

**NEW YORK CITY
DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS**

INVITATION FOR BIDS

AND

AGREEMENT

TO

**PROVIDE ALL LABOR AND MATERIAL NECESSARY TO MAINTAIN
UNINTERRUPTABLE POWER SUPPLIES (UPS) AT VARIOUS LOCATIONS
THROUGHOUT THE FIVE BOROUGHES**

DATE OF ISSUE: January 7, 2010

PIN: 85809CSB0054

**Michael R. Bloomberg
MAYOR**

**Paul J. Cosgrave
COMMISSIONER**

**Barbara Lederman
AGENCY CHIEF CONTRACTING OFFICER**

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The New York City Comptroller is charged with the audit of contracts in New York City. Any Bidder, prospective Bidder or other person who believes that there has been unfairness, favoritism or impropriety in the solicitation process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007 (212-669-3870).

2009-043217

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SECTION I: TIMETABLE

NOTE TO BIDDERS:

YOU MUST READ THE ENTIRE DOCUMENT. READ SECTION IV: BID PACKAGE FOR DETAILED INSTRUCTIONS ON BID SUBMISSION.

Contact Person: Anne Cody
Telephone #: (212) 788-6276
Fax #: (212) 788-6489 (e-mail preferred)
E-Mail Address: acco@doitt.nyc.gov

Documents are available at: Contract Section, Department of Information Technology and Telecommunications, 75 Park Place, 9th floor, New York, NY 10007 or downloaded from

http://www.nyc.gov/html/doitt/html/miscs/ups_locations.shtml

Include: "PIN: 85809CSB0054" and IFB title ("UPS Services Various Locations") in all correspondence.

All questions regarding this Invitation For Bids (IFB) should be submitted ONLY to the above Authorized Agency Contact Person. All questions must be made in writing and submitted by e-mail, fax or mail. All answers to questions, and any Addenda to the IFB, will be available to all prospective Bidders.

Release Date of this IFB: January 7, 2010

There will be a pre-bid conference.

Date: January 14, 2010
Time: 9:30 am (EST)
Location: 15 MetroTech
Brooklyn, NY 11201

Bidders will not be permitted to attend this Pre-Bid Conference if they arrive more than fifteen minutes after it has commenced. Attendance at the Pre-Bid Conference and Site Visits is not mandatory, but is highly recommended. Individuals attending must bring two sets of picture identification, including where possible corporate identification.

Site Visits:

Date: January 14, 2010
Time: 10:30 am (EST)
Location: 210 Joralemon Street
Brooklyn, NY

Last Date to Submit Written Questions: January 20, 2010 at 2:00 PM EST

Bid Due Date, Time and Public Bid Opening Location:

Date: February 8, 2010
Time: 2:00 PM EST
Location: New York City Department of
Information Technology and Telecommunications
75 Park Place, 9th Floor
New York, NY 10007

E-mailed or faxed bids will not be accepted by the City. Bids received at this Location after the Bid Due Date and Time are late and shall not be accepted by the City, except as provided under New York City's Procurement Policy Board Rules.

Delivery of the Bid to DoITT at the specified address by the Bid Due Date and Time is the sole responsibility of the Bidder. The City of New York bears no responsibility to the Bidder for the cost of preparing a response to this solicitation.

Contractor shall complete and sign a pre-award statement concerning wage requirements; and, shall require that, for any subcontractors performing work estimated to exceed \$250,000 sign such statement.

SECTION II: SCOPE OF SERVICES

SECTION I. INTRODUCTION

The New York City Department of Information Technology and Telecommunications ("Department" or "DoITT") requires preventive maintenance, as-needed remedial repairs, and 24x7 two-hour response-time for emergency service calls for the following Uninterruptible Power Supply (UPS) systems: one (1) Liebert Power System, and ninety-three (93) American Power Conversion (APC) UPS systems and associated accessories at various locations throughout the five boroughs of the City of New York. The equipment shall be serviced and maintained at these various locations. All equipment is listed in SECTION VIII of these specifications

The locations at which the units of equipment are installed are referred to as Computer Rooms, Wire Center Concentration Sites, Hubs, and Nodes. These locations represent critical communications centers that provide vital services for the City of New York.

The Contractor shall be responsible for furnishing, delivering and supplying all labor, parts, materials, supplies, tools and equipment necessary for routine preventive maintenance and as-needed remedial repair service. In addition, the Contractor shall be available for emergency services, twenty-four (24) hours a day, seven (7) days a week, including holidays, with a maximum response time of two (2) hours from the time the City contacts the Contractor to give notification. For such purpose, "response" means having a qualified technician on-site.

If the emergency response time exceeds two (2) hours, liquidated damages may be assessed as set forth in SECTION VII of these Specifications. In addition to the two-hour response time, the Contractor must complete the repairs or make available substitute equipment within ten (10) hours after the City's authorization to perform the work. Failure to repair or substitute the equipment may result in liquidated damages as set forth in SECTION VII of these Specifications

The term of this contract will be five (5) years, starting upon the date of the Notice to Proceed. If requested in writing by the Contractor within one week from its receipt of DoITT's notice, the Contractor may delay its commencement of performance of the work under the awarded contract for up to two weeks from the receipt of DoITT's Notice to Proceed, or until such other time as the City in its sole discretion may agree. Contractor's right to be paid for the work shall commence at the same time that Contractor's performance of the work commences.

SECTION II. PRICING

In the Bid Sheets (Schedules of Prices 1, 2, 3, 4 and 5), the Bidder shall provide unit prices for preventive maintenance, including remedial repairs and emergency services.

The monthly unit price, for regularly scheduled preventive maintenance, unscheduled as-needed remedial repairs and emergency service of all UPS units, systems and components at each location, shall include all labor, material, parts, supplies, equipment, travel time, overhead, contingencies, profit etc., necessary to complete routine preventive maintenance, remedial repairs and emergency service in a proper and workmanlike manner.

Based upon recent history of this work, the City estimates the number of Emergency Calls to be between three (3) and six (6) total emergency calls per year for all locations combined (for a total estimated amount of between 15-30 emergency calls during the five-year contract term). This estimated quantity for Emergency Calls is offered only as a guide for the bidder in determining its bid. The actual number of required services may be more than, or less than, this estimated amount.

The City's assumption is that all batteries in all UPS systems and all external battery packs will require replacement at some point during the term of the contract resulting from this bid. In addition to the 30 batteries in the City's Liebert UPS system, the City estimates that the City's 93 APC UPS systems and their associated external battery packs contain approximately 152 battery sleeves, with each sleeve containing seven (7) batteries. This estimated quantity of batteries requiring replacement is offered only as a guide for the bidder in determining its bid. The actual number of units may be more than, or less than, this estimated amount.

The City estimates that 50% or more of its UPS systems have environmental monitors and network management cards that will permit the Contractor to access and manage systems remotely. This estimated quantity of equipment is offered only as a guide for the bidder in determining its bid. The actual number of environmental monitors and network management cards may be more than, or less than, this estimated amount.

The City currently has seven (7) 5000 VA APC UPS systems, each of which has an APC SUTF2 transformer that must be maintained and repaired as needed under the contract resulting from this bid. This quantity of UPS systems with SUTF2 transformers is offered only as a guide for the bidder in determining its bid. The actual number of systems with transformers may vary during the course of

the contract resulting from this bid.

The Bidder shall also provide a flat-fee unit price for uninstalling, transporting, and reinstalling systems from one site to another, or for moving/relocating and placing systems into operational staging. Based upon recent history of this work, the estimated quantity for this service is between three (3) and six (6) times per year (for an estimated total between 15 to 30 times during the five-year contract term). This estimated quantity for required uninstalling, transporting and reinstalling systems is offered only as a guide for the bidder in determining its bid. The actual number of required services may be more than, or less than, this estimated amount. This flat-fee price shall include all labor, material, parts, supplies, equipment, travel time, overhead, contingencies, profit etc., necessary to perform the required services.

The Contractor is not entitled to impose any other charges or be reimbursed by the City for any expenses incurred by the Contractor in providing such services.

The City makes no representation as to the quantity of items or Services that may be purchased from or provided under the contract resulting from this solicitation. The estimated amounts of units listed in this Invitation for Bids are a reasonable approximation of the amounts of units that may be ordered under this contract, but they are set forth for comparison purposes only. Under no circumstances will the City be compelled or required to order any particular quantity of units or types of units nor will it be limited by the quantities listed. Total usage of units and types of units ordered will be determined by the amounts and types actually required during the course of this contract.

NOTE: The City is exempt from the payment of sales and excise taxes, and if a price for goods or materials is required as part of this solicitation, the price bid shall be net, exclusive of taxes, and shall be so construed.

Additions or Deletions: DoITT may at its discretion, add sites to or delete sites from this contract as need arises, by notifying the Contractor at least thirty (30) days in advance, or such shorter time as may be agreeable to the Contractor. If DoITT adds or deletes sites, then the Contractor's monthly fees will be increased or decreased proportionately, based upon the pricing in the Bid Worksheet.

SECTION III. BIDDER MINIMUM QUALIFICATIONS

Bidders must have at least three (3) years demonstrated experience maintaining Uninterruptible Power Supply (UPS) systems similar to the type of equipment included in this Bid in high capacity, high reliability data center or telecommunications facility environments.

Bidders must include with their bid submission customer reference forms providing a minimum of three (3) verifiable customer references, including contact names, titles, phone numbers and contract periods, as well as type and size of systems maintained.

In addition, bidders must include with their bid submission the experience questionnaire (1) demonstrating the bidder's experience in maintaining and repairing the models of equipment included in this solicitation, (2) describing the facilities and staff of the bidder that will provide the maintenance and repair services required by the detailed specifications and (3) describing the specific preventive maintenance services the bidder will provide.

After submission of the bid, and upon request by the City, Bidders must demonstrate familiarity and compliance with applicable IEEE standards.

The Bidder is advised that Bid Security and Payment/Performance Bonds are not required for this Contract, PIN: 85809CSB0054

SECTION IV. SITE VISIT AND PRE-BID CONFERENCE

An Optional Site visit/Pre-bid Conference is scheduled for this contract. For details see "Section I: Timetable" of the Invitation for Bids.

All interested bidders are urged to attend site visits prior to the opening date. Bidders are expected to inspect the site where services are to be performed, to examine the various units to ascertain their condition, and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the Contract. In no event will a failure to inspect a site constitute grounds for withdrawal of a bid after opening or for a claim after award of the Contract.

SECTION V. GENERAL CONDITIONS

All work shall be completed in a professional, workmanlike manner.

The Contractor shall furnish and supply all labor, parts, materials supplies, equipment and tools necessary for the proper completion of work, including any item not mentioned herein, but necessary for the proper operation of the system(s) being maintained and/or repaired.

Wherever any feature of the work is not fully set forth in these Specifications, it shall be completed in a manner conforming to, at a minimum; manufacturer's published specifications and the best modern practices. It is the intent of this contract that the Contractor shall complete the work and leave all equipment in good operating condition and ready for continued use at the completion of this contract.

The Contractor must have on staff and on-call services, qualified personnel to maintain and service the systems specified in this solicitation twenty-four (24) hours per day, seven (7) days per week.

At the expiration of the contract term, the Contractor shall supply DoITT with all information and documentation necessary for DoITT to exercise any and all still-remaining warranty periods (e.g. for replacement parts).

SECTION VI. SCOPE OF SERVICES

I. INTENTIONALLY OMITTED

II. DETAILED SPECIFICATIONS

- A. The Contractor shall provide all labor, furnish all materials, supply all parts and perform all services necessary to maintain the equipment described within this solicitation as per the manufacturer's published performance specifications.
- B. The Contractor shall perform preventive maintenance and/or repairs in accordance with and as required by the preventive maintenance cycles set forth herein, but shall not be less than semiannual, to ensure that the equipment performs as per the manufacturer's published performance specifications and to protect the equipment against potential or possible malfunctions and breakdowns.
- C. Preventive maintenance services shall be provided under a schedule arranged between DOITT and the Contractor, and such services shall be provided during normal business hours, which are generally 9:00 am through 5:00 pm, New York City (NYC) Time, Monday-Friday (excluding holidays). The sites listed in SECTION IX: SINGLE-UNIT SITES may require preventive maintenance outside of normal business hours. In addition, it may be necessary at various times for other sites to receive preventive maintenance services during off-hours. The City estimates that 10% of all preventive maintenance visits will be scheduled outside of normal business hours. The actual percentage of off-hours maintenance visits may be greater or less than this estimate, and the number of single-unit sites may be increased or decreased during the term of the contract resulting from this bid.
- D. Should extra preventive maintenance be required to maintain the equipment in accordance with the manufacturer's published performance specifications, in addition to the regularly scheduled preventive cycles set forth below, the Contractor shall notify an authorized DOITT employee and coordinate such maintenance with DOITT. There shall be no additional cost for such additional visits.
- E. In addition to preventive maintenance, the Contractor shall be available for emergency services, twenty-four (24) hours a day, seven (7) days a week, including

holidays, with a maximum response time of two (2) hours from the time the City contacts the Contractor to give notification. For such purpose, "response" means having a qualified technician on-site.

- F. All replacement parts provided by the Contractor shall be of equivalent specifications and quality of the part to be replaced. Replacement parts shall be manufacturer's brand new original equipment unless otherwise approved in writing, before installation, by an authorized DOITT employee.
- G. The Contractor shall warrant that all parts supplied to the City under this contract are free from defects in material and workmanship under normal use and service for a period of (1) year from the date of installation. If a claim of such defect arises, the Contractor shall replace without any charge or cost to the City, such part(s) claimed and found to be defective, as well as all other part(s) made defective as a result of such defective part, and the Contractor shall thereafter perform all services and repairs and replacement of the part(s) supplied by the Contractor, in accordance with Item F, above and this Item G.
- H. The Uninterruptible Power Supply System (UPS) preventive maintenance cycles shall be performed semi-annually by the Contractor.
- I. With the City's approval and in consultation with the Contractor, the UPS systems may be isolated either via internal bypass or completely via tie-breaker to the power supply distribution switchboard to safely facilitate certain components of the UPS maintenance.
- J. The UPS Battery preventive maintenance cycles shall be performed semi-annually by the Contractor.
- K. In addition to the preventive maintenance services to be performed, the Contractor shall furnish and install replacement batteries as required, if and when rating of a single battery falls below manufacturer's minimum performance standards. Furthermore, the Contractor shall furnish and install replacement batteries for all batteries before the battery's date code is five years old. The Contractor shall dispose of the replaced batteries in accordance with all applicable environmental laws for such battery disposal.

L. UPS REQUIRED PERFORMANCE

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UPS Services at Various Locations

When testing each UPS system, the Contractor shall:

1. Perform a visual inspection of the UPS system components.
2. Check the operation of and record all loads and power input/output paths as displayed on the monitoring and control panel at all selector switch settings. Verify readings manually on the line and load sides of the input and output buses/breakers. This includes AC voltages phase-to-phase and phase-to-ground, DC voltage and the input and output current for each phase.
3. Inspect power cable connections, control boards, fan operation and rotation, ribbon connectors, card cage modules and power modules.
4. Test/reset audio and lamp alarm controls. Replace blown lamps.
5. Remove all internal accumulation of foreign debris and dust.
6. Inspect all filters. Replace per manufacturer's recommendation or if required.
7. Check and record control power voltages (all power supplies).
8. Follow manufacturer's published recommendations for inspection and testing of all components, including but not limited to inverter, regulator and static switch.

M. Intentionally omitted

N. Intentionally omitted

O. BATTERY REQUIRED PERFORMANCE

When testing batteries, the Contractor shall:

1. Inspect battery jars, connections, racks and enclosure for arcing, burning, corrosion, and physical damage.
2. Measure and record all jar/cell float voltage and currents.
3. Measure and record individual jar/cell internal

resistances.

4. Measure and record all string currents.
5. Record DC voltage on the line side of the battery breaker.
6. Replace jars which exhibit poor or abnormal characteristics during the tests noted above. Contractor is responsible for immediate and proper removal and disposal of batteries.
7. Torque all battery inter-jar connections per manufacturer's specifications.

P. Preventive maintenance services, which shall be performed by the Contractor at least semi-annually, shall include the following items of equipment:

1. The modules, which include but are not limited to; power supply boards, static switchboards, communications and power supply controller boards.
2. All the electronic components, including but not limited to; transistors packs, fuses, resistors, power capacitors, diodes, IC's, and power resistors of all sizes and capacities.
3. Any and all transformers, including AC to AC, AC to DC, DC to DC, step-up and step down or variable.
4. Any and all switching devices, relays and invertors pertaining to power transformers.

Q. The following replacement items are to be provided by the Contractor, as per manufacturer's specifications, without additional charge:

1. Replacement or repair of the status indicator panel, Light Emitter Diode (LED) panel, firmware, integrated circuits, engineering changes, and updates for continuous function.
2. Replacement of all input and output devices such as receptacles, breakers and wire.
3. Replacement of all high and low power cables.
4. Repair or replacement of emergency breakers, I/O reset features, on-off key and emergency switches.

