



# **CITY OF PHILADELPHIA**

**Managing Director's Office**

## **REQUEST FOR PROPOSALS**

**TO PROVIDE**

**A Web Based Information System  
Serving Philadelphia's Out-of-School Time (OST) Programs**

<b>Deadline for Receipt of Proposals:</b>	<b>June 1, 2017, 5:00 PM (Local Philadelphia Time)</b>
<b>Pre-Proposal Meeting(Online):</b>	<b>May 15, 2017, 1:00PM (Local Philadelphia Time)</b>
<b>Deadline for Questions:</b>	<b>May 19, 2017, 5:00 PM (Local Philadelphia Time)</b>

*James F. Kenney, Mayor*  
*Michael DiBerardinis, Managing Director*

**City of Philadelphia**  
**Managing Director's Office**

**Request for Proposals**  
**for**  
**Web Based Information System**  
**Serving Philadelphia's Out-of-School Time (OST) Programs**

*May 5, 2017*

**Table of Contents**

<b>1</b>	<b>General Information.....</b>	<b>1</b>
1.1	Background and General Scope of Work .....	1
1.2	General Statement of Proposal Requirements .....	2
1.3	Proposal Submission Date; Anticipated Procurement Schedule.....	3
1.4	City's Primary Contact .....	4
1.5	Compliance with Chapter 17-1400 of The Philadelphia Code .....	4
<b>2</b>	<b>RFP Requirements and Conditions.....</b>	<b>5</b>
2.1	Fixed Price Proposal Required.....	5
2.2	Type of Solution Sought .....	5
2.3	Pilot (Proof of Concept).....	6
2.4	Maintenance and Support; Warranty; Training; Source Code .....	6
2.4.1	Maintenance and Support Services.....	6
2.4.2	Warranty .....	6
2.4.3	Training.....	7
2.4.4	Software Source Code .....	7
2.5	Responsiveness .....	7
2.6	Disclaimer .....	7
2.7	Publicity .....	8
2.8	Applicants Restricted .....	8
2.9	Participation of Disadvantaged Business Enterprises .....	8
2.10	Acceptance of the Terms and Conditions of This RFP.....	8
2.11	Proposal Submission, Evaluation and Selection .....	9
2.11.1	General.....	9
2.11.2	Rights and Options Reserved.....	9
2.11.3	Contract Negotiation and Award .....	10
2.11.4	Proposal Evaluation .....	10
2.11.5	Site Inspections.....	11
2.11.6	Prime Contractor Responsibility.....	12
2.12	Responsibility for Proposal Costs .....	12
2.13	Proposal Security .....	12
2.14	Withdrawal or Modification of Proposals.....	12
<b>3</b>	<b>Proposal Requirements .....</b>	<b>12</b>

3.1	Administrative Requirements .....	12
3.1.1	Mandatory Online Registration and Filing Requirements .....	12
3.1.2	Pre-Proposal Meeting .....	14
3.1.3	Addenda to the RFP; Requests for Information; Inconsistencies .....	14
3.1.4	Proposals Binding .....	15
3.1.5	Proposal Submission Requirements.....	15
3.2	Implementation Plan, Statement of Work, Project Schedule and Milestone Payment Schedule .....	16
3.3	Proposal Contents .....	17
3.3.1	Volume 1 – Qualifications of Applicants .....	17
3.3.2	Volume 2 – Technical Approach and Cost Proposal .....	19
3.4	Certification of Compliance with Equal Benefits Ordinance .....	22
3.5	Local Business Entity or Local Impact Certification .....	22
3.6	The Philadelphia Tax and Regulatory Status and Clearance Statement .....	22
<b>4</b>	<b>City-Wide Contract Requirements .....</b>	<b>23</b>
4.1	Term and Renewal .....	24
4.2	Certificate of Non-Indebtedness .....	24
4.3	Insurance; Performance and Payment Bonds.....	25
4.3.1	Insurance.....	25
4.3.2	Performance and Payment Bonds .....	27
4.4	Indemnification .....	27
4.5	Proprietary Rights Indemnification.....	27
4.5.1	Indemnification.....	27
4.5.2	Infringing Products .....	28
4.5.3	Exclusive Remedy .....	28
4.6	Century Date Standard .....	28
4.6.1	Covered Work.....	28
4.6.2	Century Date Standard.....	29
4.6.3	Defects and Errors .....	29
4.7	Performance Standards .....	29
4.8	Acceptance.....	29
4.8.1	Conditional Acceptance.....	29
4.8.2	Final Acceptance .....	30
4.8.3	Acceptance Test(s); Test Plan(s) .....	31
4.8.4	Reliability Periods .....	31
4.9	Retainage .....	32
4.10	City Audit .....	32
4.11	Termination for Convenience .....	32
4.12	Termination for Default .....	32
4.13	Sales and Use Tax Exemption .....	33
4.14	Unavailability of Funds.....	33
4.15	Tax Requirements .....	33
4.16	Assignment .....	34
4.17	Document Preparation Fee.....	34
4.18	Nondisclosure of City Data and Contractor Data .....	35
4.18.1	Nondisclosure .....	35
4.18.2	City Data.....	35
4.18.3	Contractor Data.....	35

4.18.4	Exclusions .....	35
4.18.5	Remedy for Breach .....	36
4.19	Ethics Requirements .....	36
4.19.1	Gifts .....	36
4.19.2	City Employee Interest in City Contracts .....	36
4.19.3	Conflict of Interest .....	37
4.20	Non-Discrimination; Fair Practices .....	37
4.21	The Philadelphia Code, Section 17-400 .....	37
4.22	Americans with Disabilities Act .....	38
4.23	Business Interests in Northern Ireland .....	38
4.24	Business, Corporate and Slavery Era Insurance Disclosure .....	39
4.25	Limited English Proficiency .....	39
4.26	Health Insurance Portability and Accountability Act .....	39
4.27	Philadelphia 21 <sup>st</sup> Century Minimum Wage and Benefits Standard.....	40
Appendix A	Detailed Project Requirements	
Appendix B	Requirements for Implementation Plan, Statement of Work, Project Schedule, and Milestone Payment Schedule	
Appendix C	Cost Proposal Requirements	
Appendix D	Requirements Compliance Certification	
Appendix E	Training Requirements	
Appendix F	Office of Economic Opportunity, Antidiscrimination Policy – Minority, Woman and Disabled Owned Business Enterprises (F-1) Antidiscrimination Policy and Solicitation for Participation and Commitment Form (F-2) Special Antidiscrimination Requirements Applicable to Nonprofit Organizations and Diversity Report of Nonprofit Organizations Form	
Appendix G	Provisions Required by Chapter 17-1400 of the Philadelphia Code	
Appendix H	Tax and Regulatory Status and Clearance Statement	
Appendix I	Local Business Entity or Local Impact Certification	
Appendix J	General Provisions	

# **1 General Information**

## **1.1 Background and General Scope of Work**

Through this Request for Proposals (“RFP”), the City of Philadelphia (“City”), acting by and through The Managing Director’s Office (“MDO”), seeks proposals from qualified Applicant for the provision of Web-based Data Management Information System (“MIS” or “System”) to track and manage Out-of-School-Time (OST) Programs across the City of Philadelphia.

