AutoNav: Enabled

1234 Market Street

Enveloped Stamping: Enabled

Suite 1800

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Philadelphia, PA 19107

law.contractinitiation@phila.gov

IP Address: 170.115.248.24

Record Tracking

Status: Original

Holder: City of Philadelphia - Law Draft Contracts

Location: DocuSign

1/24/2022 12:55:01 PM

law.contractinitiation@phila.gov

Signer Events

Signature

Timestamp

Tim Casey

Tim.Casey@allianceoneinc.com

Security Level: Email, Account Authentication (None), Access Code

DocuSigned by:



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Using IP Address: 73.51.119.29

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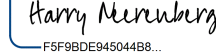
Harry Neerenberg

Harry.Neerenberg@allianceoneinc.com

Chief Financial Officer

Security Level: Email, Account Authentication (None), Access Code

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Niccole Bracey

Niccole.Bracey@phila.gov

Security Level: Email, Account Authentication (None)

Completed

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Electronic Record and Signature Disclosure:

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Daniel W. Cantú-Hertzler

Daniel.Cantu-Hertzler@phila.gov

Security Level: Email, Account Authentication (None)

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Electronic Record and Signature Disclosure:

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Signer Events	Signature	Timestamp
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<p>Finance ContractCertification Finance.ContractCertification@phila.gov City of Philadelphia Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 170.115.248.24</p>	<p>Sent: 2/8/2022 8:24:21 AM Viewed: 2/9/2022 5:37:37 AM Signed: 2/14/2022 11:55:47 AM</p>
<p>Office of the Chief Administrative Officer OfficeoftheCAO@phila.gov City of Philadelphia Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 170.115.248.24</p>	<p>Sent: 2/14/2022 11:55:57 AM Viewed: 2/17/2022 6:58:20 AM Signed: 2/17/2022 6:58:28 AM</p>
<p>Frank Breslin frank.breslin@phila.gov Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 5/9/2018 1:10:26 PM ID: 7b3fa1b4-3ba5-4fe7-ab8e-ade69b0debdb</p>	<p>DocuSigned by: <i>Frank Breslin</i> 39FCA75DF74D431...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 170.115.248.25</p>	<p>Sent: 2/17/2022 6:58:40 AM Viewed: 2/17/2022 9:44:32 AM Signed: 2/17/2022 9:44:54 AM</p>
<p>Diana P. Cortes Diana.Cortes@phila.gov City Solicitor Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 1/4/2021 8:48:40 AM ID: 5d2a3072-d3c5-4369-8367-e77ee243666b</p>	<p>DocuSigned by: <i>Diana P. Cortes</i> 9284CA9B0A474B0...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 170.115.248.25</p>	<p>Sent: 2/17/2022 9:45:04 AM Viewed: 2/17/2022 9:48:31 AM Signed: 2/17/2022 9:50:05 AM</p>
<p>Nicole Bracey Niccole.Bracey@phila.gov Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 2/17/2022 9:51:00 AM ID: df14293b-aa1d-4604-ab58-3a1731264d7c</p>	<p>Completed</p> <p>Using IP Address: 170.115.248.25</p>	<p>Sent: 2/17/2022 9:50:17 AM Viewed: 2/17/2022 9:51:00 AM Signed: 2/17/2022 9:51:16 AM</p>
<p>Law ContractConformance LawContractConformance@phila.gov City of Philadelphia Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 170.115.248.25</p>	<p>Sent: 2/17/2022 9:51:27 AM Viewed: 2/22/2022 7:48:42 AM Signed: 2/22/2022 7:49:00 AM</p>

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Revenue Contracts revenuecontracts@phila.gov Security Level: Email, Account Authentication (None)	VIEWED Using IP Address: 170.115.248.25	Sent: 1/24/2022 1:08:05 PM Viewed: 2/1/2022 10:27:08 AM Completed: 2/1/2022 10:29:45 AM
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Electronic Record and Signature Disclosure:
Accepted: 2/1/2022 10:27:08 AM
ID: ebce81af-a3cc-4b46-81d4-2caf958af071

Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Tim Casey Tim.Casey@allianceoneinc.com Security Level: Email, Account Authentication (None), Access Code	COPIED	Sent: 2/1/2022 10:29:46 AM
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Electronic Record and Signature Disclosure:
Accepted: 2/2/2022 6:47:07 AM
ID: f4ef69e8-6578-4e52-bf60-7ecd6073ae40

Nicole Bracey Nicole.Bracey@phila.gov Security Level: Email, Account Authentication (None)	COPIED	Sent: 2/17/2022 6:58:39 AM Viewed: 2/17/2022 7:28:27 AM
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Electronic Record and Signature Disclosure:
Accepted: 2/17/2022 9:51:00 AM
ID: df14293b-aa1d-4604-ab58-3a1731264d7c

Controller Contracts Controller.Contracts@phila.gov Security Level: Email, Account Authentication (None)	COPIED	Sent: 2/22/2022 7:49:07 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	1/24/2022 1:08:05 PM
Certified Delivered	Security Checked	2/22/2022 7:48:42 AM
Signing Complete	Security Checked	2/22/2022 7:49:00 AM
Completed	Security Checked	2/22/2022 7:49:07 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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This Electronic Records and Signature Disclosure is provided by the City of Philadelphia in connection with a pending electronic transaction. Any party proceeding with such electronic transaction is deemed to have consented i) to conduct the transaction by electronic means; and ii) where execution of an agreement is required, to the use of electronic signatures using the method provided in the agreement. Questions regarding this Electronic Records and Signature Disclosure should be addressed to econtractphilly@phila.gov.