5. Replacement of all high power battery connectors, low power communications connectors and related fuses.
- R. The Contractor shall furnish a written service ticket to DoITT's representative within twenty four (24) hours of any site visitation for preventive maintenance, remedial repair and/or emergency services, detailing conditions found and all actions taken (including replacements parts). Tickets shall show the Contractor's arrival and departure time at the site. Tickets shall show load voltage and current readings for the input and output of all modules and the load carrying capability of the batteries.
- S. Semi annually, the Contractor will furnish DoITT with a typed summary of all activities and services performed, both preventive maintenance services and emergency repair services, including locations, dates, time of each service, conditions found and all actions taken (including replacements). If the Contractor fails to furnish such semi-annual report to DoITT, then DoITT may suspend making further payments to the Contractor until the report is received, but the Contractor shall not be relieved of its obligation to provide the services required under this contract.
- T. At a minimum of one time during the term of the Contract, and otherwise on an as-needed basis, the Contractor shall train designated City operations personnel, at no additional expense to the City, in the proper manual isolation, start-up and shutdown practices of the entire UPS System. Contractor shall provide an accurate, typed, step-by-step narrative for these procedures that encompasses all aspects of UPS equipment.
- U. The Contractor may be required to de-install, transport, and reinstall systems from one site to another, or to move/relocate and place systems into operational staging during the term of this contract, in which event the flat-fee price set forth in the Schedules of Prices shall be applicable. However, if in order to provide emergency repair services for an item of equipment it is necessary for the Contractor to transport one of the City's spares and install it as a replacement, the Contractor shall not be entitled to charge the flat-fee price set forth in the Schedules of Prices, since the monthly maintenance fee set forth in the Schedules of Prices covers such service.
- V. It is the Contractor's responsibility to assign a sufficient number of persons for all site visits for

preventive maintenance, remedial repairs, emergency service, and the relocation of equipment to ensure the safety of the Contractor's staff in the performance of its duties, as well as to safeguard the City's site and equipment.

SECTION VII. ADDITIONAL REQUIREMENTS

I. PREVENTIVE MAINTENANCE AND REMEDIAL REPAIRS

The Contractor shall at all times ensure the availability of sufficient vehicles, labor and parts to respond to multiple calls as required and as specified herein.

All costs for labor shall be borne by the Contractor and included in the unit price for monthly maintenance.

The Contractor shall have an office staff to receive and dispatch calls promptly, and sufficient trained field personnel to service the units and do other work in a timely manner as described and when so ordered. Telephone answering machines or other such message reviewing devices are an unacceptable substitute for an office staff.

The Contractor shall maintain on hand, or have ready availability of, a supply of necessary and/or required parts, materials, supplies and equipment, required in sufficient quantity for regular maintenance, remedial repairs, and emergency repairs to ensure a minimum of down time, to speed all necessary repairs and to ensure that all repairs are performed in a proper manner as specified herein.

II. EMERGENCY SERVICES

The Contractor shall possess and provide the necessary personnel and materials and/or equipment to perform unscheduled emergency repairs for all units and/or components when notified of such by authorized DoITT personnel. A management contact must be available to DoITT twenty-four (24) hours a day, seven (7) days a week.

In the event that the equipment to be maintained pursuant to this Contract cannot be repaired, or parts cannot be obtained within a ten (10) hour period, the Contractor shall, within ten (10) hours from the occurrence of the need for such repair, provide substitute equivalent equipment at no extra charge until the malfunctioning equipment is repaired or replaced. The Contractor must complete the repairs or make available substitute equipment within ten (10) hours after the City's authorization to perform the work.

Emergency service repair work shall continue until the emergency is resolved as approved by the City.

All costs for labor shall be borne by the Contractor and included in the unit price for monthly maintenance.

II. LIQUIDATED DAMAGES

- A. Late Response: Liquidated Damages will be assessed against the Contractor, at the sole discretion of and by DoITT, if the Contractor fails to respond to an emergency call within the emergency service response times specified in this Scope of Services. The Contractor shall be assessed liquidated damages in the amount of Fifty Dollars (\$50.00) for every hour or part thereof over the two (2) hour emergency service response time.
- B. Failure to Repair Promptly: DoITT has the option of assessing liquidated damages against the Contractor if the Contractor fails to repair the equipment and restore it to operation in accordance with the manufacturer's performance specifications, or to supply adequate substitute equipment, within a period of ten (10) consecutive hours immediately following the emergency response time following notification to the Contractor within which the Contractor is required to respond. The amount of such liquidated damages shall be Five Hundred Dollars (\$500.00) for each twenty four (24) consecutive hour period or part thereof after said ten (10) consecutive hour period. If the equipment repairs or the provisions of substituted equipment is fully effected after the applicable ten (10) hour period but before the expiration of the said (24) hour period, the amount of liquidated damages for each hour within such twenty four (24) hour period will be determined upon a prorated basis of \$500.00/24 hours times the number of hours following the ten (10) hour period that it took to complete the repair or provide the equipment.

III. ESCALATION PROCEDURES

Upon receipt of the Notice to Proceed, Contractor must provide an escalation procedure with names, phone numbers and beeper numbers of key personnel who can be contacted during emergencies.

IV. OBSTRUCTION

The work shall be performed at such time and in such a manner as not to unreasonably interfere with daily operations. The Contractor shall notify the DoITT contract manager of any obstruction that may interfere with the performance of the work specified herein and will not be excused from performance of the work unless DoITT fails within a reasonable time following such notice to remedy the

obstruction.

V. OLD MATERIAL

Old items/materials that have been replaced by the Contractor in accordance with the requirements of the contract shall become the property and the responsibility of the Contractor.

VI. STORAGE OF MATERIALS

Contractor is responsible for making sure that all item/material(s) delivered to the job-site are carefully stored and protected from damage. Any item/material that is damaged must not be used. The Contractor will be assigned certain parts of a building or of the grounds about the building where it may store its materials and it shall keep their materials within the spaces allocated to them (subject to space availability). The Contractor shall be responsible for safeguarding all of its tools and materials and shall take every precaution to prevent fire or damage from any cause whatsoever (e.g. soiled or oil soaked rags shall be removed from the building).

Arrangements for delivering materials shall be made in advance with the City's representative or duly authorized designee. The Contractor shall be expected to cooperate with DoITT personnel and the custodial staff of the building or facility.

VII. PROTECTION

All work must be performed in a manner that does not endanger employees or guests, and with a minimum level of noise.

In any room where service is to be performed, the Contractor shall cover all existing floor covering with a suitable material such as a drop cloth, or heavy duty plastic, and keep it covered until all maintenance is complete.

Contractor shall also suitably protect any furniture, equipment, appliances or supplies that must remain in the room and shall carefully move such furniture, etc., when necessary and replace same after his work is completed.

Special attention must be given to any computer or computer related devices that are located within the confines of the work area. If there is any chance that any equipment may be damaged, DoITT personnel must be notified prior to commencement of work.

VIII.

DEFECTIVE WORK

All defective work shall be immediately corrected when so ordered by the City's representative or a duly authorized designee.

IX.

DEBRIS

During the course of work, the Contractor shall remove from the premises any rubbish or debris created by their work as frequently as may be necessary to avoid interference with the functions of the building or its occupants; the work of another Contractor, or to avoid any fire, safety or health hazard. Upon completion of the work, the premises must be cleaned.

X.

DAMAGE

Any part of the building or its contents thereof damaged by the Contractor during the performance of the contract must be restored to original condition at the expense of the Contractor and in a manner satisfactory to the City's representative or a duly authorized designee.

XI.

INTERRUPTION OF SERVICE

When it is necessary to interrupt any service, the work shall be performed and completed in a minimum period of time and the shut-down will occur at such a time as will cause the minimum inconvenience as determined by City's representative or a duly authorized designee.

XII.

INVOICES AND PAYMENTS

The Contractor shall submit a monthly invoice together with supporting documentation. Payment will be made for each invoice for all work submitted and approved by the Contract Manager or duly authorized designee. The Contractor is cautioned that payment will not be made for any work that is not authorized by DoITT. The invoices shall be submitted to:

Department of Information Technology and
Telecommunications, Attention: Audits & Accounts,
75 Park Place - 9th Floor, New York, N.Y. 10007

All invoices presented for payment shall include the following information:

1. Vendor name, address and contact name and phone number (should be prominently displayed - vendor address must be the same as appears on the W-9 submission)

2. Vendor tax ID number
3. Contract number
4. Invoice number and date of invoice
5. Invoice service period and date of delivery
6. Detailed description of service being invoiced (i.e., line item description of services provided) including dates services were performed and locations where services were performed
7. Remittance address, if different than the invoice address (Note: the remittance address must appear on the W-9 submission)
8. Appropriate backup and all other supporting documentation to substantiate the invoice charges must be attached:
 - (i) The contractor's Field Service Report, verifying the date, time, and work description and that the work was satisfactorily completed as specified.

XIII. ACQUISITION OF PARTS AND SUPPLIES

If necessary to complete remedial or emergency repairs, the contractor shall be required to acquire manufacturer parts and supplies. In these cases, the contractor shall offer the City the standard warranty provided by the manufacturer. In cases where the manufacturer does not provide a warranty, the contractor shall itself warranty products for the City for a minimum of one (1) year. Such warranties shall remain in effect even after the end of the term of the contract resulting from this solicitation.

XIV. REPAIRS

In performing preventive maintenance, remedial repair services, and emergency repair services, the Contractor is responsible at no additional charge to the City for providing all necessary labor, supplies and parts.

XV. REQUIRED LEVEL OF SERVICE

Emergency servicing of units or systems shall commence within the required two-hour response time specification of this contract. If the contractor cannot complete emergency repairs for any reason within ten (10) hours after the City's authorization to perform the work, the Contractor must supply and install a suitable alternative at no

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UPS Services at Various Locations

additional cost to the City within ten (10) hours after the City's authorization to perform the work. Failure to comply may result in the imposition of liquidated damages as set forth in these specifications. Any unit or system that cannot be repaired on site and is removed for repair must be repaired and returned to its original location within forty-eight (48) hours. If it is impracticable for such unit or system to be repaired and returned to its site within forty-eight (48) hours, Contractor shall inform the DoITT contract manager of the reason, and of the estimated earliest practicable date when such work can be completed. The DoITT contract manager shall not unreasonably withhold consent for such estimated completion date.

XVI. GUARANTEE OF SERVICE

The Contractor shall guarantee all repairs performed and parts installed either as part of preventive maintenance or emergency services for one year from the date of final acceptance of the work. As long as the Department notifies the contractor in writing of the need for repair (either as part of as-needed repairs or emergency services) within such one-year period, it shall be covered under the contractor's guarantee.

Repairs or replacements made under guarantee shall bear an additional one year guarantee dated from final acceptance of repair or replacement.

The Contractor shall, during the period of guarantee, promptly replace or repair at its own expense, any piece of equipment or material that is found to be defective by the City. Replacement or repair shall be done as soon as notified by the Director of Facilities Operations or designee. The Contractor shall also repair damage to surrounding work caused by failure, repair or replacement of defective equipment or material to the satisfaction of and without any additional cost or expense to the City. The guarantee work shall then be guaranteed for one (1) additional year.

Final acceptance by the City will be made only after the contractor has demonstrated that it has fulfilled completely the Department's work-order requirements, and has furnished required tests and approvals.

XVII. PERSONNEL AUTHORIZED TO REQUEST WORK

Requests for service must originate from a duly authorized designee from the following list. DoITT is allowed to submit a list with replacement authorized personnel to

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Contractor.

Joseph Sorrentino
Associate Commissioner,
Telecom & Network Operations Support

Robert Whalen
Director of Facilities Operations

Joseph Dispenza
Senior Director of Telecommunication

Paul Troiano
Manager of Facilities Operations

Yolanda Windom
Director, Network Services

Dennis Lawson
Manager of Field Operations

Marshall Watts
Supervisor, CITYNET Field Technicians
Network Hardware Field Support

Keith Carmichael
Supervisor, CITYNET Field Technicians
Network Hardware Field Support

DoITT, Field Operations Desk
212-442-0851

Ivan Rosenberg
Director of Operations
Network & Data Center Operations

DoITT, Citywide Service Desk
718-403-8888

If the Contractor receives requests from any other individual, the request shall not be honored. If the Contractor has any doubt about the validity of the individual calling, he shall contact the City's representative or DoITT's Citywide Service Desk (718) 403-8888 which is available 24 hours per day, seven (7) days per week.

XVIII. DISRUPTED SERVICE REPAIRS

Where service calls have been made and a dispute arises as to the efficient functioning of a unit, the Contractor shall

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make such necessary tests in the presence of the City's representative or duly authorized designee, at no additional cost, to determine the efficiency of said unit.

XIX. DoITT STAFF

The Contractor must inform its service technicians, when performing preventive maintenance or remedial repairs or responding to emergency service calls, to make contact with DoITT staff when entering and leaving a site. DoITT staff will notify the Contractor's technicians at the time of this contact whether the technicians should report to an authorized site representative upon arrival at the site.

DoITT Citywide Service Desk
718-403-8888 (24x7)

DoITT Field Operation Desk
212-442-0851

SECTION VIII. EQUIPMENT LIST

I. LIEBERT

Site Number	Address	UPS Model & KVA
WCCS72	West 181 Street & University Ave. Bronx, NY 10453	Liebert UPS-AP331/20KVA

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II. APC - MANHATTAN

LOCATION	MODEL	UPS	SERIAL #	EXT BATTERY SLEEVES MODEL	QUANTITY	TRANSFORMER MODEL
ONE CENTRE STREET	SU3000RMXL3U	QS0342212112		SU48R3XLB	2	
ONE CENTRE STREET	SU3000RMXL3U	WS0245151194		SU48R3XLB	2	
75 PARK PLACE	SU2200RMXL3U	WS0210150259		SU48R3XLB	3	
75 PARK PLACE	SU3000RMXL3U	QS0341311171		SU48R3XLB	2	
75 PARK PLACE	SU5000RMXL15U	WS0344250110		SU48R3XLB	2	SUTF2
ONE POLICE PLAZA	SU3000RMXL3U	QS0341311211		SU48R3XLB	2	
ONE POLICE PLAZA	SU3000RMXL3U	QS0341311140		SU48R3XLB	2	
POLICE ACADEMY 235 E. 20th Street	SU3000RMXL3U	QS0341311142		SU48R3XLB	2	
POLICE ACADEMY 235 E. 20th Street	SU3000RMXL3U	QS0341311151		SU48R3XLB	2	
POLICE ACADEMY 235 E. 20th Street	SU5000RMXL15U	WS0344250121		SU48R3XLB	2	
PBMN/24TH PCT. 151 West 100th St.	SU3000RMXL3U	QS0341311287		SU48R3XLB	2	SUTF2
PBMN/24TH PCT. 151 West 100th St.	SU3000RMXL3U	QS0341311222		SU48R3XLB	2	
WC42 / HARLEM Court House 170 East 121St.	SU3000RMXL3U	WS0243150867		SU48R3XLB	2	
WC39 / W. IRVING H.S. 40 Irving Place	SU3000RMXL3U	QS0341311146		SU48R3XLB	2	
2 WASHINGTON ST	SU3000RMXL3U	QS0548224891			0	
40 WORTH	SU3000RMXL3U	QS0416112338			0	
40 WORTH	SU3000RMXL3U	QS0510110481			0	
125 WORTH	SU3000RMXL3U	QS0416112334			0	
80 CENTRE ST.	SU3000RMXL3U	QS0416112335			0	
80 CENTRE ST.	SU3000RMXL3U	QS0634221194			0	
31 CHAMBERS	SU3000 XLM	QS0416112327			0	
253 BROADWAY	SU3000RMXL3U	WS0245151195		SU48R3XLB	2	
250 BROADWAY	SU3000RMXL3U	QS0342212155		SU48R3XLB	2	
225 BROADWAY	SU3000RMXL3U	QS0416112336			0	
42/32 BROADWAY	SU3000RMXL3U	XS0535001348			0	
33 BEAVER	SU3000RMXL3U	QS0416112323			0	
60 CENTRE ST.	SU3000RMXL3U	QS0416112337			0	
100 CENTRE ST.	SU3000RMXL3U	QS0416112339			0	
111 CENTRE ST.	SU3000RMXL3U	QS0416112324			0	
60 LAFAYETTE ST.	SU3000RMXL3U	QS0416112318			0	
346 BROADWAY	SU3000RMXL3U	QS034221252		SU48R3XLB	2	
150 WILLIAM	SU3000RMXL3U	QS0416112320			0	
49/51 Chambers St.	SU1500RM	AS0319312699			0	

III. APC - BRONX

LOCATION	UPS	MODEL	SERIAL #	EXT BATTERY SLEEVES MODEL	QUANTITY	TRANSFORMER MODEL
BX. CONCOURSE 198 East 161 Street	QS0341311267	SU3000RMXL3U		SU48R3XLB	2	
BX. CONCOURSE 198 East 161 Street	QS0341311277	SU3000RMXL3U		SU48R3XLB	2	
BX. CONCOURSE 198 East 161 Street	QS034110455	SU3000RMXL3U		SU48R3XLB	2	
BX. CONCOURSE 198 East 161 Street	NS0632010666	SURT5000XL		SURT192XLB	5	SUTF2
BX. CONCOURSE 198 East 161 Street	NS0632010667	SURT5000XL		SURT192XLB	5	SUTF2
215 E 161 Street	JS0633002126	SU3000RMXL3U			0	
231 E 161 Street	JS0633002125	SU3000RMXL3U			0	
260 E 161 Street	AS0706360134	SU3000			0	
FDNY BRONX 1129 E. 180th St.	QS0341311275	SU3000RMXL3U		SU48R3XLB	2	
FDNY BRONX 1129 E. 180th St.	QS0341311278	SU3000RMXL3U		SU48R3XLB	2	
ABBOTT ST. / NYPD DR	QS0341311282	SU3000RMXL3U		SU48R3XLB	2	
ABBOTT ST. / NYPD DR	QS0341311203	SU3000RMXL3U		SU48R3XLB	2	
PBMN/48TH PCT.	QS0341311280	SU3000RMXL3U		SU48R3XLB	2	
PBMN/48TH PCT.	QS0341311277	SU3000RMXL3U		SU48R3XLB	2	
LINCOLN HOSP. 234 E. 149th St	QS0345310358	SU3000RMXL3U		SU48R3XLB	2	
1932 ARTHUR AVE.	QS0341311190	SU3000RMXL3U		SU48R3XLB	2	
1932 ARTHUR AVE	NS0632010669	SURT5000XL		SURT192XLB	5	SUTF2