The City of Philadelphia has a multi-pronged Out-of-School Time system, serving approximately 187,000 youth participants across multiple City departments and Department of Human Services (“DHS”)-funded non-profits that provide afterschool and summer time activities for children and youth (*see details in Table 1 under Appendix A*). This number does not include the non-profit and community-based programs, funded primarily by the Commonwealth, that provide positive OST opportunities for young people.

At the direction of the Managing Director’s Office, the City has developed the first strategic plan focused on Philadelphia’s citywide OST system. This plan builds upon a grant provided by The Wallace Foundation in 2012, which worked to build a data management system for OST, referred to as Efforts To Outcome (ETO), a software provided by Social Solutions Global Inc. The strategic plan is intended to integrate Philadelphia’s OST community under a unifying vision and agenda that will help build a vibrant and thriving OST environment for youth, and addresses three specific areas: Quality Programming, Community Engagement, and Partnerships; the full strategic plan can be viewed at [PhillyBOOST.com](http://PhillyBOOST.com). A robust data collection system is critical in supporting this overall initiative, especially the quality programming component as envisioned by the City. We are at a point in our evolution of OST systems-building in Philadelphia where the new plan is providing impetus to not only enhance and streamline the current data tracking process but also to bring into our fold additional OST networks/programs that are not yet part of it.

What we are seeking through this proposal is a secure web-based Management Information System that will meet the current system requirements (as conveyed by this RFP) and that is accessible over a wide range of devices with a very intuitive and easy-to-navigate user interface. The MIS should avail itself to ease of data access, strong report generation facilities, hassle-free customization, outcomes-based data tracking, data aggregation across programs and ease of integration with the current data tracking systems that some providers or networks of providers have in place. MDO reserves the right to consider all proposals for satisfying the business and technical requirements identified in this RFP, including proposals from the incumbent vendor to upgrade and extend the ETO software, as well proposals from other software vendors or implementation vendors to replace the ETO software with a new System.

No computer hardware or other equipment, and no network or computer installation services (such as cabling or physical installation of equipment) will be purchased under any contract resulting from this Request for Proposals. The City will purchase such equipment and services separately, through its normal procurement process.

## 1.2 General Statement of Proposal Requirements

The OST data stakeholders in Philadelphia include City government, OST providers as well as educational and philanthropic partners. As indicated above, ETO a web-based commercial off-the-shelf (COTS) solution) in place currently has been instrumental in reducing the fragmentation in data collection efforts, however, silos still exist, and of the current OST network of programs using the system, the data tracking process is not entirely uniform. This lack of overall systems integration and data aggregation (and in many cases lack of data) has hampered the City's efforts to develop an integrated body of knowledge about the broad array of OST programs offered and limits the ability to track outcomes and measure performance. Furthermore, over the past three years, we have identified certain enhancements needed in the current data system that will mitigate some of the barriers to data collection efforts and improve buy-in. These enhancements are part of the detailed set of requirements spelled out in *Appendix A* and which further includes feature requests based on input from a broad array of our OST stakeholders.

The City seeks proposals from Application Service Providers ("ASP") and Contractors who provide Software as a Service ("SaaS") to apply for this initiative. The City prefers a solution hosted in a "cloud" environment where the Contractor/vendor is responsible for establishing and maintaining the software, infrastructure and/or platform within defined service levels. In short, the City requests that Applicants offer their "best" solutions that will satisfy the requirements set forth in this RFP. The MIS must meet all federal, state and local privacy requirements and regulations, including HIPAA and FERPA.

The MIS will be used by the programs funded by three City departments, namely Department of Human Services (DHS), Philadelphia Parks and Recreation (PPR) and the Free Library of Philadelphia (FLP), and subsequently through phased deployment, the System will be extended to many organizations which operate OST/After School Programs using non-City resources, either as their main data-tracking system or through data integration. For an illustration of the current Data framework and envisioned MIS, please refer to *Table 2 "Philadelphia OST Data and Program Improvement Framework" in Appendix A.*

The system is expected to be accessed by a host of entities ranging from municipal agencies, nonprofit providers and the initiative's core team, and within those entities by staff having different roles and responsibilities.

The Applicant will be required to provide a software system that is superior to our current offering and offers the following capabilities (but not limited to):

- Allow end users role-based access to track youth demographics, enrollments, attendance and participation, including over mobile devices such as smartphones and tablets;
- Allow users to capture and analyze performance and outcomes data at individual, program/provider and system levels;

- Barcode scanning for attendance tracking over smartphone or similar devices;
- An easy-to-use roster-based daily attendance tracking interface;
- Be flexible enough to support the diverse set of providers' data collection and reporting needs;
- Be easy to use and well-received by end users so that there is a quick learning curve and adoption;
- Presence of a strong search functionality allowing for specific data to be searched based on several standard criteria;
- Have the capability to easily expand and upgrade to accommodate future providers that are added and need to quickly begin capturing data;
- Can capture and manage accurate/reliable and unduplicated data;
- Have robust reporting capabilities that allow for authorized end users to run, generate and create custom reports with no additional involvement from the vendor;
- Allow for easy integration with existing systems and databases like PCAPS and hassle-free batch uploads;
- Has a contracting/proposal/invoice generation module or can easily share relevant data with one such system.

#### Features for Administrators at the City level

- Availability of tools for enterprise administrators to streamline enterprise-wide tasks (such as granting user role permissions for specific forms and reports, based on program groupings).

Detailed requirements for the System and/or services sought by this RFP are provided in Appendix A, *Detailed Project Requirements*.

### 1.3 Proposal Submission Date; Anticipated Procurement Schedule

The date for submitting Proposals pursuant to this RFP (the "Submission Date") is as provided below. Proposals must be submitted as provided in Section 3.1.5, *Proposal Submission Requirements*, by the time on the Submission Date indicated below.