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IV. APC BROOKLYN

LOCATION	UPS	MODEL	SERIAL #	EXT BATTERY SLEEVES MODEL	QUANTITY	TRANSFORMER MODEL
2615 W13th St - OEM	QS0341311167	SU3000RMLX3U		SU48R3XLB	2	
2615 W13th St - OEM	QS0341311174	SU3000RMLX3U		SU48R3XLB	2	
61ST PCT. 2575 Coney Island Avenue	QS0341311141	SU3000RMLX3U		SU48R3XLB	2	
61ST PCT. 2575 Coney Island Avenue	QS0341311148	SU3000RMLX3U		SU48R3XLB	2	
BNTF 179 Wilson Ave.	QS0334310056	SU3000RMLX3U		SU48R3XLB	2	
BNTF 179 Wilson Ave.	QS0334310062	SU3000RMLX3U		SU48R3XLB	2	
485 THROOP Ave / DOH DR	QS0341311165	SU3000RMLX3U		SU48R3XLB	2	
720 FLUSHING / WOODHULL	QS0334310060	SU3000RMLX3U		SU48R3XLB	2	
720 FLUSHING / WOODHULL	QS0334310082	SU3000RMLX3U		SU48R3XLB	2	
210 JORALEMON	WS0245150002	SU3000RMLX3U		SU48R3XLB	2	
WC71 / 345 ADAMS ST.	QS0341311172	SU3000RMLX3U		SU48R3XLB	2	
101-07 Farragut Rd.	WS0050010437	SU3000RM			0	
11 METROTECH CTR. 5 TH FLOOR	QS0341311173	SU3000RMLX3U		SU48R3XLB	2	
11 METROTECH CTR. 5 TH FLOOR	QS0341311144	SU3000RMLX3U		SU48R3XLB	2	
11 METROTECH CTR. 5 TH FLOOR	QS0341311175	SU3000RMLX3U		SU48R3XLB	2	
11 METROTECH CTR. 5 TH FLOOR	QS0341311150	SU3000RMLX3U		SU48R3XLB	2	
11 METROTECH CTR. 5 TH FLOOR	QS0343116194	SU3000RMLX3U		SU48R3XLB	2	
11 METROTECH CTR. 5 TH FLOOR	QS0343116294	SU3000RMLX3U		SU48R3XLB	2	

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V. APC - QUEENS

LOCATION	UPS	MODEL	SERIAL #	EXT BATTERY #1 MODEL	QUANTITY	TRANSFORMER MODEL
QNS / LAGUARDIA 31-10 Thompson Ave	QS0341211785	SU3000RMXL3U		SU48R3XLB	2	
QNS / LAGUARDIA 31-10 Thompson Ave	WS0344250123	SU5000RMXLT5U		SU48R3XLB	2	SUTF2
FDNY QUEENS 89-61 Woodhaven Blvd	QS0334310077	SU3000RMXL3U		SU48R3XLB	2	
FDNY QUEENS 89-61 Woodhaven Blvd	QS0343117397	SU3000RMXL3U		SU48R3XLB	2	
PBQN/112TH PCT. 68-40 Austin Ave	QS0343117175	SU3000RMXL3U		SU48R3XLB	2	
PBQN/112TH PCT. 68-40 Austin Ave	QS0342212150	SU3000RMXL3U		SU48R3XLB	2	
PBQS/ 107TH PCT. 71-01 Parsons Blvd	QS0334110470	SU3000RMXL3U		SU48R3XLB	2	
PBQS/ 107TH PCT. 71-01 Parsons Blvd	QS0334310083	SU3000RMXL3U		SU48R3XLB	2	
PBQS/ 107TH PCT. 71-01 Parsons Blvd	WS0344250189	SU5000RMXLT5U		SU48R3XLB	2	SUTF2
WC29 / LEFRACK 59-17 Junction Blvd	QS0342212156	SU3000RMXL3U		SU48R3XLB	2	
WC34 / QBH 120-55 Queens Blvd	QS0342212109	SU3000RMXL3U		SU48R3XLB	2	
125-01 Queens Blvd.	WS0243150861	SU3000RMXL3U		SU48R3XLB	2	
JOHN ADAMS HS, 101-01 Rockaway Blvd	QS0416112340	SU3000RMXL3U			0	
52-35 58TH STREET	QS0341311135	SU3000RMXL3U		SU48R3XLB	2	
66-26 METROPOLITAN AVE.	XS0226017083	SU3000RM			0	
	WS0104014471	SU2200RMXL		SU48R3XLB	2	

VI. APC - STATEN ISLAND

LOCATION	UPS	MODEL	SERIAL #	EXT BATTERY SLEEVES MODEL	QUANTITY	TRANSFORMER MODEL
FDNY STATEN ISLAND 65 Slosson Ave	QS0342310890	SU30000RMXL3U		SU48R3XLBP	2	
FDNY STATEN ISLAND 65 Slosson Ave	QS0343117173	SU30000RMXL3U		SU48R3XLBP	2	
WC63 / STATEN IS. BORO 10 Richmond Terrace	QS0341311220	SU30000RMXL3U		SU48R3XLBP	2	
WC65 / TOTTENVILLE 100 Lutten Ave	QS0342310854	SU30000RMXL3U		SU48R3XLBP	2	
NEW DORP HS 465 New Dorp Lane	QS0341311243	SU30000RMXL3U		SU48R3XLBP	2	
NEW DORP HS 465 New Dorp Lane	QS0341311230	SU30000RMXL3U		SU48R3XLBP	2	
PETRIDES HS. 715 Ocean Terrace	QS0341311152	SU30000RMXL3U		SU48R3XLBP	2	
PETRIDES HS. 715 Ocean Terrace	QS0341311246	SU30000RMXL3U		SU48R3XLBP	2	
130 STUYVESANT PL.	QS0342212158	SU30000RMXL3U		SU48R3XLBP	2	

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SECTION IX. SINGLE-UNIT SITES

The following UPS units may require preventive maintenance outside of regular business hours. UPS units may be added to or removed from this list during the term of the contract resulting from this bid.

Address	City	Zip
42-32 Broadway	New York	10004
2 Washington St.	New York	10006
31 Chambers St.	New York	10007
49-51 Chambers St.	New York	10007
225 Broadway	New York	10007
60 Centre St.	New York	10007
80 Centre St. unit 1	New York	10013
80 Centre St. unit 2	New York	10013
100 Centre St.	New York	10013
111 Centre St.	New York	10013
40 Worth St. unit 1	New York	10013
40 Worth St. unit 2	New York	10013
125 Worth St.	New York	10013
60 Lafayette St.	New York	10013
33 Beaver St.	New York	10014
150 William St.	New York	10038
215 E 161 St.	Bronx	10451
231 E 161 St.	Bronx	10451
260 E 161 St.	Bronx	10451
101-07 Farragut Rd.	Brooklyn	11236
52-35 58th St.	Queens	11377
125-01 Queens Blvd.	Queens	11415

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SECTION III: BID PROCEDURES AND REQUIREMENTS

1. Time and Place for Receipt of Bids.

- a. Sealed bids shall be received by the Department of Information Technology and Telecommunications on or before the day, at the time, at the locations set forth in Section I - Timetable.
- b. The completed bid must be submitted in a sealed envelope on or before the time and at the place indicated in Section I of the Invitation For Bids. The envelope must be marked with the name of the person, firm or corporation presenting it, the bid opening date, bid number and bid title. The bid and all other documents requiring signature must be signed and notarized.

2. Definitions

- a. The definitions set forth in Chapter 1, Section 1-01, (e) of the Procurement Policy Board Rules shall apply to this Invitation For Bids.

3. Invitation For Bids Documents

- a. Except for titles, sub-titles, headings, running headlines, table of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of the contract and the Invitation For Bids.
 - 1. The Advertisement and Proposal for Bids.
 - 2. The Information for Bidders.
 - 3. The Bid.
 - 4. The Agreement.
 - 5. The Budget Director's Certificate.
 - 6. The Specifications.
 - 7. The Contract Drawings.
 - 8. All addenda issued by the Commissioner prior to the receipt of bids.
 - 9. All provisions required by law to be inserted in this contract whether actually inserted or not.
 - 10. The Notice of Award.
 - 11. Performance and Payment Bonds.
 - 12. Notice to Proceed with Work (Commence Work Order Letter).
- b. For particulars as to this procurement, including quantity and quality for the purchase, extent of the work or labor to be performed, delivery and performance schedule, and any other special instructions, prospective bidders are referred to the Invitation of Bidders documents. A copy of such documents can be obtained at the location set forth in Section I of the Invitation For Bids.
- c. Deposit for Copy of Invitation for Bids Documents, if required, - For each set of Invitation for Bid Documents the bidder shall submit a check or money order for Thirty-Five dollars (\$35.00) made payable to the order of the Department of Information Technology and Telecommunications and drawn upon a State or National Bank or Trust Company, or a check of such bank or trust company

signed by a duly authorized officer thereof. **However, the deposit for this IFB has been waived.**

- d. Return of Deposit - Such deposit, if required, will be returned within 30 days after the award of the contract or the rejection of all bids as set forth in the advertisement provided the Invitation For Bids documents are turned to the Contract Clerk of the Agency in physical condition satisfactory to the Commissioner.
- e. Additional Copies - Additional copies of the Invitation For Bids documents may be obtained subject to the conditions set forth in the advertisement for bids.

4. **Pre-Bid Conference**

Details concerning any mandatory or optional pre-bid conference may be found in Section I of the Invitation For Bids.

Nothing stated at the pre-bid conference shall change the terms or conditions of the Invitation For Bids unless a change is made by written amendment as provided in Section 12, below.

Failure to attend a mandatory pre-bid conference shall constitute grounds for the rejection of your bid.

Please notify the Agency Contact of the number of representatives from your firm that will attend the conference at least five (5) City working days before the date of the pre-bid conference.

5. **Agency Contact**

Any questions or correspondence relating to this bid solicitation shall be addressed to the person indicated in Section I of the Invitation For Bids.

6. **Examination of Proposed Contract**

- a. Request for Interpretation or Correction - Prospective bidders must examine the Contract Documents carefully and before bidding must request from the Commissioner, in writing, an interpretation or correction of every patent ambiguity, inconsistency or error therein which should have been discovered by any reasonably prudent bidder. Such interpretation or correction, as well as any additional contract provisions the Commissioner may decide to include, will be issued in writing by the Commissioner as an addendum to the contract, and will be sent by mail or delivered to each person recorded as having received a copy of the contract documents from the Contract Clerk, and will also be posted at the place where the contract documents are available for the inspection of prospective bidders. Upon such mailing or delivery and posting, such addendum shall become a part of the contract documents, and binding on all bidders, whether or not actual notice of such addendum is shown.
- b. Only Commissioner's Interpretation or Correction Binding - Only the written interpretation or correction so given by the Commissioner shall be binding, and

prospective bidders are warned that no other Officer, agent or employee of the City is authorized to give information concerning, or to explain or interpret, the contract.

7. **Form of Bid**

- a. Each bid must be submitted upon the prescribed form and must contain: a) the name, residence and place of business of the person or persons making the same; b) the names of all persons interested therein, and if no other person is so interested, such fact must be distinctly stated; c) a statement to the effect that it is made without any connection with any other person making the bid for the same purpose and that it is in all respects fair and without collusion or fraud; d) a statement that no Councilman or other officer or employee or person whose salary is payable in whole or part from the City Treasury is directly or indirectly interested therein or in the supplies, materials or equipment and work or labor to which it relates, or in any portion of the profits thereof; e) a statement that the bidder is not in arrears to the City or to any agency upon a debt or contract or taxes, and is not a defaulter as surety or otherwise upon any obligation to the City to any agency thereof, except as set forth in the bid.
- b. The Bid shall be typewritten or written legibly in ink. The Bid shall be signed in ink. Erasures or alterations shall be initialed by the signer in ink.

8. **Bidder's Oath**

- a. The bid shall be verified by an authorized representative of the bidder and the bid shall be verified by the written oath of the authorized representative who signed the bid, that the several matters stated and information furnished therein are in all respects true.
- b. A materially false statement willfully or fraudulently made in connection with the bid or any of the forms completed and submitted with the bid may result in the termination of any contract between the City and the Bidder. As a result, the Bidder may be barred from participating in future City contracts as well as be subject to possible criminal prosecution.

9. **Site Visit**

Where the Invitation For Bids involves performance of services on City facilities, all bidders are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the Contract. In no event will a failure to inspect a site constitute grounds for withdrawal of a bid after opening or for a claim after award of the Contract.

10. **(This section has been left intentionally blank.)**

11. **Irrevocability of Bid**

The prices set forth in the bid cannot be revoked and shall be effective until the award of the contract, unless the bid is withdrawn as provided for in Sections 15 and 18, below.

12. **Acknowledgment of Amendments**

The receipt of any amendment to the contract documents shall be acknowledged by the bidder.

13. **Bid Samples and Descriptive Literature**

Bid samples and descriptive literature shall not be submitted by the bidder, unless expressly requested elsewhere in the contract or contract documents. Any unsolicited bid samples or descriptive literature which are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of this contract.

14. **Proprietary Information/Trade Secrets**

The bidder shall identify those portions of its bid that it deems to be confidential, proprietary information or trade secrets, and provide justification why such materials shall not be disclosed by the City. All materials the bidder desires to remain confidential shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof with the word "Confidential". Such materials stamped "Confidential" must be easily separable from the non-confidential sections of the bid.

All such materials so indicated shall be reviewed by the Agency and any decision not to honor a request for confidentiality shall be communicated in writing to the bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the bidder. Prices, makes and models or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the bidder.

15. **Pre-Opening Modification or Withdrawal of Bids**

Bids may be modified or withdrawn by written notice received in the office designated in Section I of the Invitation For Bids.

16. **Bid Evaluation and Award**

In accordance with the New York City Charter, the Procurement Policy Board Rules and the terms and conditions of this Invitation For Bids, this contract shall be awarded, if at all, to the responsible bidder(s) whose bid(s) meets the requirements and evaluation criteria set forth in the Invitation For Bids, and whose bid price is the most favorable evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation For Bids.

No negotiations with any bidder shall be allowed to take place except under the circumstances and in the manner permitted under the Procurement Policy Board Rules. Nothing in this Section shall be deemed to permit a contract award to the bidder submitting a higher quality item than that designated in the Invitation For Bids if that bid is not also the most favorable bid.

17. **Late Bids, Late Withdrawals and Late Modifications**

Any bid received at the place designated in the solicitation after the time and date set for

receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered.

The exception to this provision is that a late modification of a successful bid that makes the bid terms more favorable to the City shall be considered at any time it is received.

18. **Withdrawal of Bids**

Except as provided for in Section 15, above, a bidder may not withdraw its bid before the expiration of forty-five (45) days after the date of the opening of bids; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual award.

If within sixty (60) days after the execution of the contract, the Commissioner fails to fix the date for commencement of work by written notice to the bidder, the bidder, at his option, may ask to be relieved of his obligation to perform the work called for by written notice to the Commissioner. If such notice is given, the bidder waives all claims in connection with this contract.

19. **Mistake in Bids**

a. **Mistake Discovered Before Bid Opening**

A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 15, above.

b. **Mistakes Discovered Before Award**

1. In accordance with Chapter Three, Section 3-02(m) of the Procurement Policy Board Rules, if the bidder alleges a mistake in bid after bid opening and before award, the bid may be corrected or withdrawn upon written approval of the Agency Chief Contracting Officer and Agency Counsel if the following conditions are met:

(i) **Minor Informalities.**

Minor informalities in bids are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City.

(ii) **Mistakes Where Intended Correct Bid is Evident.**

If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.

(iii) **Mistakes Where Intended Correct Bid is Not Evident.**

Mistakes may not be corrected after bid opening. A bidder may be permitted to withdraw A low bid where a unilateral error or mistake has been discovered in the bid and the

Contracting Officer makes the following determination, which shall be approved by the ACCO:

- a. the mistake was known to the agency prior to supplier selection or within three days after the opening of the bid, whichever period is shorter;
- b. the price bid was based on an error of such magnitude that enforcement would be unconscionable;
- c. the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgement error;
- d. the error in bid is actually due to an unintentional and substantial arithmetic error or unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and
- e. it is possible to place the City in the same condition that had existed prior to the receipt of the bid.

Upon the approval of the ACCO, the bid may be withdrawn, and the bid bond or other security returned to the bidder. The contract shall either be awarded to the next lowest bidder or resolicited pursuant to these Rules. Under no circumstances shall a bid be amended or revised to rectify the error or mistake.

- f. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the City Chief Procurement Officer subject to the approval of Corporation Counsel makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

20. Low Tie Bids

- a. When two or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation For Bids, the Agency Chief Contracting Officer will break the tie in the following manner and order of priority:
 - (i) Award to a certified New York City small, minority or woman-owned business entity bidder;
 - (ii) Award to a New York City bidder;
 - (iii) Award to a certified New York State small, minority or woman-owned business bidder;
 - (iv) Award to a New York State bidder.
- b. If two or more bidders still remain equally eligible after application of paragraph (a) above, award shall be made by a drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation

sheet.

21. **Rejection of Bids**

- a. **Rejection of Individual Bids.** The Agency Head may reject a bid if:
- (1) The bidder fails to furnish any of the information required pursuant to Sections 25 or 29 hereof; or if
 - (2) The bidder is determined to be not responsible pursuant to the Procurement Policy Board Rules; or if
 - (3) The bid is determined to be non-responsive pursuant to the Procurement Policy Board Rules.
 - (4) The bid, in the opinion of the Agency Chief Contracting Officer, contains unbalanced bid prices and is thus non-responsive, unless the bidder can show that the prices are not unbalanced for the probable required quantity of such items.

b. **Rejection of All Bids.**

The Agency, upon written approval by the Agency Chief Contracting Officer, may reject all bids and may elect to resolicit by bids in accordance with the Procurement Policy Board Rules or by other method authorized by such Rules.