<b><u>Date</u></b>	<b><u>Activity</u></b>
<i>May 5, 2017</i>	Issue Request for Proposals
<i>May 15, 2017 at 1:00PM EST</i>	Pre-Proposal Meeting ( <i>Optional to participate</i> ) Location: Online, web-based
<i>May 19, 2017, 5:00PM</i> <i>(Local Philadelphia Time)</i>	Submit questions, requests for clarification, information to Primary Contact, in writing
<i>May 23, 2017, 5:00PM</i>	Response to Questions Posted

*June 1, 2017, 5:00PM (Local  
Philadelphia Time)*

Submit Proposals

*July 1, 2017*

Notice of Intent to Contract

*Sept 1, 2017*

Project start

These dates are estimates only and the City reserves the right, in its sole discretion, to alter this schedule as it deems necessary or appropriate. Notice of changes in the due date/time for submission of Applicant questions, and the date/time for Proposal Submission will be posted on the City's website at <https://secure.phila.gov/econtract> ("eContract Philly"). The other dates/times listed may be changed without notice to prospective Applicants.

Applicants to this RFP (each an "Applicant" and collectively "Applicants") must submit their responses and applications electronically on eContract Philly and in accordance with Section 3.1.5, *Proposal Submission Requirements*. Submissions will not be considered unless the Applicant has proceeded through the eContract Philly system. For more information, please consult the reference materials found on the website, e-mail [econtractphilly@phila.gov](mailto:econtractphilly@phila.gov) or call 215-686-4914. . **Applicants who have failed to file complete applications to the correct opportunity number through the eContract Philly online application process prior to the closing date and time will not be considered for the contract.** The City encourages Applicants to start and complete their online applications as early as possible.

#### **1.4 City's Primary Contact**

The name, address, and contact information for the City's Primary Contact for this RFP are as follows:

**Christine Piven  
Municipal Services Building  
1401 JFK Blvd., Suite 1430  
Philadelphia, PA 19102  
[christine.piven@phila.gov](mailto:christine.piven@phila.gov)**

All questions, requests for clarification, and requests for additional information regarding this RFP must be submitted in writing by the deadline set forth in Section 1.3. No oral response by any employee or agent of the City shall be binding on the City, or shall in any way constitute a commitment by the City. If an Applicant finds any inconsistency or ambiguity in the RFP, the Applicant is requested to notify the City by the questions due date set forth in Section 1.3.

#### **1.5 Compliance with Chapter 17-1400 of The Philadelphia Code**

Under any contract resulting from this RFP, the successful Applicant shall be required to comply with the terms and conditions set forth in Appendix G, *Provisions Required by Chapter 17-1400 of the Philadelphia Code*, which shall be incorporated into the contract.



## **2 RFP Requirements and Conditions**

### **2.1 Fixed Price Proposal Required**

Cost proposals for the MIS must be “fixed price” proposals. (see Cost Proposal Template). The proposed fixed flat fee will include all costs that will be incurred during the implementation of the project and is expected to include initial set-up costs including integrations, customization, project management, the yearly licensing fee (by site or by user, as applicable) and ongoing training. Any software customization (for required features not included in the base system) and integration with other systems should be included as part of the Fixed Cost (see Appendix C, *Cost Proposal Requirements*). If an Applicant offers options and/or alternates that are not included in the fixed price for the proposed System, the Applicant must provide for each such option/alternate the following information:

- A detailed description of the option/alternate (including, but not limited to, all features and functionality that will be unavailable in the base System if the option/alternate is not purchased) and
- A full explanation of the rationale for not incorporating such functionality in the base System;

Applicants should also be mindful that the System is to be used by a variety of OST networks and is anticipated to integrate with other established MIS systems and thus will be “general” in nature, and as such should not require much customization (except at the local administrative level) as is often the case with systems used by individual agencies with specific needs.

The cost proposal must identify, by separate line item, the cost of each item of software, services, and other work to be furnished as part of the System. The City reserves the right, in its sole discretion, to reject without evaluation any Proposal that does not identify each item of the work by line item, and any Proposal that does not provide a fixed price to perform the proposed work (including, but not limited to, proposals to perform the work on a “time and materials” or “cost-plus” basis).

### **2.2 Type of Solution Sought**

The City seeks to implement a “state of the art” System, which will satisfy all of the City’s current requirements, as specified in this RFP, and also be easy to maintain and easy and inexpensive to upgrade and expand to satisfy future needs for additional functionality and/or processing capacity. The City prefers a solution hosted in a cloud/(SaaS) environment where the Contractor is responsible for establishing and maintaining the software, infrastructure and/or platform within defined service levels and consumption-based economics. In short, the City requests that Applicants offer their “best” solutions that will satisfy the requirements set forth in this RFP and competitive pricing.

## **2.3 Pilot (Proof of Concept)**

The City anticipates that some Applicants will be required to conduct a demonstration of their proposed solution (Software demonstrations will include (on the spot or scheduled) user testing for enrollment, attendance and other related tasks). In these demonstrations, product and service representations made via your written responses will be verified by the evaluation committee/Data Work Group along with the viability of the solution and its compliance with the RFP requirements. All expenses incurred by Contractors for on-site presentations or through remote audio/visual means will be borne by the Contractors.

## **2.4 Maintenance and Support; Warranty; Training; Source Code**

### **2.4.1 Maintenance and Support Services**

The Proposal must include a section describing the maintenance and support services to be provided under the contract resulting from the RFP. A minimum of one (1) year of maintenance/support services, commencing on final acceptance of the System and project by the City, must be included in the fixed price cost proposal, with the price identified in a separate line item. The City expects that maintenance and support will be furnished on a “turnkey” basis – i.e. the successful Applicant will itself be contractually responsible for all maintenance and support services for all elements of the System, including but not limited to all software and any data transport services that are required under the contract, and will be the single point of contact for service and support. Applicants are requested to price four additional years of maintenance and support, with the price for each of years two through five identified in a separate line item. The City expects that the successful Applicant will guarantee the availability of maintenance and support services for application software, on the foregoing “turnkey” basis, for a minimum of five (5) years from final acceptance of the System. Proposals must include a description of the proposed services, stating whether the Applicant will comply with the foregoing terms, and describing the Applicants problem resolution procedures – including problem severity classifications, response times and “fix” times for each level of severity, and the escalation procedures (including on-site service) that will apply where resolution is not immediately achieved.