- c. Intentionally left blank
- d. The City reserves the right, before making an award, to conduct examinations to determine whether or not the Services proposed to be furnished meet the requirements set forth in the Contract. If any such examination shows that the Contract requirements have not been complied with, or that Services proposed to be furnished do not meet the requirements called for, the Commissioner may reject such bid, and may award the Contract to the lowest responsive and responsible Bidder. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that it is obligatory upon the City to make any examinations before awarding a Contract. It is further understood that the making or waiving of any such examination in no way relieves the Contractor from fulfilling all requirements and conditions of this Contract.

22. **Right to Appeal Determinations of Non-Responsiveness or Non-Responsibility and Right to Protest Solicitations and Award**

The bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award, pursuant to Chapter 4, Sections 4-09, of the Procurement Policy Board Rules.

23. **MacBride Principles**

This Invitation for Bids is subject to the provision of Title 6, Chapter 1, Section 6-115.1 of the New York City Administrative Code.

24. **Affirmative Action and Equal Employment Opportunity**

This Invitation For Bids is subject to applicable provisions of Federal, State and Local Laws and executive orders requiring affirmative action and equal employment opportunity.

25. **VENDEX Questionnaire**

Pursuant to Administrative Code Section 6-116.2 and Section 3-02 of the Rules of the Procurement Policy Board, bidders may be obligated to submit completed VENDEX Questionnaires with this bid. Generally, if this bid is \$100,000 or more, or if this bid when added to the sum total of all contracts, concessions and franchises the bidder has received from the City and any subcontracts received from City contractors over the past twelve months, equals or exceeds \$100,000, VENDEX questionnaires must be completed and submitted with the bid. Any questions concerning this requirement must be submitted to the Agency Chief Contracting Officer or the contact person for this contract.

26. **Audit by Comptroller**

The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, One Centre Street, Room 835, New York, New York; telephone number (212) 669-3000.

27. **Bid, Performance and Payment Security**

- (A) General Requirements for Security - Requirements for bid, performance and payment security are set forth in paragraphs (B) and (C) below. Additional requirements which apply to all security furnished by the bidder are set forth in paragraphs (D), (E), (F) and (G) below.
- (B) Bid Security - Each bid must be accompanied by bid security in an amount and type specified in the Invitation for Bids. The bid security shall assure the City of New York of the adherence of the bidder to its proposal, the execution of the Contract, and the furnishings of Performance and Payment Bonds by the bidder, if required. Bid security shall be returned to the bidder as follows:
 - (1) Within ten (10) days after the bid opening, the Comptroller will be notified to return the deposits of all but the three (3) lowest bidders. Within five (5) days after the award, the Comptroller will be notified to return the deposits of the remaining two unsuccessful bidders.
 - (2) Within five (5) days after the execution of the Contract and acceptance of the Contractor's bonds, the Comptroller will be notified to return the bid security of the successful bidder.
 - (3) Where all bids are rejected, the Comptroller will be notified to return the deposit of the three (3) lowest bidders at the time of rejection.

- (C) Performance and Payment Security - Performance and Payment Security must be provided in an amount and type specified in the Invitation for Bids. The performance and payment security shall be delivered by the Contractor prior to or at the time of execution of the Contract. If a Contractor fails to deliver the required performance and payment security, the award shall be rescinded, its bid security shall be enforced, and an award of contract may be made to the next lowest responsible and responsive bidder, or the contract may be rebid.
- (D) Acceptable Types of Security - Acceptable types of security for bids, performance, and payment shall be limited to the following:
- (1) a one-time bond in a form satisfactory to the City;
 - (2) a bank certified check or money order;
 - (3) obligations of the City of New York; or
 - (4) other financial instruments as determined by the Department of Information Technology and Telecommunications in consultation with the Comptroller.

Whenever the successful bidder deposits obligations of the City of New York as performance and payment security, the Comptroller may sell and use the proceeds thereof for any purpose for which the principal or surety on such bond would be liable under the terms of the contract. If money is deposited with the Comptroller, the successful bidder shall not be entitled to receive interest on such money from the City.

- (E) Intentionally omitted
- (F) Form of Bonds - Security provided in the form of bonds must be prepared on the form of bonds authorized by the City of New York. Forms for bid, performance, and payment bonds are included in the Invitation for Bids Documents. Such bonds must have as surety thereunder such surety company or companies as are approved by the City of New York and authorized to do business in the State of New York. Premiums for any required bonds must be included in the base bid.
- (G) Power of Attorney - Attorneys-in-fact who sign bid, performance, or payment bonds must file with each bond a certified copy of their power of attorney to sign said bonds.

28. **Failure to Execute Contract**

In the event of failure of the successful bidder to execute the contract and furnish any required security and insurance, within ten (10) days after notice of the award of the contract, the deposit of the successful bidder or so much thereof as shall be applicable to the amount of the award made shall be retained by the City, and the successful bidder shall be liable for and hereby agrees to pay on demand the difference between the price bid and the price for which such contract shall be subsequently awarded, including the cost of any required reletting and less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action based upon such accepted bid.

29. **Bidder Qualifications**

Evidence of Ability and Financial Qualifications

- a. Before or after making an award of Contract, the City reserves the right to inspect the premises where Services are to be performed.
- b. The Bidder shall, upon request, submit evidence that will prove to the satisfaction of the Commissioner that it is qualified and able to furnish the Services on which it bids and perform them in the manner and time specified. It shall also furnish evidence that it has secured the necessary licenses, permits or certificates, required by any legislative or regulatory body having jurisdiction, to carry on the business of furnishing the Services on which the bid was submitted.
- c. The Agency may require any bidder or prospective bidder to furnish all books of account, records, vouchers, statements or other information concerning the bidder's financial status for examination as may be required the Agency to ascertain bidder's responsibility and capability to perform the contract.
- d. If the evidence required in paragraph (b) or (c) of this sub-section is not furnished, or if, upon examination of such evidence or other inspection of the plant or premises, it is found that the Bidder does not comply with the requirements set forth in this Contract, the Commissioner shall have the right to reject the bid in whole or in part. Should the non-compliance be discovered after the award is made, the Commissioner shall have the right to cancel and terminate this Contract and/or declare the Contractor in default, in addition to any other remedies provided by contract or at law or equity.
- e. In addition to any other requirement of this Contract, the Commissioner may request the Bidder to submit a sworn statement or submit to an oral examination setting forth such information as may be deemed necessary by the Commissioner to determine the Bidder's ability and responsibility to perform the work and supply the Services in accordance with the Contract.

30. **Bureau of Labor Services Information**

- a. **Who Must File A Complete Employment Report**
In accordance with Executive Order No. 50 (1980) and its implementing Regulations (E.O. 50), the filing of a completed Employment Report (ER) is a requirement of doing business with the City of New York if you meet all of the following conditions:
 1. you have been identified as the lowest bidder for a supply or service contract or your proposal for supplies or services has been accepted;
 2. the contract value exceeds \$100,000; and
 3. your firm employs 50 or more people.

Please note that suppliers, subcontractors or vendors performing on the contract who meet conditions 2 and 3, also must file an ER.

If you are the low bidder, ER will be sent to you under separate cover.

b. Who must file A Less Than 50 Employees Certificate

1. If your company or any of its facilities performing on the contract has fewer than 50 employees, although the contract value exceeds \$100,000, you need only submit a "Less Than 50 Employees Certificate".
2. If there is subcontractor, supplier or vendor to the prime contractor and any of its facilities performing on the contract has fewer than 50 employees, although the subcontract value exceeds \$100,000, it need only submit the "Less Than 50 Employees Certificate".

31. **Procurement Policy Board Rules**

This Invitation For Bids is subject to the Rules of the Procurement Policy Board of the City of New York. In the event of a conflict between said Rules and a provision of this Invitation For Bids, the Rules shall take precedence.

32. **Sales, Excise and Federal Transportation Taxes**

Unless this Contract indicates otherwise, the City is exempt from the payment of any sales, excise or federal transportation taxes. The price bid must be exclusive of taxes and will be so construed.

33. **Estimates of Quantity**

Bidders are advised that the City's estimate of quantities of the various items of Service is approximate only, given solely to be used as a uniform basis for the comparison of bids, and is not to be considered a part of this Contract. The quantities actually required to complete the contract work may be more or less than so estimated, and if so, no action for damages or for loss of profits shall accrue to the contractor by reason thereof.

Unit prices for bid items shall not vary notwithstanding any increase or reduction in the amount of services to be performed and no claims for damages shall be made or allowed by reason of such increase or reduction.

34. **Prompt Payment**

The Prompt Payment provisions set forth in Chapter 4, Section 4-06 of the Procurement Policy Board Rules in effect at the time of this solicitation will be applicable to payments made under a contract resulting from this solicitation. The provisions require the payment to contractors of interest on payments made after the required payment date except as set forth in subdivisions (d)(3) and (4)) of Section 4-06 of the Rules.

The contractor must submit a proper invoice to receive payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

Determinations of interest due will be made in accordance with the provisions of Section 4-06 of the Procurement Policy Board Rules and General Law §3-a.

35. MacBride Principles Provisions

ARTICLE 1. MacBride Principle - Notice to All Prospective Contractors

Local Law No. 34 of 1991 became effective on September 10, 1991 and added section 6-115.1 to the Administrative Code of the City of New York. The local law provides for certain restrictions on City contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of workplace opportunity.

Pursuant to Section 6-115.1, prospective contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business operations in Northern Ireland conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the City that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

PART A

In accordance with section 6-115.1 of the Administrative Code of the City of New York, the contractor stipulates that such contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) take steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

PART B

For purposes of this section, the following terms shall have the following meanings:

1. "MacBride Principles" shall mean those principles relating to nondiscrimination in

employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

- (1) increase the representation of individuals from underrepresented religious groups work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;
- (4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) abolish all job reservations, apprenticeship restrictions and different employment criteria that discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programming and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

ARTICLE III. ENFORCEMENT OF ARTICLES I

- A. The Contractor agrees that the covenants and representations in Article I above are material conditions of this contract. In the event the Department receives information that the Contractor, or a manufacturer or refiner subject to such provisions in accordance with Part B of Article I, is in violation of the provisions of such Article, the Department shall review such information and give the contractor and any such manufacturer or refiner an opportunity to respond. If the Department finds that a violation has occurred, the Department shall have the right to terminate this contract and procure the supplies, services or work from another source in any manner the Department deems proper. In the event of such termination, the Contractor shall pay to the Department, or the Department in its sole discretion may withhold from any amounts otherwise payable to the Contractor the difference between the contract price for the uncompleted portion of this contract and the cost to the Department of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the Department for the uncompleted term of this

contract. In the case of a construction contract, the Department shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this contract. The rights and remedies of the Department hereunder shall be in addition to, and not in lieu of, any rights and remedies the Department has pursuant to this contract or by operation of law.

ARTICLE II Enforcement of Article I (Mac Bride Principles Provisions)

The contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the contractor in default and or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost of the contracting entity of completing performance of this contract itself or by engaging another contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In case of a construction contract, the contracting entity shall also have the right to hold the contractor, and/or may see debarment or suspension of its contractor. The rights and remedies of the entity hereunder shall be in addition to, and not lieu of any rights and remedies the entity has pursuant to this contract or by operation of law.

36. Procurement Policy Board Rules

This Invitation For Bids is subject to the Rules of the Procurement Policy Board of the City of New York. In the event of a conflict between said Rules and a provision of this Invitation For Bids, the Rules shall take precedence.

A COPY OF THE PROCUREMENT POLICY BOARD (PPB) RULES CAN BE

DOWNLOADED FROM THE FOLLOWING SITE:

www.nyc.gov/html/moc/ppb/html/home/home.shtml

PERFORMANCE BOND/PAYMENT BOND
NOT REQUIRED

SECTION IV: BID PACKAGE

**CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS
SPECIAL NOTICE TO BIDDERS**

BID SUBMISSION REQUIREMENTS

The following documents **ARE TO BE COMPLETED AND SUBMITTED WITH THE BID:**

1. Bid Form (THE BIDDER IS REQUIRED TO SIGN THE BID IN INK. ALL CORRECTIONS MUST BE INITIALED)
2. Bid Security (If applicable)
3. M/WBE Utilization Plan (If applicable)
4. Experience Questionnaire
5. Vendex Questionnaire (if Bid is \$100,000 or more OR the bidder's aggregate business with the City in the preceding twelve months totals \$100,000 or more)
The Bidder is advised that Vendex Questionnaires and procedures have been changed. Vendex Questionnaires, as well as detailed instructions, may be obtained at www.nyc.gov/vendex.
6. Employment Report (if bid is \$100,000 or more)
7. Affirmation, and check-off for MacBride Principals Provision

FAILURE TO SUBMIT THE ABOVE ITEMS, OR ANY PORTION THEREOF, WILL

RESULT IN THE DISQUALIFICATION OF THE BID

The Bidder Is Cautioned That In The Event of a Discrepancy between the Unit Price and The Extended Price, The Unit Price Shall Prevail

- NOTE:**
- 1) All of the above referred to blank forms to be completed.
 - 2) If additional information is required, please contact the Department of Information Technology and Telecommunications (212) 788-6276.
 - 3) **SPECIAL EXPERIENCE REQUIREMENTS:** The bidder is advised that there are Special Experience Requirements for this contract as set forth in Section IV: Bid Package on page 24. The Bidder shall demonstrate compliance with the Special Experience Requirements by completing all Attachments, of this Invitation for Bids.
 - 4) Information regarding the time and place of the pre-bid conference, if any, is set forth in Section I of the Invitation of Bids.

SUPPLY AND SERVICE

CONTRACTOR'S EMPLOYMENT REPORT

<http://www.comptroller.nyc.gov/bureaus/bam/dobdlsform.pdf>

SUPPLY AND SERVICE REPORT INSTRUCTIONS

<http://www.comptroller.nyc.gov/bureaus/bam/ERinstructions.pdf>

VENDEX QUESTIONNAIRE

The VENDEX Questionnaire may be obtained online under the following address:

<http://www.nyc.gov/html/selltonyc/html/tocvendex.html>

**The City of New York
Department of Information
Technology and Telecommunications (DoITT)**

**SPECIAL NOTICE TO BIDDERS
Special Experience Requirements/Bidders Qualifications**

PIN: 85809CSB0054

Contractor's Qualifications

BIDDER MINIMUM QUALIFICATIONS

BIDDERS MUST HAVE AT LEAST 3 YEARS DEMONSTRATED EXPERIENCE MAINTAINING UNINTERRUPTIBLE POWER SUPPLY (UPS) SYSTEMS SIMILAR TO THE TYPE OF EQUIPMENT INCLUDED IN THIS BID IN HIGH CAPACITY, HIGH RELIABILITY DATA CENTER OR TELECOMMUNICATIONS FACILITY ENVIRONMENTS.

BIDDERS MUST COMPLETE AND WITH THEIR BID SUBMISSION INCLUDE CUSTOMER REFERENCE FORMS PROVIDING A MINIMUM OF THREE (3) VERIFIABLE CUSTOMER REFERENCES, INCLUDING CONTACT NAMES, TITLES, PHONE NUMBERS AND CONTRACT PERIODS, AS WELL AS TYPE AND SIZE OF SYSTEMS MAINTAINED.

IN ADDITION, BIDDERS MUST COMPLETE AND WITH THEIR BID SUBMISSION INCLUDE THE EXPERIENCE QUESTIONNAIRE (1) DEMONSTRATING THE BIDDER'S EXPERIENCE IN MAINTAINING AND REPAIRING THE MODELS OF EQUIPMENT INCLUDED IN THIS IFB, (2) DESCRIBING THE FACILITIES AND STAFF OF THE BIDDER THAT WILL PROVIDE THE MAINTENANCE AND REPAIR SERVICES REQUIRED BY THE DETAILED SPECIFICATIONS AND (3) DESCRIBING THE SPECIFIC PREVENTIVE MAINTENANCE SERVICES THE BIDDER WILL PROVIDE, INCLUDING FREQUENCY.

**NO CONTRACT AWARD SHALL BE MADE TO ANY BIDDER WHO FAILS TO
DEMONSTRATE COMPLIANCE WITH THE ABOVE BIDDERS QUALIFICATIONS**

Attachment A: References

To demonstrate compliance with the Special Experience Requirements/Bidders Qualifications, as described in the contract documents, please identify on this page and following pages, a minimum of three (3) verifiable customer references, including the name(s) of the organization together with contact name and title, location(s), telephone number, contract period and requested information about the data center or telecommunications system.

PROVIDE A MINIMUM OF THREE (3) CUSTOMER REFERENCES WITH BID SUBMISSION.

Bidder Qualifications (continuation)

Customer References:

(ATTACH ADDITIONAL SHEETS AS NECESSARY)

Firm Name: _____

Address: _____

Customer Contact: Name and Title: _____

Customer Contact: Telephone #: _____

Contract Period: _____

Work Performed:

Bidder Qualifications (continuation)

Customer References:

Firm Name: _____

Address: _____

Customer Contact: Name and Title: _____

Customer Contact: Telephone #: _____

Contract Period: _____

Work Performed:

[illegible]

Bidder Qualifications (continuation)

Customer References:

Firm Name: _____

Address: _____

Customer Contact: Name and Title: _____

Customer Contact: Telephone #: _____

Contract Period: _____

Work Performed:

BID FORM

THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

MAINTENANCE AND SERVICE FOR UPS AT VARIOUS LOCATIONS THROUGHOUT THE
FIVE BOROUGHES

PIN: 85809CSB0054

Name of Bidder: _____

Date of Bid Opening: _____

Bidder is: Individual__ Partnership__ Corporation__ Other: _____
(Check one, whichever applies)

Federal Tax ID: _____

Place of Business of Bidder: _____

Bidder's Telephone Number and Fax Number: _____

Residence of Bidder (If Individual): _____

(If Bidder is a Partnership, fill in the following blanks:)

NAME OF PARTNERS

RESIDENCE OF PARTNERS

(If Bidder is a Corporation, fill in the following blanks:)

Organized under the laws of the State of _____

Name and Home Address of the
President: _____

Name and Home Address of the Secretary: _____

Name and Home Address of Treasurer: _____

BID FORM

The above-named Bidder affirms and declares:

1. The said bidder is of lawful age and the only one interested in this bid; and no person, firm or corporation other than hereinbefore named has any interest in this bid, or in the Contract proposed to be taken.
2. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief: (1) the prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; (2) unless otherwise required by law, the prices quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
3. No councilman or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.
4. The bidder is not in arrears to the City of New York upon debt or contract or taxes, and is not a defaulter, as surety or otherwise, upon any obligation of the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except as set forth on the Affirmation included in this Invitation for Bid.

The bidder hereby affirms that it has paid all applicable City income, excise and other taxes for all years it has conducted business activities in New York City.

5. The bidder, as an individual, or as a member, partner, director or officer of the bidder, if the same be a firm, partnership or corporation, executes this document expressly warranting and representing that should this bid be accepted by the City and the Contract awarded to him, he and his subcontractors engaged in the performance: (1) will comply with the provisions of Section 6-108 of the Administrative Code of the City of New York and the non-discrimination provisions of Section 220a of the New York State Labor Law, as more expressly and in detail set forth in the Agreement; (2) will comply with Section 6-109 of the Administrative Code of the City of New York in relation to minimum wages and other stipulations as more expressly and in detail set forth in the Agreement; (3) have complied with the provisions of the aforesaid laws since their respective effective dates, and (4) will post notices to be furnished by the City, setting forth the requirements of the aforesaid laws in prominent and conspicuous places in each and every plant, factory, building and structure where employees engaged in the performance of the Contract can readily view it, and will continue to keep such notices posted until the supplies, materials and equipment, or work labor and services required to be furnished or rendered by the Contractor have been finally accepted by the City. In the event of any breach or violation of the foregoing, the Contractor may be subject to damages, liquidated or otherwise, cancellation of the Contract and suspension as a bidder for a period of three years. (The words, "the bidder", "he", "his", and "him" where used herein shall mean the individual bidder, firm, partnership or corporation executing this bid).

BID FORM

6.Compliance Report

The bidder, as an individual, or as a member, partner, director, or officer of the bidder, if the same be a firm, partnership, or corporation, (1) represents that his attention has been specifically drawn to Executive Order No. 50, dated, April 25, 1980, on Equal Employment Compliance of the contract, and (2) warrants that he will comply with the provisions of Executive Order No. 50. The Employment Report must be submitted as part of the bid.

The bidder, as an individual, or as a member, partner, director, or officer of the bidder, if the same be a firm, partnership, or corporation, executes this document expressly warranting that he will comply with: (1) the provision of the contract on providing records, Chapter 8.

7.By submission of this bid, the bidder certifies that it now has and will continue to have the financial capability to fully perform the work required for this contract. Any award of this contract will be made in reliance upon such certification. Upon request therefore, the bidder will submit written verification of such financial capability in a form that is acceptable to the department.

8.In accordance with Section 165 of the State Finance Law, the bidder agrees that tropical hardwoods, as defined in Section 165 of the State Finance Law, shall not be utilized in the performance of this Contract, except as the same are permitted by the foregoing provision of law.

9.The bidder has visited and examined the site of the work and has carefully examined the Contract in the form approved by the Corporation Counsel, and will execute the Contract and perform all its items, covenants and conditions, and will provide, furnish and deliver all the work, materials, supplies, tools and appliances for all labor and materials necessary or required for the hereinafter named work, all in strict conformity with the Contract, for the price set forth herein:

BID FORM (TO BE NOTARIZED)

AFFIDAVIT WHERE BIDDER IS AN INDIVIDUAL

STATE OF NEW YORK, COUNTY OF _____ ss:

_____ being duly sworn says:

I am the person described in and who executed the foregoing bid, and the several matters therein stated are in all respects true.

(Signature of the person who signed the Bid)

Subscribed and sworn to before me this

_____ day of _____, _____

Notary Public

AFFIDAVIT WHERE BIDDER IS A PARTNERSHIP

STATE OF NEW YORK, COUNTY OF _____ ss:

_____ being duly sworn says:

I am a member of _____ the firm described in and which executed the foregoing bid. I subscribed the name of the firm thereto on behalf of the firm, and the several matters therein stated are in all respects true.

(Signature of Partner who signed the Bid)

Subscribed and sworn to before me this

_____ day of _____, _____

Notary Public

AFFIDAVIT WHERE BIDDER IS A CORPORATION

STATE OF NEW YORK, COUNTY OF _____ ss:

_____ being duly sworn says:

I am the _____ of the above named corporation whose name is subscribed to and which executed the foregoing bid. I reside at

I have knowledge of the several matters therein stated, and they are in all respects true.

(Signature of Corporate Officer who signed the Bid)

Subscribed and sworn to before me this

_____ day of _____, _____

Notary Public

AFFIRMATION

The undersigned bidder affirms and declares that said bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except _____

(If none, the bidder shall insert the word "None" in the space provided above.)

Full Name of Bidder: _____

Address: _____

City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A. -Individual or Sole Proprietorship*

SOCIAL SECURITY NUMBER:

☐ B. -Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER:

☐ C. -Corporation

EMPLOYER IDENTIFICATION NUMBER:

By: _____

Signature

Title: _____

If a corporation
place seal here

This affirmation must be signed by an officer or duly authorized representative.

*Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying of businesses which seek City contracts.

AUDIT RIDER

AUDIT BY THE DEPARTMENT OF THE COMPTROLLER OF THE CITY OF NEW YORK

All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are subject to audit by the Department and the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the New York City Charter and Administrative Code of the city of New York, as well as all orders and regulations promulgated pursuant thereto.

The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this agreement as may be required by said Department and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department and to the Comptroller as they consider necessary.

All books, vouchers, records, reports, canceled checks and any and all similar materials may be subject to periodic inspection, review and audit by the State of New York, Federal Government and other persons duly authorized by the City.

The contractor shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

BID BOND
FORM OF BID BOND

NOT REQUIRED

KNOW ALL MEN BY THESE PRESENTS. That we, _____

hereinafter referred to as the "Principal", and _____

hereinafter referred to as the "Surety" are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the "CITY", or to its successors and assigns in the penal sum of _____

(\$ _____), Dollars lawful money of the United States, for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal is about to submit (or has submitted) to the City the accompanying proposal, hereby made a part hereof, to enter into a contract in writing for

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall not withdraw said Proposal without the consent of the City for a period of forty-five (45) days after the opening of bids and in the event of acceptance of the Principal's Proposal by the City, if the Principal shall:

(a)

Within ten (10) days after notification by the City, execute in quadruplicate and deliver to the City all the executed counterparts of the Contract in the form set forth in the Contract Documents, in accordance with the proposal as accepted, and

(b)

Furnish a performance bond and separate payment bond, as may be required by the City, for the faithful performance and proper fulfillment of such Contract, which bonds shall be satisfactory in all respects to the City and shall be executed by good and sufficient sureties, and

(c)

In all respects perform the agreement created by the acceptance of said Proposal as provided in the Information for Bidders, bound herewith and made a part hereof, or if the City shall reject the aforesaid Proposal, then this obligation shall be null and void; otherwise to remain in full force and effect.

BID BOND

NOT REQUIRED

In the event that the Proposal of the Principal shall be accepted and the Contract be awarded to him the Surety hereunder agrees subject only to the payment by the Principal of the premium therefore, if requested by the City, to write the aforementioned performance and payment bonds in the form set forth in the Contract Documents.

It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

There shall be no liability under this bond if, in the event of the acceptance of the Principal's Proposal by the City, either a performance bond or payment bond, or both, shall not be required by the City on or before the 30th day after the date on which the City signs the Contract.

The surety, for the value received, hereby stipulates and agrees that the obligations of the Surety and its bond shall in no way be impaired or affected by any postponements of the date upon which the City will receive or open bids, or by any extensions of the time within which the City may accept the Principal's Proposal, or by any waiver by the City of any of the requirements of the Information for Bidders, and the Surety hereby waives notice of any such postponements, extensions, or waivers.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers the _____ day of _____, _____.

(Seal)

Principal (L.S.)

By: _____

(Seal)

Surety

By: _____

M/WBE UTILIZATION PLAN

NOT REQUIRED

EXPERIENCE QUESTIONNAIRE
BIDDER'S APPLICATION FOR QUALIFICATION

1. Applicant (Firm/Individual): _____
2. Address, City & State, Zip: _____
3. Federal Tax ID: _____
4. Number of Years in Business: _____
5. State the general nature of the service you desire to bid upon:

6. Number of years at present address: _____
7. If incorporated, state date on incorporation _____ and State of incorporation _____.

(if not a domestic corporation, attach a copy of the Certificate of Authority issued by the Secretary of State of the State of New York pursuant to the Business Corporation Law)

8. List below names & addresses of all officers of the corporation:

NAME _____

ADDRESS _____

TITLE _____

9. Are you a partnership: _____ If so, list the names & addresses of all partners:

10. If you are doing business under a trade name, give the State and County in which certificate is filed:

_____ State _____ County

(If certificate is filed outside New York City, attach a certified copy of the certificate)

11. Average number of employees: _____
12. Do you share working premises with any other firm(s) _____. If so, give the name of the other firm(s): _____
13. Do you own and operate a warehouse: _____ If yes, give address and number of years at this address:

14. Have you ever bid on City of New York business under another name: _____
If the answer is yes, list below the name(s):

15. What is the experience of the principal individuals of your organization?

Present Position or Office	Individual's Name	Years of Experience	Magnitude & Type of Work
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16. WHAT PROJECTS HAS YOUR ORGANIZATION COMPLETED WITHIN THE LAST FIVE (5) YEARS

Project Identification & Nature of contract	Name & Address of Owner	Contract Amount (\$000)	Date Started	Original Scheduled Completion Date	Actual Completion Date	If not completed by Original Scheduled Completion Date Give Reason

17. WHAT PROJECTS DOES YOUR ORGANIZATION CURRENTLY HAVE UNDER CONTRACT

Project Identification & Nature of contract	Name & Address of Owner	Contract Amount (\$000)	Date Started	Contract Time	% Contract Time Elapsed as of this Date	% Work Completed as of this Date	If % of Elapsed Time is in Excess of Work Completed Give Reason

18. For which projects listed in items 16 and 17, above, if any, did the Bidder maintain and repair the particular models of equipment included in this IFB?:

19. Describe the facilities and staff of the Bidder that will provide the maintenance and repair services required by the Detailed Specifications of this IFB:

20. Describe the specific preventive maintenance services the Bidder will provide under this IFB, including frequency. If feasible, annex the manufacturer's specifications for preventive maintenance services and normal operating condition of such items of equipment:

21. Give names, addresses, contacts and phone numbers of three of your largest (and most recent) customers including Federal, or any State or City Government, or quasi-public corporation:

22. Bank References (Name, Address, Contact and Phone Number):

23. Financial Statement (Most Recent Statement Must be Submitted with Bid)

*NOTE: If a vendor is unable to furnish the required references, its bid will be rejected.

The undersigned hereby certifies the truth and accuracy of all figures and answers contained in this application and hereby authorizes DoITT to make any necessary examination of the books of account, records and vouchers of the bidder to determine its responsibility.

Signature of Applicant

Title

STATE OF ()

SS.:

COUNTY OF ()

Sworn to before me

This _____ day of _____, 200__

Notary Public or Commissioner of Deeds

Acknowledgement of Addenda

Complete Part I or Part II, whichever is applicable:

PART I: LISTED BELOW ARE THE DATES OF ISSUE FOR EACH
ADDENDUM RECEIVED IN CONNECTION WITH THIS IFB:

ADDENDUM # 1, DATED _____ , 20__

ADDENDUM # 2, DATED _____ , 20__

ADDENDUM # 3, DATED _____ , 20__

ADDENDUM # 4, DATED _____ , 20__

ADDENDUM # 5, DATED _____ , 20__

ADDENDUM # 6, DATED _____ , 20__

PART II: NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS
IFB. _____

DATE __/__/__

BIDDER (NAME) _____

BIDDER (SIGNATURE) _____

BID SHEETS

1.0 Unit Prices for Maintenance, Repairs and Moves - Year 1

For Contract Year 1, list the unit price for the provision of maintenance, repairs and moves. If the cost is included as part of another unit price, then give the price as "0".

The monthly and flat-fee unit prices shall include all labor, material, parts, supplies, equipment, travel time, overhead, contingencies, profit, etc.

The estimated amounts of units listed in this schedule are a reasonable approximation of the amounts of units that may be purchased, but they are set forth for bid purposes only.

1.1	Scheduled Preventive Maintenance, Including Repairs and Emergency Services	\$	per month x 12 months =	\$
1.2	Uninstallation, Transportation, and Installation of Equipment	\$	per event x 3 events per year =	\$
1.3	Sum of Items 1.1 through 1.2 (Total Year 1 Charge)			\$

2.0 Unit Prices for Maintenance, Repairs and Moves - Year 2

For Contract Year 2, list the unit price for the provision of maintenance, repairs and moves. If the cost is included as part of another unit price, then give the price as "0".

The monthly and flat-fee unit prices shall include all labor, material, parts, supplies, equipment, travel time, overhead, contingencies, profit, etc.

The estimated amounts of units listed in this schedule are a reasonable approximation of the amounts of units that may be purchased, but they are set forth for bid purposes only.

2.1	Scheduled Preventive Maintenance, Including Repairs and Emergency Services	\$	per month x 12 months =	\$
2.2	Uninstallation, Transportation, and Installation of Equipment	\$	per event x 3 events per year =	\$
2.3	Sum of Items 2.1 through 2.2 (Total Year 2 Charge)			\$

3.0 Unit Prices for Maintenance, Repairs and Moves - Year 3

For Contract Year 3, list the unit price for the provision of maintenance, repairs and moves. If the cost is included as part of another unit price, then give the price as "0".

The monthly and flat-fee unit prices shall include all labor, material, parts, supplies, equipment, travel time, overhead, contingencies, profit, etc.

The estimated amounts of units listed in this schedule are a reasonable approximation of the amounts of units that may be purchased, but they are set forth for bid purposes only.

3.1	Scheduled Preventive Maintenance, Including Repairs and Emergency Services	\$	per month x 12 months =	\$
3.2	Uninstallation, Transportation, and Installation of Equipment	\$	per event x 3 events per year =	\$
3.3	Sum of Items 3.1 through 3.2 (Total Year 3 Charge)			\$

4.0 Unit Prices for Maintenance, Repairs and Moves - Year 4

For Contract Year 4, list the unit price for the provision of maintenance, repairs and moves. If the cost is included as part of another unit price, then give the price as "0".

The monthly and flat-fee unit prices shall include all labor, material, parts, supplies, equipment, travel time, overhead, contingencies, profit, etc.

The estimated amounts of units listed in this schedule are a reasonable approximation of the amounts of units that may be purchased, but they are set forth for bid purposes only.

4.1	Scheduled Preventive Maintenance, Including Repairs and Emergency Services	\$	per month x 12 months =	\$
4.2	Uninstallation, Transportation, and Installation of Equipment	\$	per event x 3 events per year =	\$
4.3	Sum of Items 4.1 through 4.2 (Total Year 4 Charge)			\$

5.0 Unit Prices for Maintenance, Repairs and Moves - Year 5

For Contract Year 5, list the unit price for the provision of maintenance, repairs and moves. If the cost is included as part of another unit price, then give the price as "0".

The monthly and flat-fee unit prices shall include all labor, material, parts, supplies, equipment, travel time, overhead, contingencies, profit, etc.

The estimated amounts of units listed in this schedule are a reasonable approximation of the amounts of units that may be purchased, but they are set forth for bid purposes only.

5.1	Scheduled Preventive Maintenance, Including Repairs and Emergency Services	\$	per month x 12 months =	\$
5.2	Uninstallation, Transportation, and Installation of Equipment	\$	per event x 3 events per year =	\$
5.3	Sum of Items 5.1 through 5.2 (Total Year 5 Charge)			\$

For performing the work at the Unit Prices indicated in Sections 1 through 5 of the Bid Sheets the sum of:

1.0 TOTAL CHARGES FOR MAINTENANCE, REPAIRS AND MOVES - YEAR 1: \$ _____

2.0 TOTAL CHARGES FOR MAINTENANCE, REPAIRS AND MOVES - YEAR 2: \$ _____

3.0 TOTAL CHARGES FOR MAINTENANCE, REPAIRS AND MOVES - YEAR 3: \$ _____

4.0 TOTAL CHARGES FOR MAINTENANCE, REPAIRS AND MOVES - YEAR 4: \$ _____

5.0 TOTAL CHARGES FOR MAINTENANCE, REPAIRS AND MOVES - YEAR 5: \$ _____

GRAND TOTAL \$ _____

Write Grand Total Bid Amount in Words (sum of sections 1 through 5):

In case of a discrepancy between the amount shown in figures and the amount written in words, the lesser shall prevail.

SECTION V: AGREEMENT

AGREEMENT

*AGREEMENT made and entered into this _____ day of _____, 20xx by and between The City of New York, acting through its Department of Information Technology and Telecommunications, having an office at 75 Park Place, 9th Floor, New York, New York, 10007 (hereinafter referred to as "**City**") and xxxxxxxxxxxxxx, a Corporation organized and existing under the laws of the State of xxxxxxxxxx and having an office at xxxxxxxxxxxxxxxx (hereinafter referred to as "**Contractor**").*

WITNESSETH:

In consideration of the mutual promises and the covenants herein contained, the City and the Contractor agree as follows:

ARTICLE 1. DEFINITIONS

As used throughout this Agreement, the following terms shall have the meaning set forth below:

- a. "**City**" shall mean The City of New York, and its agencies as defined in Section 1150 of the City Charter.
- b. "**Comptroller**" shall mean the Comptroller of the City of New York.
- c. "**Department**" and "**Agency**" shall mean the Department of Information Technology and Telecommunications.
- d. "**Administrator**" or "**Commissioner**" shall mean the Commissioner of the Department of Information Technology and Telecommunications.
- e. "**Law**" or "**Laws**" shall include but not be limited to the New York City Charter, the New York City Administrative Code, any Local Law of the City of New York, any State or Federal Law, and any City, State or Federal rule or regulation having the force or law.
- f. The Contractor shall also be referred to as "**it**" whether such Contractor be an individual, partnership or corporation.
- g. "**Contract**" shall include all of the following, except for titles subtitles, headings, running headlines, tables of contents and indices (all which are printed herein merely for convenience), and any other portions as may be specifically excluded:

- h.
1. This document titled "Agreement";
 2. The Specifications;
 3. The Contract Drawings;
 4. The Advertisement and Proposal for Bids, as well as any addenda thereto issued by the Commissioner prior to the receipt of all bids;
 5. All provisions required by law to be inserted in the Contract whether actually inserted or not; The Bid;
 6. Notice of Award.