### **2.4.2 Warranty**

The City requires a warranty from the successful Applicant that covers the entire System, including all software, other deliverables, design, implementation/integration and other services required under the contract resulting from the RFP and ensures compliance with all specifications, including performance standards, in the contract. The warranty must be on a “turnkey” basis – i.e. the successful Applicant must itself be contractually responsible for all warranty obligations and must be the single point of contact for service under the warranty. The warranty period must be a minimum of one (1) year, commencing on final acceptance of the System and project by the City. The price of such a one year warranty must be included in the fixed price cost proposal, with the price identified in a separate line item. The City strongly prefers a two year or greater warranty period and requests that Applicants price two additional warranty years, with the price for each additional warranty year identified in a separate line item of the cost proposal. Any premium

charged for a warranty year – i.e. any charge in addition to the price for a concurrent year’s maintenance and support services – should be identified in the cost proposal.

### **2.4.3 Training**

The City requires the user training and other training services described in Appendix E, *Training Requirements*, in accordance with the conditions there provided. Proposals should describe, and in the Cost Proposal provide line item costs for, the training that the Applicant can provide, the training methodologies and materials to be used, and the Applicant’s experience in furnishing the kinds of training requested. Proposals should state clearly, in the Requirements Compliance Certification, whether each type of training requested will be offered in accordance with the requirements of *Appendix E*.

### **2.4.4 Software Source Code**

The City expects delivery and ownership of the source code, including complete documentation and specifications, for custom software developed and furnished specifically for the System under any contract resulting from this RFP. For software that is proprietary to the successful Applicant or to third parties, the City expects that source code, including complete documentation and specifications, will be deposited in escrow, at no expense to the City and on terms satisfactory to the City, with regular updates of the deposited code and documentation to reflect enhancements, upgrades, updates, and corrections to the software.

## **2.5 Responsiveness**

Proposals must satisfy all requirements set forth in this RFP. Any Proposal that does not adhere strictly to RFP requirements may, in the sole discretion of the City, be rejected, as not responsive to the RFP, without further consideration. Proposals will be evaluated, in part, according to whether the Applicant meets the qualifications described in the RFP and submits a Proposal complying with all RFP requirements. The City reserves the right, in its sole discretion, to determine whether any deviation(s) from or exception(s) to RFP requirements make the Proposal non-responsive or otherwise unacceptable such that the Proposal will be rejected without further consideration.

## **2.6 Disclaimer**

This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. This RFP is not binding on the City. No other party, including any Applicant to this RFP or future Applicant to any RFP that may be issued by the City, is intended to be granted any rights hereunder. Proposals and other materials submitted in response to this RFP, whether written or verbal and including, without limitation, ideas of Proposers elicited in response to the RFP, shall become the sole and absolute property of the City upon submission or communication, and the City shall have title thereto and unrestricted use thereof. The City shall have the right to disclose the Proposals, materials and any ideas to any person or entity including, employees of the City, its consultants and contractors, and authorized agents, as required to carry out this RFP procurement. Any such Proposal, materials, and ideas may be publicly disclosed by the City or any authorized agent of the City, for any reason the City, in its sole discretion, deems appropriate, or pursuant to the Pennsylvania Right To Know Act or other applicable law. The Proposer acknowledges and agrees that the City and its authorized agents shall have the foregoing right of

public disclosure notwithstanding any notice or statement by the Proposer (whether made in the Proposal or otherwise) asserting the confidential or proprietary nature of the Proposal or of any materials submitted or ideas elicited in response to the RFP.

## **2.7 Publicity**

All publicity (including, but not limited to, news releases, news conferences, and commercial advertising) relating to this RFP and/or the services or products sought by this RFP and/or any contract awarded pursuant to this RFP shall require the prior written approval of the CIO, Charles Brennan.

## **2.8 Applicants Restricted**

No Proposal shall be accepted from, or contract awarded to, any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest. No Applicant may be the prime contractor or prime Applicant for more than one Proposal submitted pursuant to this RFP. Entities that are legally related to each other or to a common entity may not submit separate Proposals as prime contractors or prime Applicants. Any Proposal may be rejected that, in the City's sole judgment, does not comply with these conditions. Nothing contained in this RFP is intended to preclude a Proposal by a system integrator that proposes to perform the substantive work proposed through subcontractors.

## **2.9 Participation of Disadvantaged Business Enterprises**

Each Applicant is subject to the provisions of Mayoral Executive Order 03-12, the City's Antidiscrimination Policy, and is required to exercise its "Best and Good Faith Efforts" in response to the ranges specified in Appendix F included with this RFP for participation by Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE") and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") as those terms are defined in Executive Order 03-12. Forms, instructions and special contract provisions for the Antidiscrimination Policy explain these requirements in more detail and are included in Appendix F-1 to this RFP. Applicants are required to complete and return with their proposals the "Solicitation for Participation and Commitment Form" which is included in Appendix F-1.

If Applicant is a nonprofit organization, Mayoral Executive Order 03-12 requires nonprofit Applicants to document their diversity policies. Applicants that are nonprofit organizations should refer to the special contract provisions and instructions attached to this RFP as Appendix F-2. Included in Appendix F-2 is the form, "Diversity Report of Nonprofit Organizations," which should be completed and returned with proposals submitted by nonprofit Applicants even if a nonprofit Applicant is also submitting a "Solicitation for Participation and Commitment" form.

## **2.10 Acceptance of the Terms and Conditions of This RFP**

All Proposals submitted are subject to the terms and conditions set forth in this RFP. The Applicant, by submitting its Proposal, expressly acknowledges and agrees to all terms, conditions and requirements contained in this RFP.

## **2.11 Proposal Submission, Evaluation and Selection**

### **2.11.1 General**

The City reserves the right, in its sole discretion, to reject all Proposals and reissue this RFP at any time prior to execution of a final contract; to require, in any RFP for similar products and/or services that may be issued subsequent to this RFP, terms and conditions that are substantially different from the terms and conditions set forth in this RFP; and/or to cancel this RFP with or without issuing another RFP.

### **2.11.2 Rights and Options Reserved**

The City reserves and in its sole discretion may, but shall not be required to, exercise the following rights and options with respect to the Proposal submission, evaluation and selection process under this RFP:

- (a) To reject any Proposals if, in the City's sole discretion, the Proposal is incomplete, the Proposal is not responsive to the requirements of this RFP (see "Detailed Project Requirements" in the RFP appendices), the Applicant does not meet the Qualifications set forth in the RFP, or it is otherwise in the City's best interest to do so;
- (b) To supplement, amend, substitute or otherwise modify this RFP at any time prior to selection of one or more Applicants for negotiation and to cancel this RFP with or without issuing another RFP;
- (c) To accept or reject any or all of the items in any Proposal and award the contract(s) in whole or in part if it is deemed in the City's best interest to do so;
- (d) To reject the Proposal of any Applicant that, in the City's sole judgment, has been delinquent or unfaithful in the performance of any contract with the City or with others, is financially or technically incapable or is otherwise not a responsible Applicant;
- (e) To reject as informal, non-responsive, or otherwise non-compliant with the requirements of this RFP any Proposal which, in the City's sole judgment, is incomplete, is not in conformity with applicable law, is conditioned in any way that is unacceptable to the City, deviates from this RFP and its requirements, contains erasures, ambiguities, or alterations, or proposes or requires items of work not called for by this RFP;
- (f) To waive any informality, defect, non-responsiveness and/or deviation from this RFP and its requirements that is not, in the City's sole judgment, material to the Proposal;
- (g) To permit or reject at the City's sole discretion, amendments (including information inadvertently omitted), modifications, alterations and/or corrections of Proposals by some or all of the Applicants following Proposal submission;
- (h) To request that some or all of the Applicants modify Proposals based upon the City's review and evaluation;
- (i) To request additional or clarifying information or more detailed information from any Applicant at any time, before or after Proposal submission, including information inadvertently omitted by the Applicant;
- (j) To inspect and otherwise investigate projects performed by the Applicant, whether or not referenced in the Proposal, with or without the consent of or notice to the Applicant;
- (k) To conduct such investigations with respect to the financial, technical, and other qualifications of each Applicant as the City, in its sole discretion, deems necessary or appropriate; and

- (l) To waive and/or amend any of the factors identified in the RFP as pertaining to the Applicant's qualifications.

### **2.11.3 Contract Negotiation and Award**

The City reserves and in its sole discretion may, but shall not be required to, exercise the following rights and options with respect to the contract negotiation and award process resulting from this RFP:

The City reserves the right to enter into post-submission negotiations and discussions with any one or more Applicants regarding price, scope of services, and/or any other term of their Proposals, and such other contractual terms as the City may require, at any time prior to execution of a final contract. The City may, at its sole election, enter into simultaneous, competitive negotiations with multiple Applicants or negotiate with individual Applicants seriatim. Negotiations with Applicants may result in the enlargement or reduction of the scope of services, or changes in other terms that are material to the RFP and the submitted Proposals. In such event, the City shall not be obligated to inform other Applicants of the changes, or to permit them to revise their Proposals in light thereof, unless the City, in its sole discretion, determines that doing so is in the City's best interest.

In the event negotiations with any Applicant(s) are not satisfactory to the City, the City reserves the right to discontinue such negotiations at any time; to enter into or continue negotiations with other Applicants; to enter into negotiations with firms that did not respond to this RFP and/or to solicit new proposals from firms that did not respond to this RFP, including but not limited to negotiations or proposals for components of the System, if any, that are deleted by the City from the successful Proposal or the contract resulting from it. The City reserves the right not to enter into any contract with any Applicant, with or without re-issue of the RFP, if the City determines that such is in the City's best interest.

### **2.11.4 Proposal Evaluation**

Proposals the City determines, in its sole discretion, are responsive to the RFP will be reviewed by a selection committee designated by the City. The City, in its sole discretion, may require any Applicant to make one or more presentations of its Proposal to the selection committee, in City offices, at no cost to the City, addressing its ability to satisfy the requirements of this RFP. The City shall not be required, however, to permit any Applicant to make such a demonstration.

Cost to the City is a material factor, but not the sole or necessarily the determining factor in Proposal evaluation. The City may, in its sole discretion, award a contract resulting from this RFP to a person or entity other than the responsible and qualified Applicant submitting the lowest price. The contract will be awarded to the Applicant whose Proposal the City determines, in its sole discretion, is the most advantageous to the City and in the City's best interest.

Proposal evaluation will include evaluation of the Applicant's qualifications, based on Volume 1 of the Proposal and such other information and investigations as the City deems necessary and appropriate; and evaluation of the Applicant's technical solutions and Cost Proposals as set forth in Volume 2 of the Proposal. The City, in its sole discretion, may, but shall not be required to, reject without further consideration the Proposal of any Applicant that has not demonstrated, in

the City's sole judgment, that it satisfies the qualifications criteria provided in the RFP. The City reserves the right, in its sole discretion and without notice to Applicants, to modify this evaluation procedure as it may deem to be in the City's interest.

Evaluation factors to be considered by the City include, but are not limited to, the following (no particular order of importance, weighting, or other priority is assigned to these factors or reflected by their order in the list):

- 1) Superior ability or capacity to meet particular requirements of contract and needs of City Department and those it serves -
  - a) Project understanding and soundness of proposed project methodology, including but not limited to the detail and accuracy of the proposed scope and statement of work and implementation plan;
- 2) Eligibility under Code provisions relating to campaign contributions;
- 3) Superior prior experience of Applicant and staff -
  - a) References provided by the Applicant, particularly from projects of similar complexity and scope;
  - b) Demonstrated ability to provide Services and Deliverables comparable to those requested in this RFP;
- 4) Superior quality, efficiency and fitness of proposed solution for City Department -
  - a) The impact of the proposed solution on the operations of the using department, and the demonstrated ability of the solution to enhance operational efficiency and effectiveness;
- 5) Superior skill and reputation, including timeliness and demonstrable results -
  - a) The Applicant's financial and technical qualifications to perform the work required by the RFP, as presented in its Proposal and determined by any other investigations conducted or information obtained by the City;
  - b) Commitment and ability to complete the project within the time frame specified in the Proposal;
- 6) Special benefit to continuing services of incumbent, such as operational difficulties with transition or needs of population being served;
- 7) Benefit of promoting long-term competitive development and allocation of experience to new or small businesses, including those owned by minority or disabled persons or by women;
- 8) Lower cost;
- 9) Administrative and operational efficiency, requiring less City oversight and administration;
- 10) Anticipated long-term cost effectiveness;
- 11) Meets prequalification requirements as set forth in this RFP; and,
- 12) Applicant's certification of its Local Business Entity/Local Impact status pursuant to Executive Order 04-12.

### **2.11.5 Site Inspections**

The City may, at its sole option, inspect the Applicant's work at one or more sites where the Applicant's or a proposed subcontractor's products are installed or services have been provided. If a list of such sites is not required elsewhere in this RFP or included in its Proposal, the Applicant will promptly provide such a list upon written request by the City.