ARTICLE 2. SCOPE OF WORK

The Contractor agrees to perform all services described in the specifications attached hereto.

ARTICLE 3. PERIOD OF PERFORMANCE

The period of performance of the Contract shall be for five (5) years following the date of issuance of an official notification to proceed, after registration by the Comptroller of the Contract.

ARTICLE 4. PAYMENT

- 4.1 The City agrees to pay and the Contractor agrees to accept, as full payment for the complete and satisfactory performance of the services required herein, an amount not to exceed \$xxxxxxx, such amount being based upon the Contractor's Bid for the work or services required as set forth in the Proposal for Bid, and in the case where such bid is a unit price, upon the quantity, volume, amount or period of work or services on materials estimated by the Department to be required multiplied by such Unit Bid Price. Any such estimated quantity, volume, amount or period of work or services or materials is an estimate based upon experience. The Department shall neither be required to order any quantity or amount or period thereof, nor shall it be limited to any such estimate, but the quantity or amount or period ordered and paid for shall be that which is actually required by the Department and provided by the Contractor.
- 4.2 The Contractor shall submit numbered invoices for payment on a monthly basis, unless otherwise agreed. Such invoices shall set forth the services for which payment is requested, and approval thereof by the Department shall be a prerequisite to set-off as may be set forth in this Agreement and in this Agreement and in the specifications attached hereto.

ARTICLE 5. LIABILITY OF CONTRACTOR

5.1 General Liability

- A. The Contractor shall be solely responsible for all physical injuries or deaths to its agents, servants, or employees or to any other person and for all damage to any property sustained during its operations and work under the Contract resulting from any act or omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for such person or damages to property on account of any neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all its employees whether due to negligence, fault or default of the Contractor or not.
- B. In the event that any claim is made or action is brought against the City arising out of negligent or careless acts of an employee of the Contractor, either within or without the scope of his employment, or arising out of Contractor's negligent performance of this Agreement and the Contract, then the City shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said claim or action. The rights and remedies of the City provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement or the Contract.

5.2 Protection of City Property

- A. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, and caused, either directly or indirectly, by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Contractor as expert, consultant, specialist or subcontractor under this Agreement and the Contract.

- B. In the event that any such City property is lost or damaged, except for normal wear and tear, or to the extent that such property is consumed in the performance of this Agreement and the Contract, then the City shall have the right to withhold further payments hereunder and under the Contract for the purpose of set-off, in sufficient sums to cover such loss or damage.
- C. The Contractor agrees to indemnify the City and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any such City property described in subsection A above.
- D. The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement and the Contract.

5.3 Infringements

The Contractor shall be liable to the Department and the City and hereby agrees to indemnify and hold the Department and the City harmless for any damage or loss or expense sustained by the Department or the City from any infringement by the Contractor of any copyright, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement and the Contract.

ARTICLE 6. BONDS, INSURANCE AND LIQUIDATED DAMAGES

6.1 Performance and Payment Bonds

The Contractor shall, prior to or at the time of execution of the Contract, deliver to the City a performance bond and a payment bond, if such bonds are required, having as surety thereunder such surety company or companies as are approved by the Comptroller. Such bonds shall be in the amount and in the form prescribed in the Schedule A attached hereto.

6.2 Insurance

- A. The Contractor shall procure and maintain, during the entire performance period of the Contract with insurance carriers authorized to do business in the State of New York the insurance coverage prescribed hereinafter in this Article

6 and the Schedule A attached hereto and hereby made part hereof.

- B. Upon written demand, the Contractor shall furnish to the Agency a schedule of current insurance covering this Contract, showing coverage, amount, expiration date, carrier and policy number, which said schedule shall be maintained and updated, when applicable.
- C. The Contractor shall also require any subcontractor hereunder and under the Contract to procure and maintain the insurance required herein and under the Contract during the entire period of its performance. A schedule of current insurance showing the above information shall be furnished to the Agency, at least (5) business days prior to entry by such subcontractor's personnel into performance of work in or on City-owned or City-leased facilities.

6.3 Worker's Compensation and Disability Benefits

If this Agreement and the Contract be such a character that the employees engaged thereon are required to be insured by the provisions of Chapter 615 of the Laws of 1922, known as the "Worker's Compensation Law" and acts amendatory thereto, the Agreement and the Contract shall be void and to no effect unless the Contractor shall, during the life of this Agreement and the Contract, secure compensation for the benefit of it and keep insured such employees in compliance with the provisions of said law, including Disability Benefits; and the Contractor shall furnish the Department with 92) certificates of these insurance coverages.

6.4 Unemployment Insurance

Unemployment Insurance shall be obtained and provided by the Contractor for its employees.

6.5 Public Liability and Property Damage Insurance

- A. Before commencing any performance under the Contract, the Contractor shall submit to the Administrator or his/her duly authorized representative (2) executed copies of the insurance policy or policies, duly issued by the insurance carrier(s) to the Contractor and providing coverage for the Contractor and for its subcontractors for work being performed under the Contract for at least the limits of the Public Liability and Property Damage Insurance attached

hereto and hereby made a part hereof.

- B. The insurance referred to in Paragraph 6.5.A., above, shall be maintained by the Contractor until ALL WORK under the Contract is completed and accepted by the City, and shall include the City as an additional named insured.
- C. THE LIMIT OF LIABILITY FOR PUBLIC LIABILITY (BODILY INJURY) for EACH OCCURRENCE is the limit of liability required for all damages, including damages for care and loss of services, arising out of bodily injury, sickness, or disease, including death, at any time resulting therefrom, sustained by one or more persons in any one accident or occurrence.
- D. THE LIMIT OF LIABILITY FOR PROPERTY DAMAGE for EACH ACCIDENT is the limit of liability required for all damages arising out of injury to or destruction of property, including the loss of use thereof; caused by any one accident; the AGGREGATE is the total liability required for all damages arising out of injury to or destruction of property, including loss thereof, caused all accidents arising out of operations performed under the Contract during the policy period.
- E. If the aggregate of liability specified under the Contractor's policy is not sufficient to cover all claims for damages arising from its operations under the Contract and for any other work performed by it or if the policy of insurance does not provide that the aggregate limit of liability for property damages applies to the Contract separately, the Contractor shall have such policy amended so that the aggregate limit of liability required under the Contract will be available to the City to cover all claims for damages due to operations under this Contract.

6.6 Motor Vehicle Liability Insurance

If performance of this Contract involves use by the Contractor of a motor vehicle, the Contractor shall obtain Motor Vehicle Liability Insurance, with the City as an additional named insured party, in accordance with the limits prescribed in the Schedule of Bonds and Liability Insurance attached hereto and hereby made a part hereof. During the performance and until the date of termination of the Contract, the Contractor shall maintain such required Motor Vehicle Liability Insurance with a carrier or carriers authorized to

do business in the State of New York, and shall furnish to the Administrator or his/her duly authorized representative (2) executed copies of such insurance policy or policies. Such Motor Vehicle Liability Insurance shall cover all vehicles to be used in such Contract performance.

6.7 Liquidated Damages

If provided for in the Specifications, liquidated damages for failure to perform the work in compliance with the terms of this Agreement and the Contract shall be assessed by the Department against the Contractor in accordance with the said provisions.

ARTICLE 7. PROVISIONS RELATING TO LABOR

7.1 Supervision by Contractor

- A. The Contractor shall give its personal supervision to the work or have a competent manager, foreman or supervisor, satisfactory to the Administrator, assigned to the work at all times during performance of the Contract, with authority to act for the Contractor.
- B. In the performance of the Contract, the Contractor shall utilize competent and qualified persons. All such persons are the employees of the Contractor and not of the City and the Contractor shall be responsible for their acts, personal conduct and work.
- C. All services shall be performed in a skillful and workmanlike manner. The Administrator may require and the Contractor agrees to the removal from the work of any of the Contractor's personnel or of its subcontractor's personnel deemed incompetent, careless or otherwise objectionable by the Administrator.
- D. The Department shall have the right to have representatives of the Department or of the City or the State or Federal government present at the site of the engagement to observe the work being performed.

7.2 Prohibited Acts

The Contractor shall not employ any labor, or utilize materials or means which, during the course of this Agreement and the Contract, may in any way tend to cause or result in strikes, work

stoppages, delays, suspension of work or similar troubles by any workman employed by the Contractor, or by any of the trades working in or about the buildings or any premises where work is being performed under this Agreement or the Contract, or by contractors or their subcontractors pursuant to other agreements or contracts, or on any other building or premises owned or operate by the City of New York, its agencies, departments, boards or authorities. Any violation by the Contractors of these requirements shall be considered as proper and sufficient cause for declaring the Contractor to be in default.

7.3 Notice of Labor Disputes

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to the Department, including all relevant information with respect thereto.

7.4 Minimum Wage and Working Conditions

- A. Except for those employees whose minimum wage is required to be fixed pursuant to §230-c of the Labor Laws of the State of New York, all persons employed by the Contractor and any subcontractor in the manufacture or furnishing of work, labor or services, used in the performance of this Contract will be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the Federal minimum wage.
- B. No part of work, labor or services will be performed or rendered by the Contractor in any plants, factories, buildings or surrounding or working under conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Contract. Compliance with the safety, sanitary and factory inspection laws of the State in which the work is to be performed shall be prima facie evidence of compliance with this paragraph.
- C. For any breach or violation of any of the provisions of Paragraph 7.4.A and 7.4.B., above, the Contractor shall be liable to the City for liquidated damages, which may be recovered in suits brought by the Corporation Counsel of the City of New York in name of the City, in addition to damages for any other breach of this Contract, in a sum

equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Contract. In addition, the Administrator shall have the right to cancel this Contract for violation of this clause and to enter into other contracts for the completion of this Contract, charging any additional cost to the Contractor. All sums withheld or recovered as deductions, rebates, or refunds underpayment of wages in violation of the provisions of this clause, shall be without interest, on order of the City Commissioner of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth herein and/or from whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

7.5 Time Requirements (§§ 220 and 220-d – Labor Law)

The Contractor agrees that, as required by Labor Law Sections 220 and 220-d, as amended:

No laborer, workman or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood, or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency, and unless specific dispensation shall have been granted by the industrial commissioner. Whenever such a dispensation is granted all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workmen and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed.

7.6 Prevailing Wage and Supplements (§231 - Labor Law)

- A. The wages which the Contractor shall pay for a legal day's work and supplements to be provided to building service employees, as defined in Section 230 of the Labor Law, employed upon the whole or part of the building service work contemplated by the Contract, shall not be less than the prevailing rate of wages and any supplements required

to be paid to the various classes of employees on such work, ascertained and determined by the Comptroller as set forth in a schedule which is set forth in Section B of Part IV of the Proposal for Bid, or as otherwise defined pursuant to law.

- B. No later than the first day upon which work on this Contract is to commence, the Contractor, and its subcontractors, shall notify all workers that the work to be performed under this Contract is subject to prevailing wages; and, shall post in a prominent and accessible place on the site of work a legible statement of the wages to be paid to the employees for the building service work contemplated. Such notification shall be further provided annually on the first day of July for the duration of the contract.
- C. An apprentice in a craft or trade may be permitted to work at a wage lower than that established for the journeyman in such craft or trade only if all of the following conditions are met:
 - (1) such apprentice has been individually registered in an apprenticeship program which is duly registered with the New York State Industrial Commissioner in conformity with Article 23 of the Labor Law;
 - (2) such apprentice's registration occurred prior to his/her employments as an apprentice on such craft or trade service work; and
 - (3) written proof of such individual registration is submitted to the Agency prior to such apprentice's employment as an apprentice. The proof submitted shall include evidence of the appropriate ratios and apprentice's wage rates. In no event shall the wage rate ratio of apprentice to journeyman employed on such service work be greater than the lesser of the following ratios:
 - (a) the ratio permitted in the apprenticeship program approved by the industrial Commissioner, or
 - (b) the ratio prevailing in the locality where the service work will be performed.
- D. The obligation of the Contractor to pay prevailing

supplements may be discharged by furnishing any equivalent combinations or fringe benefits or by making equivalent differential payments in cash under rules and regulations established by the fiscal officer.

- E. The prevailing wage rates are subject to change periodically. The Contractor has an obligation to pay the current prevailing wage rates. At a time the Contractor makes application for each partial payment, the Contractor shall submit to the said Commissioner a written certification of compliance with the current prevailing wage rates as required by Section 220 of the New York State Labor Law.
- F. Contractor and, to the extent that any subcontracts exceed \$750,000, applicable subcontractor(s), shall pay their workers in checks issued by a payroll service or automated payroll system, unless use of an in-house system is pre-approved by DoITT.
- G. Prior to any subcontractor commencing work under the contract, contractor shall enter into written agreements with subcontractors, which shall include prevailing wage and supplement requirements.

7.7 Records (§233 - Labor Law)

- A. The Contractor shall keep original payrolls or transcripts thereof, subscribed and confirmed by it as true, under penalties of perjury, showing the hours and days worked by each employee, the craft, trade or occupation at which he/she was employed, and the wages paid.
- B. Where the wages paid include sums which are not paid directly to the employee weekly and which are expended for supplements, the records shall include the hourly payment on behalf of such employees, the supplements for which such payment has been made, and the name and address of the person to whom such payment has been made. In all cases, the Contractor shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and a list of all persons for whom such payments are made.
- C. The records required herein shall be kept on the site of the

work during all of the time that work hereunder and under the Contract is being performed. Upon a formal order of the City, the Contractor shall produce within (5) days on the site of work, such records subscribed and affirmed by it as true under the penalties of perjury.

7.8 Certification of Wage Amounts (§237 - Labor Law)

As a prerequisite to any payments by the City, the Contractor and his subcontractors shall file a statement in writing and in form satisfactory to the Comptroller, certifying to the amounts then due for daily or weekly wages on account of labor performed upon the work hereunder and under the Contract, setting forth therein the names of the persons whose wages are unpaid and the amount due to or on behalf of each respectively, which statement so to be filed shall be certified by the oath of the Contractor or subcontractor, as the case may be that he has read such statement subscribed by him and knows the contents thereof, and that the same is true of his own knowledge.

7.9 Failure to Comply

- A. The Contractor agrees that, as required by Labor Law Section 220-b, in case of underpayment of wages or supplements to any worker engaged in the performance of this Contract by the Contractor or any Subcontractor, the City shall withhold from the Contractor out of payments due any amount sufficient to pay such worker the differences between the wages and supplements required to be paid by the Labor Law and wages and supplements actually paid such worker for the total number of hours worked plus interest as provided in the Labor Law, and the City may disburse such amount so withheld by the City for and on account of the Contractor to the employees to whom such amount is due.
- B. In the event of any violation of Labor Law Section 220, the City may terminate the Contract for cause, may issue an unsatisfactory performance evaluation in accordance with Section 20.07, Contractor Performance Evaluation, and may prohibit the Contractor from bidding, contracting or subcontracting on SCA projects for a period not to exceed five (5) years of duration from the date of the decision to terminate the Contract or the issuance of the unsatisfactory performance evaluation, which ever date is later.

- C. In accordance with E.O. 102, Contractor agrees that in the event that Contractor is found liable for a violation of any requirement of the Labor Law, Contractor shall be liable to the City for all costs associated with enforcing such requirements.

7.10 Discrimination in New York State (§220-e - Labor Law)

- A. In the hiring of employees for the performance of work under the Contract or any subcontract thereunder, the Contractor, subcontractor, or any person acting in behalf of the Contractor or subcontractor, shall not, by any reason of race, creed, color, sex or national origin, discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
- B. The Contractor, subcontractor, or any person on his behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex, or national origin.
- C. The City may deduct from any amount due and payable to the Contractor under this Contract a penalty of (\$5.00) for each person for each day during which such person was discriminated against or intimidated in violation of this section.

The City may terminate this Contract, and all monies due or to become due thereunder may be forfeited, for a second or subsequent violation of this section.

7.11 E.O. 50 – Equal Employment Opportunity

This Contract is subject to the requirements of Executive Order No. 50 (1980) as revised (“E.O. 50”) and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this Contract, the Contractor agrees that it:

- A. will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment

decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination and all other terms and conditions of employment;

- B. the Contractor agrees that when it subcontracts it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owner; race, color, creed, national origin, sex, age, disability, marital status or sexual orientation;
- C will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;
- D. will send to each labor organization or representation of worker with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;
- E. will furnish all information and reports including an Employment Report before the award of the Contract which are required by E.O. 50, the rules and regulations promulgated thereunder, and the orders of the Director of the Bureau of Labor Services ("Bureau") and will permit access to its books, records and accounts by the Bureau for purposes of investigation to ascertain compliance with such rules, regulations and orders.

The Contractor understands that in the event of its noncompliance with nondiscrimination clauses of this Contract with any such rules, regulations or orders, such noncompliance shall constitute a material breach of the Contract and noncompliance with the E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Bureau, the Director may direct the imposition by the contracting agency held of any or all of the following sanctions:

- (i) disapproval of the Contractor;
- (ii) suspension or termination of the Contract;

- (iii) declaring the Contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Bureau may recommend to the contracting agency head that a Board responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be non-responsible.