### **2.11.6 Prime Contractor Responsibility**

All subcontractors will be subject to approval by the City. Prior to contract execution, the successful Applicant will be required to furnish the corporate or company name and the names of the officers and principals of all subcontractors. Notwithstanding any such approval by the City, the successful Applicant shall itself be solely responsible for the performance of all work set forth in any contract resulting from the RFP, and for compliance with the price and other terms provided in the contract. The successful Applicant shall cause the appropriate provisions of its Proposal and the contract to be inserted in all subcontracts.

The City's consent to or approval of any subcontract or subcontractor Proposed by an Applicant shall not create or purport to create any obligation of the City to any such subcontractor, or any form of contractual relationship or relationship of privity between the City and the subcontractor. Any Applicant who obtains such approval or consent of the City shall be required to insert a clause so providing in all subcontracts.

### **2.12 Responsibility for Proposal Costs**

The Applicant shall be solely and fully responsible for all costs associated with the development, preparation, transmittal, and submission of any Proposal or material submitted in response to this RFP. The City may, in its sole discretion, ask selected Applicants to present their Proposal in person to the City's representatives at the City's offices, and the costs of such presentations, as well as the costs of any pilot implementation required by the City under Section 2.3, shall be solely the responsibility of the Applicant. The City assumes no contractual or other obligations as a result of the issuance of this RFP, the preparation or submission of a Proposal by an Applicant, the evaluation of Proposals, the Applicant's conduct of presentations or pilot implementations, or the selection of any Applicant for further negotiations. There may be no claims whatsoever for reimbursement from the City or any of its consultants for such costs. All costs incurred by the Applicant during the selection process and during negotiations will be solely the responsibility of the Applicant.

### **2.13 Withdrawal or Modification of Proposals**

Applicants may withdraw or modify their Proposals at any time prior to the Proposal Submission Date provided in Section 1.3, *Proposal Submission Date; Anticipated Procurement Schedule*, by written notice of withdrawal or written submission of the modification, signed in the same manner and by the same persons who signed the Proposal. Such written notice must be addressed to the City Primary Contact as specified in Section 1.4.

## **3 Proposal Requirements**

### **3.1 Administrative Requirements**

Applicants are expected to comply with all administrative requirements provided in this Section 3.1

#### **3.1.1 Mandatory Online Registration and Filing Requirements**

The City requires that all Applicants apply online in order to be eligible for award of the non-competitively bid contract opportunity described in this RFP; proposals and any other related



documents prepared in response to this RFP will not be considered unless they are filed, within the prescribed time period, through eContract Philly, which can be accessed on the City's website at [www.phila.gov/contracts](http://www.phila.gov/contracts) by clicking on eContract Philly<sup>1</sup>. The posting of this RFP on eContract Philly is also referred to as a Notice of Contracting Opportunity.

Any Applicant who establishes an account on eContract Philly and utilizes that account for the purpose of responding to a particular contract opportunity must be the same individual or business entity that, if awarded the contract, will enter into and perform the resulting contract with the City. Except in the case of joint ventures, applications submitted through eContract Philly from Applicants that purport to be filing an application on behalf of another individual or business entity will not be considered, even if the other business entity is an affiliate of the Applicant.

In the case of multiple business entities that if awarded a contract have formed, or intend to form a joint venture to perform the contract, a single business entity may file an application on behalf of all such business entities so long as (i) the filing business entity is or will be a member of the joint venture, (ii) the application is made in the name of the existing or proposed joint venture, (iii) documentation is submitted with the application identifying all business entities that comprise, or will comprise, the joint venture, and demonstrating a binding agreement among those business entities to perform the contract as the joint venture identified in the application (for a joint venture that has not yet been formed, documentation signed by each identified business entity evidencing a commitment to form the joint venture if awarded the contract is sufficient), and (iv) the non-filing business entities are eligible for award of a City contract and make the disclosures required by Chapter 17-1400 of The Philadelphia Code within fourteen (14) days after the joint venture receives notice that it has been awarded the contract.

Applicants and contractors are required disclose their campaign contributions to political candidates and incumbents who are running for, or currently serving in, a local (Philadelphia) or state-wide elected office anywhere within the Commonwealth of Pennsylvania (federal campaign contributions are not included); any consultants used in responding to the RFP and contributions those consultants have made; prospective subcontractors; and whether Applicants or any representative of Applicants has received any requests for money or other items of value or advice on particular firms to satisfy minority-, woman- or disabled-owned business participation goals from City employees. This information, as well as a proposal or any other response document required, is part of the online application and is required pursuant to Chapter 17-1400 of the Philadelphia Code (*see* Appendix G of the RFP). For more information, please consult the reference materials found on the website, e-mail [econtractphilly@phila.gov](mailto:econtractphilly@phila.gov) or call 215-686-4914.

**Applicants who have failed to file complete applications to the correct opportunity number – including using the online disclosure forms provided – through the eContract Philly online application process prior to the closing date and time will *not* be considered.**

Applicants are encouraged to start and complete their online applications on eContract Philly as early as possible. Please be aware that Internet connection speed depends on a variety of factors

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<sup>1</sup> The eContract Philly website is compatible with Internet Explorer, Google Chrome and Apple Safari; but the site is not presently compatible with Mozilla Firefox.

including: configuration of your computer, configuration of your business or home network, the condition of the wiring at your location, and network or Internet congestion (available bandwidth). Please prepare and plan accordingly to ensure a timely submission. Proposals and other application documents will not be considered submitted until the application is signed and submitted through eContract Philly.

Applicants can begin uploading (or attaching) proposals and other application materials at any time. It is prudent to start uploading your attachments earlier if you have a large number of attachments (e.g. over five documents) or larger-sized attachments (e.g. above 5 MB). Application materials are not available for review by the City until the completed application is signed and submitted, at which time application materials are accessible only to appropriate City staff.

Any individual who signs and submits an application on eContract Philly must be an authorized signatory of the Applicant, authorized to both bind the Applicant to its proposal and to make the disclosures required to complete the eContract Philly process. Therefore, in conjunction with their electronic signatures provided at the conclusion of the submission of their applications online, signatories will be required to certify that they are the Applicant or are employees or officers of the Applicant duly authorized to execute the application and make disclosures on the Applicant's behalf; and they represent and covenant that, to the best of their knowledge after appropriate inquiry, all of the information and disclosures provided are true and contain no material misstatement or omissions.

Except as expressly provided otherwise on eContract Philly, Applicants that obtain the RFP via eContract Philly shall be bound by all instructions, disclaimers, terms and conditions for viewing, downloading and/or printing the RFP that are posted on the "Terms of Use" page of the site (accessed by clicking on the "Terms of Use" link on the Phila.Gov Home Page). These Terms of Use are incorporated in and made a part of this RFP by reference.

### **3.1.2 Pre-Proposal Meeting**

An online web-based pre-Proposal Meeting to review the requirements of this RFP will be held on May 15, 2017 starting at 1:00PM. Attendance at the pre-proposal meeting is optional.

The City believes that attendance at the Pre-Proposal Meeting is essential for successful participation in this RFP procurement and expects every Applicant to attend. The City reserves the right, in its sole discretion, to reject any Proposal submitted by an Applicant that does not attend the Pre-Proposal Meeting, but may, in its sole discretion, consider such a Proposal if it deems consideration to be in the City's best interest, or determines that the Applicant's failure to attend was caused by circumstances reasonably beyond the Applicant's control.

### **3.1.3 Addenda to the RFP; Requests for Information; Inconsistencies**

The City may, in its sole discretion, issue addenda to this RFP containing responses to questions and requests for information, addressing matters raised at the Pre-Proposal meeting(s), clarifications of the RFP, revisions to the RFP, or any other matters that the City deems

appropriate. Addenda will be posted on eContract Philly. It is the Applicant's responsibility to monitor eContract Philly for Addenda and to comply with their terms.

All questions, requests for clarification, and requests for additional information regarding this RFP must be submitted to the City's Primary Contact not later than the deadline set forth in Section 1.3. All such questions and requests must be submitted in writing, by facsimile, U.S. mail, private delivery service, hand delivery, or email to the City's Primary Contact. Responses to such questions and requests shall be at the City's sole discretion and nothing in this RFP shall create an obligation on the City to respond to the submitting party or at all. In the City's sole discretion, responses may be posted on eContract Philly without formal notification to prospective Applicants.

No oral response by any employee or agent of the City shall be binding on the City, or shall in any way constitute a commitment by the City.

If an Applicant finds any inconsistency or ambiguity in the RFP or an addendum to the RFP issued by the City, the Applicant is requested to notify the City in writing by the questions due date as set forth in Section 1.3.

### **3.1.4 Proposals Binding**

By submitting its Proposal, the Applicant agrees to be bound by all terms and conditions of its Proposal, including, without limitation, the prices stated therein, for a period of one hundred and eighty (180) days from the Submission Date. An Applicant's refusal to enter into a contract that reflects such terms and conditions may, in the City's sole discretion, result in rejection of the Proposal, termination of any negotiations with the Applicant, and/or Applicant's forfeiture of its Proposal Security, if required by this RFP, as set forth in the "Proposal Security" section of the RFP (included in the RFP if Proposal Security is required).

It shall be the Applicant's responsibility to review and verify the completeness of its Proposal.

Applicants may withdraw or modify their Proposals at any time prior to the Submission Date by written notice of withdrawal or written submission of the modification, signed in the same manner and by the same person(s) who signed the initial Proposal, to the City's Primary Contact. The City reserves the right, at its sole discretion, to permit or require modifications to any Proposal after it is submitted, as set forth in the "Reservation of Rights" sections of the RFP.

### **3.1.5 Proposal Submission Requirements**

Proposals submitted in response to this RFP must be submitted electronically on eContract Philly, in accordance with the instructions and requirements there posted and by the time and date provided in Section 1.3, *Proposal Submission Date; Anticipated Procurement Schedule*. Proposals should include a table of contents listing all sections, figures, and tables and their corresponding page numbers.

Qualifications and Technical/Cost Proposals in Separate Volumes. Applicants will organize their Proposals into two separate electronic files, referred to herein as Volume 1 and Volume 2. The details for each volume are provided below:

- Volume 1 - Qualifications

Volume 1 will set forth the Applicant's qualifications, and must be labeled on the cover with "Web Based Information System Serving Philadelphia's Out-of-School Time (OST) System Proposal, Volume 1 – Vendor Qualifications." The required contents of Volume 1 are defined in the "Qualifications of Applicants" section below.

- Volume 2 – Technical Approach and Cost Proposal

Volume 2 will set forth the Applicant's technical approach and solution for meeting the requirements of the RFP, and its cost Proposal, and must be labeled on the cover with "Web Based Information System Serving Philadelphia's Out-of-School Time (OST) System Proposal, Volume 2 – Technical Approach and Cost Proposal." The required contents of Volume 2 are defined in the "Technical Approach and Cost Proposal" section below.

### **3.2 Implementation Plan, Statement of Work, Project Schedule and Milestone Payment Schedule**

Applicants must submit the following documents (collectively, "Project Documents") as part of their Proposals, in accordance with the overall structure of the work as set forth in the RFP and the specific format and other requirements provided in Appendix B (if no requirements are provided in Appendix B, Applicants should submit the Project Documents in the form they currently use for work of the type here sought):

- (a) an implementation plan for the proposed System and/or services that describes in detail (i) the methods, including controls, by which the Applicant manages projects of the type sought by this RFP; (ii) where software is to be developed, customized, and/or implemented as part of the project, the Applicant's software development and implementation methodology, including, but not limited to, version control, error correction, pre-delivery testing and debugging procedures, and post-installation testing; (iii) and any other project management or implementation strategies or techniques that the Applicant intends to employ in carrying out the work;
- (b) a detailed statement of the work to be performed, in a form that the Applicant considers appropriate and sufficient for incorporation in a contract document;
- (c) a detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, principal schedule milestones, and overall time of completion; and
- (d) a milestone payment schedule setting forth the frequency and amount of progress payments, and identifying the tasks and deliverables ("milestones") to be completed for each payment.

Proposals will be evaluated in part on the adequacy of the proposed Project Documents. The City reserves the right, in its sole discretion, to impose additional or different requirements on any of the Project Documents submitted in any Proposal, without notice to other Applicants.

### 3.3 Proposal Contents

#### 3.3.1 Volume 1 – Qualifications of Applicants

Proposals will be evaluated, in part, on the Applicant's ability, in the City's sole judgment, to demonstrate technical and financial capacity to perform the work it proposes in accordance with the requirements of this RFP. Applicants are accordingly required to furnish the information described below. The City reserves the right, in its sole discretion, to require additional or different qualifications information, and is the sole judge of whether the Applicant's submissions meet the information requirements provided below and are sufficient to demonstrate the Applicant's qualifications.

Volume 1 of the Proposal should include the following sections, with the information specified for each.