The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of Bureau of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The Contractor further agrees that it will refrain from entering into a contract or contract modification with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

ARTICLE 8. BOOKS AND RECORDS

8.1 Maintenance

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

8.2 Retention of Records

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement for (6) years after the final payment or termination of this Agreement, whichever is later. City, State and Federal auditors and any other persons duly authorized by the Department shall have full access to and the right to examine any of said material during said period.

8.3 No Removal of Records From Premises

Where performance of this Agreement and the Contract involves use by the Contractor of Department facilities or offices, the Contractor shall not remove any such papers, files, data or records therefrom without the prior approval of the Department's designated official.

8.4 Audit by the Department and City

- A. All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the New York City Charter and Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.
- B. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by said Department and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department and to the Comptroller as they consider necessary.
- C. All books, vouchers, records, reports, canceled checks and all similar material may be subject to periodic inspection, review and audit by the State of New York, Federal Government and other persons duly authorized by the City. Such audit may include examination and review of the source and application of all funds whether from the City, any State, the Federal Government, private sources or otherwise.
- D. The Contractor shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

9.1 Procurement of Agreement

- A. The Contractor represents and warrants that no person or

selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.

- B. For a breach or violation of such representations or warranties, the Administrator shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder and the Contractor shall make no claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

9.2 Conflict of Interest

The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

9.3 Fair Practices

The Contractor and each person signing on behalf of any contractor represents and warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief:

- A. The prices in this Contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- B. Unless otherwise required by law, the prices which have been quoted in this Contract and on the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the proposal opening, directly or indirectly, to any other bidder or to any competitor; and
- C. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The fact that the Contractor: (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of the above.

ARTICLE 10. COVENANTS OF THE CONTRACTOR

10.1 Employees

All expert or consultants or employees of the Contractor who are employed by the Contractor to perform work under this Contract are neither employees of the City nor under the Contract to the City and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Agreement. Nothing in the Contract shall impose any liability or duty on the City for the acts omissions, liabilities or obligations of the Contractor any person, firm company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, workmen's compensation, disability benefits and social security, or, except as specifically stated in this Contract, to any person, firm or corporation.

10.2 Independent Contractor Status

The Contractor and the Department agrees that the Contractor is an independent contractor, and not an employee of the Department or the City of New York, and that in accordance with such status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City of New York, or of any department, agency or unit thereof, by reason hereof, and that they will not, be reason hereof, make any claim, demand or application top or for any right or privilege applicable to an officer or employee of the City of New York, including, but not limited to, Workmen's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

10.3 Confidentiality

- A. All information obtained, learned, developed or filed by the Contractor in connection with public assistance recipients or services, including data contained in official Department files or records, shall be held confidential by the Contractor pursuant to the provisions of the Social Services Law of the State of New York, the Federal Social Security Act, Federal, State and Local Tax Law and any applicable regulations promulgated thereunder and shall not be disclosed by the Contractor to any person, organization, agency or other entity except as authorized or required by law.
- B. All of the reports, information or data, furnished to or prepared, assembled or used by the Contractor under this Agreement are to be held confidential, and prior to publication, the Contractor agrees that the same shall not be made available to any individual or organization without the prior written approval of the Department.
- C. The provisions of this Paragraph 10.3 shall remain in full force and effect following termination of or cessation of the services required by this Agreement and the Contract.

10.4 Compliance with Law

Contractor shall render all services under this Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect at the time such services are rendered.

10.5 Federal Employment Practices

The Contractor and its subcontractors shall comply with the Civil Rights Act of 1964 and any amendments thereto, and the rules and regulations thereunder.

10.6 Investigations

- A. The parties to this agreement shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
- B.
 - 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;
 - 2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit, or inquiry conducted by a City or State governmental agency or authority empowered directly by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

3. The commission or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
 4. If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 5 below without the City incurring any penalty or damages for delay or otherwise.
- C. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
1. The disqualification for a period not to exceed (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit, or license with or from the City; and or
 2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
- D. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs 1 and 2 below. He or she may also consider, if the relevant and appropriate, the criteria established in paragraphs 3 and 4 below in addition to any other information which may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 10.6D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Paragraph 10.6B3 above gives notice and proves that such interest was previously acquired. Under either circumstances the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

E. Definitions of term used in Paragraph 10.6 - Investigations:

1. The term "*license*" or "*permit*" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
2. The term "*person*" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
3. The term "*entity*" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from

or through the City or otherwise transacts business with the City.

4. The term "**member**" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

- F. In addition to and notwithstanding any other provision of this agreement the Commissioner or Agency Head may in is or her sole discretion terminate this agreement upon not less than (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any purpose which may be related to the procurement or obtaining of this agreement by the Contractor, or affecting the performance of this Contract.

10.7 Assignment

- A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement or of Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the notices due or to become due under this Contract, unless the prior written consent of the Administrator shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.
- B. In the event that the Contractor assigns, transfers, conveys, sublets or otherwise disposes of this Agreement or the Contract as specified in Paragraph 10.7A, above, without the prior authorized written consent of the Department, the Department shall revoke and annul this Agreement and the Contract and the Department shall be relieved and discharged from any and all liability and obligations growing out of such Agreement and the Contract, its assignees, transferees or subleases and they all and each of them shall forfeit and lose all monies theretofore earned under this Agreement and the Contract, except so much thereof as may be required to pay the Contractor's employees. The provisions of this section shall not hinder, prevent or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.

- C. This Agreement and the Contract may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

10.8 Subcontracting

- A. The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior written approval of the Department. Two copies of each such proposed subcontract shall be submitted to the Department with the Contractor's written request for approval.

- B. All such subcontracts shall contain provisions specifying:

1. that the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Department and the Contractor,
2. that nothing contained in such agreement shall impair the rights of the Department,
3. that nothing contained herein, or under the Agreement between the Department and the Contractor, shall create any contractual relation between the subcontractor and the Department, and
4. that the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Department and the Contractor.

- C. The Contractor agrees that it is fully responsible to the Department for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by then as it is for the acts and omissions of person directly employed by it.

- D. The aforesaid approval is required in all cases other than individual employer-employee contracts.

- E. The Contractor shall not in any way be relieved of any responsibility under this Contract by any subcontract.

10.9 Publicity

- A. The prior written approval of the Department is required before

the Contractor or any of its employees, servants, agents, or independent contractors may, at any time, either during or after completion or termination of this Agreement make any statement to the press or issue any material for publication through any media or communication bearing on the work performed or data collected under this Agreement.

- B. If the Contractor published a work dealing with any aspect of performance under this Agreement, or of the results and accomplishment attained in such performance, the Department shall have a royalty fee, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use the publication.

10.10 Participation in an International Boycott

- A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.
- B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Contractor or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render forfeit and void this Contract.
- C. The Contractor shall comply in all respects, with the provisions of section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

10.11 Inventions Patents and Copyrights

- A. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in to invention or discovery, including rights under any

patent issued thereon, shall be disposed of and administers in order to protect the public interest.

- B. No report, document or other data produced in whole or in part with Contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for the Contract.
- C. If any copyright material is developed under, or in the course of performing this Agreement or the Contract, any Federal Agency providing Federal financial participation for the Agreement or the Contract shall have a royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, the work for governmental purposes.
- D. In no case shall subsections A and B of this section apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

10.12 Antitrust

The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular goods or services purchased or procured by the City under this Agreement.

10.13 Political Activity

- A. There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with this Agreement, nor shall any of the fund provided under this Agreement be used for such purposes.
- B. No funds provided under this Agreement or the Contract shall be used, for publicity or propaganda purposes, for the distribution, or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress of the United States, except in presentation to the Congress itself.

- C. No funds provided under this Agreement or the Contract shall be used to pay the salary or expenses of any person to engage in any activity designed to influence legislation or appropriations pending before the Congress of the United States.

10.14 Clean Air Act

If the amount of this Agreement and/or Contract is in excess of \$100,000, the Contractor shall comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1837, et sec.) and the Federal Water Pollution Act (33 U.S.C. 1251, et sec.).

ARTICLE 11. TERMINATION

- 11.1 A. At any time during the period of this Agreement and the Contract the Department, upon ten days written notice to the Contractor, may cancel this Agreement and the Contract and terminate the service. In such event the Contractor shall be paid whatever sum has become due to him for services performed prior to the effective date of the cancellation without further liability to the City.
- B. The Contractor shall be entitled to apply to the Department to have this Agreement terminated by said Department by reason of any failure in the performance of this Agreement (including any failure by the Contractor to make progress in the prosecution of work hereunder which endangers such performance), if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; for any other case beyond the reasonable control of the Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of the Contractor shall be made by the Department which agrees to exercise reasonable judgement therein. If such a determination is made and the Agreement is terminated by the Department pursuant to such application by the Contractor, such termination shall be deemed to be without cause.
- C. All payments made following termination of this Agreement and the Contract pursuant to this Paragraph 11.1 shall be

accepted by the Contractor in full satisfaction of all claims against the City arising out of the Department's determinations and/or actions pursuant to this Paragraph 11.1.

- 11.2 The Contractor may be declared in default by the Administrator and the Department may terminate the Agreement and the Contract in whole or in part by written notice to the Contractor if:
- A. The Contractor becomes insolvent; or
 - B. The Contractor makes an assignment of a substantial portion of his business and assets for the benefit of creditors pursuant to the Statutes of the State of New York and the Federal Bankruptcy Code; or
 - C. A voluntary or involuntary petition in bankruptcy be files by or against the Contractor; or
 - D. A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or
 - E. The Contractor sublets, assigns, transfers, conveys or otherwise disposes of this Agreement or the Contract other than as herein specified; or
 - F. The Contractor fails or refuses to proceed with the work when and as directed by the Administrator; or
 - G. The Contractor is or has been unnecessarily or unreasonably or willfully delaying (i) the performance and completion of the work to be done pursuant to the Contract, or (ii) the obtaining of necessary subcontracts, or (iii) the placement of necessary material and equipment orders; or
 - H. The Contractor, without just cause, reduces his working force to a number which, if maintained, would jeopardize the timely performance of the Contract, and fails or refuses to increase such working force when ordered to do so by the Administrator; or
 - I. The work cannot be completed or is not completed within the time herein or in the Contract provided there for or within the time to which such completion have been extended; unless, however, the delay is caused by circumstances under the Administrator's control; or

- J. The Contractor shall refuse to do or abandons the work; or
 - K. The Contractor is or has been willfully or in bad faith violating any of the provisions of the Contract.
- 11.3 Before the Administrator shall exercise his right to declare the Contractor in default by reason of the conditions set forth in Paragraph 11.2 A, F, G, H, I and K, he shall give the Contractor an opportunity to be heard, on (2) days' written notice, at which hearing the Contractor may have a stenographer present; provided, however, that a copy of such stenographic notes, if any, shall be furnished to the Administrator.
- 11.4 In the event the Department or City shall terminate this Agreement, in whole or in part, as provided in this Article 11, the Department or City may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Contractor shall continue the performance of this Agreement to the extent not terminated hereby.
- 11.5 Notwithstanding any other provisions of this Contract, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Contract, and the City may withhold payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due to the City from the Contractor is determined.
- 11.6 The provisions of the Agreement regarding confidentiality of information shall remain in full force and effect following any termination.
- 11.7 The rights and remedies of the City provided in this section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Agreement.

ARTICLE 12. MISCELLANEOUS

12.1 Choice of Law, Consent to Jurisdiction and Venue

This Agreement and the Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York. The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined

either in the courts or the United States located in New York City ("*Federal Court*") or in the courts of the State of New York ("*New York State Courts*") located in the city and County of New York. To effect this Agreement and intent, the Contractor agrees:

- A. If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, whenever such Contractor may be found, or by registered mail addresses to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing; and
- B. With respect to any action between the city and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquished any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.
- C. With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquished any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
- D. If the Contractor commences any action against the City in a court located other than in the City, and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

12.2 General Release

The acceptance by the Contractor or its assignees of the final payment under this Contract, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to the City from any and all claims of and liability to the Contractor arising out of the performance of this Contract.

12.3 Claims and Actions Thereon

- A. No action at law or proceeding in equity against the City or Department shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.
- B. No action shall lie or be maintained against the City by the Contractor upon any claims based upon this Agreement unless such action shall be commenced within (6) months after the date of filing in the Office of the Comptroller of the City of the certificate for the termination or conclusion of this Agreement, or within (6) months after the accrual of the Cause of Action, whichever first occurs.
- C. In the event any claim is made or any action brought in any way relating to the Agreement herein, the Contractor shall diligently render to the Department and/or the City of New York without additional compensation any and all assistance which the Department and/or the City of New York may require of the Contractor.
- D. The Contractor shall report to the Department in writing within (3) working days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

12.4 No Claim Against Officers, Agents or Employees

No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the city for, or on account of, anything done or omitted in connection with this Contract.

- 12.5 If any provision(s), Paragraphs or subparagraphs of this Article, this Agreement or the Contract is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

12.6 Waiver

Waiver by the Department of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement and until the same shall be agreed to

in writing by the Department or City as required and attached to the original Agreement.

12.7 Notice

The Contractor and the Department hereby designate the business addresses hereinabove specified as the places where all notices, directions or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by certified mail shall be conclusive and deemed to be sufficient service thereof upon such party as of the date such notice direction or communication is received by the party. Such address may be changed at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified above. Nothing in this section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by law, including the Civil Practice laws and Rules.

12.8 All Legal Provisions Deemed Included

It is the intent and understanding of the parties to this Agreement that each and every provision of laws required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

12.9 Severability

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to be a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

12.10 Availability of Funds

In the event that the period of performance contemplated by this Agreement and the Contract involves performance by the

Contractor in City Fiscal Year(s) subsequent to the current City Fiscal Year ending on the next occurring June 30, each payment obligation of the City Created pursuant to this Agreement and the Contract to be satisfied in any such subsequent City Fiscal Year is conditional upon the availability of City funds which are appropriated or allocated for the payment of such obligations.

12.11 Paragraph Headings

Paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Contract and in no way affect this Contract.

12.12 Inspection at Site

The Department shall have the right to have representatives of the Department or of the City or of the State or of the Federal government at and on the site of the performance of the Contract at all times and for such inspection purposes as each and all of them shall deem to be necessary or desirable.

12.13 Recoupment of Disallowance, Questioned Costs and Overpayment

The Department may, at its option, withhold for the purpose of set-off any monies due to the Contractor under this Agreement and the Contract up to the amount of any disallowances or questioned costs resulting from any audits done by the City or the Department of the Contractor or up to the amount of any overpayment made to the Contractor with regard to this Agreement, the Contract or any other agreement between the parties hereto, including any agreement for a term commencing prior to the commencement day of this Agreement and the Contract.

ARTICLE 13. APPROVALS

13.1 The City of New York

This Agreement and the Contract shall not become effective until the Comptroller shall have endorsed his certificate that there remains unexpended a balance of the apportioned funds applicable to this Agreement and the Contract sufficient to pay for the estimated expense of executing this Agreement and the Contract.

13.2 New York State Financial Control Board

This Agreement and the Contract shall not become effective or

binding unless approved by the New York State Financial Control Board ("**Control Board**") pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "**Act**") in the event Regulations of the Control Board pursuant to the Act require such approval. This Agreement and the Contract are subject to the approval of the Control Board if it falls into any of the following categories:

- A. Any contract, other than Long-term leases and Collective Bargaining Agreements, of \$10,000,000 or more.
- B. Any Long-term Lease.
- C. Any Collective Bargaining Agreement or modification thereof as defined and governed by the Collective Bargaining Agreements Review and Approval Procedures adopted by the Control Board on April 23, 1981, and as they may be amended from time to time.
- D.
 - (1) Any amendment to a contract is required to be submitted to the Control Board pursuant hereto, other than a Long-term Lease or Collective Bargaining Agreement, which modifies the time or times of payment, or increases the amount required to be paid by the City, and which amendment, when considered in the aggregate with all price unapproved amendments to such contract otherwise approved since the last amendment, increases or may reasonably be anticipated to increase the base contract amount by increment(s) of \$500,000.
 - (2) Any amendments to a contract not initially required to be submitted to the Control Board pursuant hereto, other than a Long-term Lease or Collective Bargaining Agreement which amendment, when considered in the aggregate with the base contract, increases or may reasonably be anticipated to increase the base contract by an amount up to or beyond \$10,000,000.
 - (3) All subsequent amendments to a contract not initially required to be submitted to the Control Board pursuant hereto but which has been amended and such amendments was required to be submitted to the Control Board pursuant to Section 3(f) (ii) of the said Regulations of the Control Board, which subsequent contract amendments, when considered in the aggregate with all prior unapproved amendments to such contract, increase or may reasonably

be anticipated to increase the base contract as approved by increments of \$500,000.

- E. (1) Any amendment to a Long-term Lease as defined in Section 2(f)(1) or (2) of the said Regulations of the Control Board, which (a) modifies the term of the lease or renewal period, (b) increase the amount required to be paid by the City as rent or otherwise, (c) decrease the amount to be paid to the City pursuant to such Lease, or (d) modifies the times or amounts of any payments under the Lease.
- (2) Any amendment to a Long-term Lease as defined in Section 2(f)(3) of the said Regulations of the Control Board.

13.3 Other Approvals or Authorizations

The requirements of this Article 13 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement or the Contract to be effective and for the expenditure of City funds.

ARTICLE 14. CONTRACT CHANGES

- 14.1 Changes may be made to this Contract only as duly authorized by the Agency Chief Contracting Office or his or her designee. Vendors deviating from the requirements of an original purchase order or contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become a part of the original contract.
- 14.2 Contract changes will be made only for work necessary to complete the work included in the original scope of the Contract, and for non-material changes to the scope of the Contract. Changes are not permitted for any material alteration in the scope of work. Contract changes may include any contract revision deemed necessary by the Contracting Officer.
- 14.3 The Contractor may be entitled to a price adjustment, for extra work performed pursuant to a written change order, if any part of the Contract work is necessarily delayed by a change order, the Contractor may be entitled to an extension of time for performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

14.4 (This section has been intentionally left blank.)

- 14.5 Except in the case of a requirements contract, any contract increases which cumulative exceed the greater of 10% or \$100,000 must be approved in writing by the City Chief Procurement Officer. Any contract amendment which either amends a unit price, cancels required units, or adds a new type of unit type to the Contract, must be approved in writing by the Agency Chief Contracting Officer.

ARTICLE 15. EXECUTORY CONTRACT

The Contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the Contract, and no liability on account thereof shall be incurred by the City or the Department beyond the amount of such monies. It is understood that neither the Contract nor any representation by any public employee or officer, creates any legal or moral obligation to request appropriations or make available monies for the purpose of the Contract.

ARTICLE 16. EXTENSION OF TIME FOR PERFORMANCE

- 16.1 Upon written application by the Contractor, the Agency Chief Contracting Officer may grant an extension of time for performance of the Contract. Said application, must state, at a minimum, in detail, each cause for delay, the date the cause of the alleged delay occurred and the total number of delay in days attributable to such cause.
- 16.2 The ruling of the Agency Chief Contracting Officer shall be final and binding as to the allowance of an extension and the number of days allowed.

ARTICLE 17 RESOLUTION OF DISPUTES

- 17.1 Except as provided in 17.1 (a) and 17.1 (b) below, all disputes between the City and the vendor that arise under, or by virtue of, this contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board ("PPB Rules"). This procedure shall be the exclusive means of resolving any such disputes.
- (a) This section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets

(as interpreted by the courts of New York State) relating to proprietary rights in computer software.

- (b) For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the vendor's work to the contract, and the acceptability and quality of the vendor's work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the vendor disagrees.

17.2 All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.

17.3 During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the vendor shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer ("ACCO") or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of any and all claims being presented pursuant to this section and a material breach of contract.

17.4 Presentation of Dispute to Agency Head.

- (a) Notice of Dispute and Agency Response. The vendor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the vendor relies in support of its position, as well as a detailed computation demonstrating how any amount of money

claimed by the vendor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the vendor to produce any requested material whose relevancy the vendor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the vendor of its claim.

- (b) Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the vendor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other vendor with a contract related to the work of this contract and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the vendor initiating the dispute.
- (c) Agency Head Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head

shall make his or her determination and shall deliver or send a copy of such determination to the vendor and ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, together with a statement concerning how the decision may be appealed.

- (d) **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this section. The City may not take a petition to the CDRB. However, should the vendor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the vendor and more favorable to the City than the decision of the Agency Head.

17.5 **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the vendor to the CDRB, the vendor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

- (a) **Time, Form, and Content of Notice.** Within thirty (30) days of receipt of a decision by the Agency Head, the vendor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the vendor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head, and (iii) a copy of all materials submitted by the vendor to the agency, including the Notice of Dispute. The vendor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
- (b) **Agency Response.** Within thirty (30) days of receipt of the Notice of Claim, the agency shall make available to the Comptroller a copy of all material submitted by the agency to the Agency Head in connection with the dispute. The agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

- (c) **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the vendor. Willful failure of the vendor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the vendor of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, agency representatives, and any other personnel desired by the Comptroller.
- (d) **Opportunity of Comptroller to Compromise or Adjust Claim.** The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the vendor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The vendor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

17.6 **Contract Dispute Resolution Board.** There shall be a Contract Dispute Resolution Board composed of:

- (a) the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;
- (b) the City Chief Procurement Officer ("CCPO") or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background

to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated , and

- (c) a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

17.7 Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the vendor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

- (a) Form and Content of Petition by Vendor. The vendor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the vendor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the vendor to the agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the vendor to, the Comptroller's Office. The vendor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the vendor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.
- (b) Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the vendor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the agency

response shall be submitted to the CDRB at OATH's offices and one to the vendor. Extensions of time for submittal of the agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.

- (c) Further Proceedings. The Board shall permit the vendor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the vendor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the agency's case. Neither the vendor nor the agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
- (d) CDRB Determination. Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.
- (e) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the vendor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the vendor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be

thirty (30) days after the date the parties are formally notified of the CDRB's decision.

- (f) **Finality of CDRB Decision.** The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with Section 4-09 of the PPB Rules.

- 17.8 Any termination, cancellation, or alleged breach of the contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this section.

ARTICLE 18. ENTIRE AGREEMENT

This written Agreement and the Contract including any attachments or references which have been incorporated therein, contain all the terms and conditions agreed upon by the parties thereto, and no other agreement, written, oral or otherwise regarding the subject matter of this Agreement and the Contract shall be deemed to exist or to bind any of the parties thereto, or to vary any of the terms and conditions contained therein.

No Further Text On This Page

IN WITNESS, the parties hereto have executed this Agreement on
the date first written above.

THE CITY OF NEW YORK
Department of Information
Technology and Telecommunications

By: _____

Title: _____

Date: _____

(Contractor): _____

By: _____

Title: _____

Date: _____

EIN: _____

AGREEMENT

Acknowledgment by City of New York

STATE OF NEW YORK: ()

SS.:

COUNTY OF NEW YORK: ()

On the _____ day of _____, 200 before me personally came _____ to me known and known to me to be the Commissioner of the Department of Information Technology and Telecommunications of The City of New York, the person described as such in and who as such executed the foregoing AGREEMENT as Commissioner for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

=====

Acknowledgment by Corporation

STATE OF NEW YORK: ()

SS.:

COUNTY OF NEW YORK: ()

On the _____ day of _____, 200 before me personally came _____ who being duly sworn, did depose and say that he resides in the City of _____, State of _____, that he is the _____ of _____, the corporation described in and which executed the foregoing AGREEMENT, that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Notary Public or Commissioner of Deeds

General Conditions

Schedule A - Summary

PIN: 85809CSB0054

**UPS SERVICES AT VARIOUS LOCATIONS THROUGHOUT THE
FIVE BOROUGH**

REFERENCE	ITEM	REQUIREMENTS
Bid Security	Bid Deposit	N/A
	Bid Bond	or N/A
Art. 6.1	Performance Bond	N/A
Agreement	Payment Bond	N/A
Art. 3 Agreement	Period of Performance	5 Years with NO renewal options
Art. 6.7 IV.B) Agreement	Liquidated Damages/ Service Credit	See Spec. (Section
Art. 10.8 Agreement	Sub-Contracting	not to exceed 25%

General Conditions

Schedule A - Summary (cont'd)

PIN: 85809CSB0054

Insurance if indicated below by an "X" shall be required under this Contract. Insurance certificates, policies and endorsements shall be sent to the: Department of Information Technology and Telecommunications, 75 Park Place, 9th Floor, New York, NY 10007, Attn: Contracts Section. The City will be named as insured by endorsement to each relevant policy. Insurance Contracts are subject to approval by the City.

- | | | |
|-----|---|--|
| [X] | Worker's Compensation Statutory | {See Agreement. Art. 6.3} |
| [X] | Employer's Liability \$1,000,000 each accident | {See Agreement Art. 6.2} |
| [X] | Comprehensive General
Injury & Property Damage {See Agreement, Art. 6.2, 6.5}. | Combined Single Limit - Bodily
\$1,000,000 per occurrence
\$2,000,000 aggregate |
| [] | Professional Liability
per CNA Design Professionals
1-87503-A (ed. 8/83) or
deductible
equivalent | _____ per claim
_____ aggregate
_____ maximum

{See Schedule A, Art. 6.2(A)} |
| [X] | Automobile Liability
CA 00 01 (ed. 1/80)
or equivalent. Combined
Single Limit - Bodily
Injury & Property Damage
<u>\$ 1,000,000.00</u> each occurrence | The following coverage must be
provided:
[X] Comprehensive Form;
[X] Owned;
[X] Hired;
[X] Non-Owned
{See Agreement, Art. 6.6} |
| [] | Builder's Risk
115% of Total Contract Amount
{See Schedule A, Article 6.2(A).5} | All-Risk/Completed Value |
| [] | Other | |

SCHEDULE A (continued)

1. Comprehensive General Liability

Before commencing work at the site pursuant to this Agreement the Contractor shall procure a comprehensive general liability insurance policy in the Contractor's name and naming the City of New York Department of Information Technology and Telecommunications as an additional insured and endorsed to cover liability assumed by the Contractor under the indemnity provisions of this Contract.

This insurance policy must be maintained during the life of the Contract and shall protect the City and the Contractor and its subcontractors performing work at the site from claims for property damage and/or bodily injury which may arise from operations under this Agreement, whether such operations are conducted by the Contractor or by any person or entity directly or indirectly employed or engaged by him. Two (2) certificates of insurance shall be furnished in a manner acceptable to the Department of Information Technology and Telecommunications, together with copies of all endorsements pertaining to the requirements of this Contract,

The policy shall contain no exclusions or endorsements which are not acceptable to the Commissioner and shall be of a form and by an insurance company acceptable to the Commissioner.

The following endorsements are required to be made on the policy:

- (a) The Department of Information Technology and Telecommunications (DoITT) and the City of New York as additional named insured under this policy; and
- (b) Notices given under the Policy of the Insured shall be addressed to the Commissioner of the Department of Information Technology and Telecommunications (DoITT) c/o the Contract Section, 75 Park Place, 9th Floor, New York, NY 10007.
- (c) Notwithstanding any provision of this policy to the contrary, notice by or on behalf of the City as Additional Insured of any occurrence, offense or claim of such notice is required, will be deemed timely if given to the Insurance Company as soon as practicable after a Notice of Claim adequately specifying the occurrence, offense, or claim as one potentially covered under the policy has been filed with the Comptroller; however in no event shall "as soon as practicable" be a period more than one hundred eighty (180) days thereafter; and

- (d) Notice to the Company (carrier) by the Contractor of an accident or claim on the site shall constitute notice by the City to the Company; and
- (e) Notice of Cancellation of Policy: The Policy shall not be canceled, terminated, modified or changed by the Insurance Company unless sixty (60) days prior written notice is sent to the Insured by Registered Mail and also sent to the Commissioner of DoITT and the Comptroller's Office Attention: Office of Contracts Administration, Municipal building, Room 1010, New York, NY 10007. Nor shall the policy be canceled, terminated, modified or changed by the Insured without the prior consent of the Commissioner.

2. Insurance Agreement

- (a) The Contractor is required to obtain and maintain the Insurance outlined in Article 6 of the Agreement.
- (b) The insurance required for this Contract must be offered on forms acceptable to the Department and offered by Insurers acceptable to the Department who are licensed and authorized by the State of New York to do business in New York State as an Insurer.
- (c) Where circumstances warrant, the Department may, at its sole discretion, but subject acceptance by the Law Department of the City of New York and/or the Office of the Comptroller, accept letters of credit or custodial accounts in lieu of specific insurance requirements.
- (d) The Contractor/Consultant agrees, and all Insurance policies contributing to satisfaction of this Schedule A's Insurance requirements shall provide, that "the policy shall not be canceled, terminated or modified by the Insurance company unless at least (30) days prior written notice is given to the City of New York, DoITT, 75 Park Place, 9th Fl., New York, NY 10007, Attn: Contracts Section; nor shall it be modified terminated or canceled by the Contractor/Consultant without the prior written approval of the Commissioner of the DoITT.
- (e) The Contractor shall be solely responsible for payment of all premiums for Insurance obtained and maintained in satisfaction of the requirements of the Schedule A and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New York is an insured under the policy.
- (f) The Contractor shall promptly notify the Department's Contracts Section of any accidents arising in the course of operations under the Contract causing bodily injury or property damage.

SCHEDULE A – LIABILITY AND INSURANCE

1 Liability and Indemnity.

1.1 Contractor. Contractor shall indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors (the “Indemnitees”) harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, charges and expenses (including, without limitation, attorneys’ fees and disbursements) that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of or related to this Contract; provided, however, that the foregoing liability and indemnity obligation of Contractor pursuant to this section “1.1” shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of any willful misconduct or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors. Further, it is a condition of this Contract that the City assumes no liability for liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys’ fees and disbursements) to either persons or property on account of the same, except as expressly provided herein.

1.2 No Liability for Damages. Neither the City nor its officers, agents, servants, employees, attorneys, consultants and independent contractors shall have any liability to Contractor for any damages as a result of the proper and lawful exercise of any right of the City pursuant to this Contract or applicable law; provided, however, that the foregoing limitation on liability pursuant to this section “1.2” shall not apply to any liability arising out of any willful misconduct or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors. Notwithstanding the above, neither the City nor its officers, agents, servants, employees, attorneys, consultants or independent contractors shall be subject to special, incidental, consequential or punitive damages.

1.3 Defense of Claim, etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in section 1.1 hereof, then upon demand by the City, Contractor shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee’s name by the attorneys for or approved by, Contractor’s insurance carrier (if such claim, action or proceeding is covered by insurance) or by Contractor’s attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation, such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee’s defense of such claim, action or proceeding, as the case may be, and Contractor shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee.

2 Insurance.

2.1 Specifications. Prior to the execution of this Contract, Contractor shall, at its own cost and expense, furnish to DoITT, with a copy to the Comptroller, an insurance certificate indicating that Contractor has obtained a Commercial General Liability insurance policy taking effect no later than the Effective Date, issued by a company duly licensed to do business in the State of New York, insuring Contractor and the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors, protecting Contractor and the City for any injuries and damages arising out of or related to this Agreement in the following minimum amounts: (1) for bodily injury, including death, (a) One-million dollars (\$1,000,000.00) for any one person and (b) One-million dollars (\$1,000,000.00) per occurrence, (c) and Two-million dollars (\$2,000,000.00) aggregate; and (2) for property damage in the minimum amount of One-million dollars (\$1,000,000.00). All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least AA, unless prior written approval is obtained from the Mayor's Office of Operations. The foregoing minimum coverage shall not prohibit Contractor from obtaining a liability insurance policy or policies with coverage in excess of such minimum, provided that the City shall be named as an additional insured to the full extent of any limitation contained in such policy or policies obtained by Contractor.

2.2 Maintenance. (a) Contractor shall continuously maintain one or more liability insurance policies meeting the requirements in section 2.1 hereof throughout the Term and thereafter until completion of all requirements arising out of or related to this Agreement. (b) Each such liability insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled, terminated or modified, neither may the insurer's intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, of such intent to so cancel, terminate, modify or not to renew." Within sixty (60) days after receipt by the City of any said notice, and in no event later than thirty (30) days prior to any said cancellation, Contractor shall obtain and furnish to DoITT, with a copy to the Comptroller, replacement insurance policies in a form acceptable to DoITT and the Comptroller together with evidence demonstrating that the premiums for such insurance have been paid. Failure to maintain insurance coverage as set forth in this section 2 shall be an Event of Default under this Agreement.

2.3 Adjusted Insurance Coverage. Contractor agrees to adjust the minimum coverage of the liability insurance policy or policies required by section 2.1 within three (3) months of notice from the City that the City has reasonably determined that circumstances have arisen which makes it reasonably prudent to obtain such additional amounts or types of insurance.

2.4 Liability Not Limited. The liability of Contractor and any Affiliated Person to the City or any Person for any of the matters which are the subject of the liability insurance policy or policies required by this section 2 shall not be limited by said insurance policy or policies nor by the recovery of any amounts thereunder; provided, however, that the City shall in no case be entitled to duplicative recoveries from different sources.

SECTION VI: ELECTRONIC FUNDS TRANSFER (EFT)

ELECTRONIC FUNDS TRANSFER

A. In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance with information necessary for Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

B. The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

Mail to: NYC Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 -
Attention: EFT, or **Fax to:** EFT at 212-361-7063.

INSTRUCTIONS: Please complete all sections of this Enrollment Form and attach a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name. See the reverse side for more information and instructions.

SECTION I - VENDOR INFORMATION

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER: (AS IT APPEARS ON W-9 FORM)			
2. VENDOR NAME (AS IT APPEARS ON W-9 FORM):			
3. VENDOR'S ADDRESS (FOR EFT ENROLLMENT PURPOSES):			
4. VENDOR'S EMAIL ADDRESS:		CONTACT PERSON TELEPHONE NUMBER:	
5. CONTACT PERSON NAME:		CONTACT PERSON TELEPHONE NUMBER:	

SECTION II - FINANCIAL INSTITUTION INFORMATION

1. BANK ACCOUNT NUMBER:		2. ACCOUNT NAME:	
3. BANK NAME :			
4. BANK BRANCH ADDRESS:			
5. ROUTING TRANSIT NUMBER: (LOCATED AT THE BOTTOM OF YOUR CHECK)		6. ACCOUNT TYPE - MUST BE EITHER CHECKING OR SAVINGS: (CHECK ONE BOX ONLY)	
7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:		TELEPHONE NUMBER:	

SECTION III - VENDOR SIGNATURE

VENDOR SIGNATURE _____ PRINT NAME _____ DATE _____

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

GENERAL INSTRUCTIONS

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to: NYC Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 - Attention: EFT, or Fax to: EFT at 212-361-7063.

SECTION I - VENDOR INFORMATION

1. Enter the vendor's social security number or taxpayer ID number, the 9-digit number reported on the W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's E-mail address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person.)

SECTION II - FINANCIAL INSTITUTION INFORMATION

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Provide bank's name
4. Provide the complete address of your bank.
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account. Account must be designated as either checking or savings. (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

SECTION III - VENDOR SIGNATURE

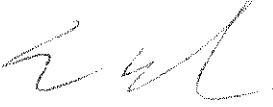
Sign and date where indicated.

THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY AND
TELECOMMUNICATIONS
75 Park Place, 9th Floor
New York, NY 10007

**MAINTENANCE AND SERVICE FOR THE UPS AT VARIOUS
LOCATIONS THROUGHOUT THE FIVE BOROUGH**

PIN: 85809CSB0054

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY



Acting Corporation Counsel



NOV 19 2009

Dated: _____