Volume 1, Section 1: Description of Applicant. The Applicant shall provide:

- (a) Name, street address, mailing address if different, email address, and telephone and facsimile numbers of the Applicant.
- (b) Year established (include former firm names and year each applied). Identify the country and state in which the firm was incorporated or otherwise organized.
- (c) Type of ownership and parent company and subsidiaries, if any. Include dates of any corporate mergers and/or acquisitions including all present and former subsidiaries with dates of any and all re-structuring since the founding date.
- (d) Address and telephone number of production facility(ies) where any of the work is to be accomplished (if different than item a); name, address, and telephone number of the proposed project manager.
- (e) A narrative description and organization chart depicting the management of the Applicant's organization and its relationship to any larger business entity.
- (f) A description of the overall operations of the Applicant, the number and scope of other projects currently ongoing or set to begin in the near future.
- (g) A narrative description of Applicant's familiarity with and prior operating experience in the Philadelphia region. Specifically identify (i) all projects in the last five years on which Applicant has worked that are valued at over \$100,000 and located in the City of Philadelphia or *other similar projects in other cities*. (ii) any contracts valued at over \$100,000 entered into with the City of Philadelphia in the last five years; and (iii) any contracts valued at over \$100,000 entered into with any other government entity in the last five years (the 5 most recent such contracts shall be sufficient; Applicants may list more than 5).

- (h) Provide, at Applicant's option, any additional information not specifically listed above which demonstrates the qualifications of the Applicant to perform the scope of work specified in this RFP.

#### Volume 1, Section 2: Technical Qualifications

- (a) Project Understanding: Provide a brief narrative statement that confirms Applicant's understanding of, and agreement to provide, the services and/or tangible work products necessary to achieve the objectives of the project that is the subject of this RFP.
- (b) The Applicant shall provide information that demonstrates that it possesses the technical expertise that the City requires for this RFP.
- (c) Applicants should submit references from owners of projects that are comparable in size, complexity and scope of work sought by this RFP. The references should also demonstrate the Applicant experience with the technology solution proposed. The histories of such projects that they have completed, firm resumes and resumes of key personnel should also be included as well as other such information believed to demonstrates the indicated types of experience. All references should include the name, title, telephone number of both the current owner of the project and the owner of the project at time of work effort. Specific reasons for using the reference must also be provided.
- (d) The Applicant must demonstrate adequate experience in the following areas; the City prefers a minimum of three years of such experience:
  - (1) Large-scale project management experience;
  - (2) Previous installations of web-based data management systems similar in scope to this one, preferably for other municipalities;
  - (3) Public sector experience.
- (e) Additional experience in the following areas, while not mandatory, is preferred:
  - (4) Screenshots of successfully implemented OST or similar MIS that illustrate the Applicant's Software functionality.

#### Volume 1, Section 3: Financial Qualifications. The Applicant shall provide:

- (a) A narrative that demonstrates its financial capacity to undertake and complete the project as proposed and to furnish software systems and/or services in accordance with the RFP;
- (b) A current audited statement of financial condition, prepared by an independent certified public accountant;
- (c) Financial statements for the two (2) years preceding the year to which the statement required in b applies, prepared by an independent certified public accountant;
- (d) A bank reference;
- (e) A statement disclosing any audits of the Applicant by the federal government;
- (f) A statement disclosing any bankruptcy or insolvency proceeding that Applicant has filed or that has been against Applicant pursuant to Chapter 11 or Chapter 7 of the United States Bankruptcy Code, or any applicable state law of comparable effect.

- (g) If performance and/or payment bonds are required under the RFP, a notarized letter from an approved surety stating the willingness of the surety to issue the bonds to the Applicant as principal;
- (h) A description of contracts with municipalities for work of similar type, scope, and value as the work sought by this RFP; including, for each, the name, address, and telephone number of a contact person;
- (i) A copy of the most recent Form 10-K filed by the Applicant with the U.S. Securities and Exchange Commission, and copies of all Form 8-Ks filed since the filing of the most recent 10-K. If a Form 10-K is not filed with the SEC, submit the following:
  - certified audited financial statements for the past three fiscal years including, at a minimum, income statements, balance sheets and statements of changes in financial position; if fewer than three years of financial statements are available, this information should be provided to the fullest extent possible;
  - copies of the latest quarterly financial reports;
  - a copy of the Applicant's most recent annual report;
- (j) If the Proposal is submitted by a partnership and/or joint venture, provide full information concerning the nature and structure of the partnership and/or joint venture, including:
  - What entity will be guaranteeing contract performance?
  - Date of joint venture or partnership.
  - Does the agreement between members comprising the joint venture make each jointly and severally liable for contractual obligations of this project?
- (k) Any other information not specifically itemized above that it believes to be demonstrative of its financial capacity.

Volume 1, Section 4: Local Business Entity or Local Impact Certification. (Optional if applicable to Applicant)

If applicable, Applicant may elect to provide the certification statement in the form of Appendix D as to Applicant's status as a Local Business Entity or its local impact if awarded the contract. (See Section 3.5 for more information.)

### **3.3.2 Volume 2 – Technical Approach and Cost Proposal**

Volume 2 will set forth the Applicant's technical approach and solution for meeting the requirements of the RFP, and its Cost Proposal. Volume 2 of the Proposal should be divided into five index-tabbed sections, including the information identified below for each section.

Volume 2, Section 1: Organization and Management. The Applicant shall provide the following in Section 1:

- (a) Organizational charts addressing the delineation of authority and responsibilities in performing the work described in the Proposal and identifying all key personnel, including, but not limited to, the project manager.
- (b) Company affiliation, job title, and resume of each individual listed in on the organizational chart, setting forth work experience, education, professional achievements, and any publications related to the type of work to be performed. (The City will require that the key people

proposed for the project participate in their proposed capacities and the City must approve any substitutions or replacements.)

(c) Detailed descriptions of the following:

- The system development methodology as defined in the “Project Approach and Plan” in the RFP Appendices;
- The project management approach as defined in the “Project Approach and Plan” in the RFP Appendices;
- All computer hardware, communications equipment, network equipment, and other equipment required for the software system proposed, with detailed specifications for each;
- A mapping of functional and other requirements to the technology requirements;
- Reasons for selection of hardware and software environment, if applicable; and,
- The proposed pilot (“proof of concept”) implementation, if required by the RFP.

Volume 2, Section 2: Scope of Work Plan. Section 2 will provide a detailed description of the Applicant’s plan for completing the work proposed in accordance with the time-of-performance requirements of the RFP. The plan should include:

- (a) The proposed Project Documents, as described in Section 3.2, *Implementation Plan, Statement of Work, Project Schedule and Milestone Payment Schedule*;
- (b) A comprehensive list of tasks required to complete the scope of work proposed, with estimated effort (expressed in persons, identified by skill set, and hours) required for each task;
- (c) A detailed written description of how the Applicant intends to accomplish each task;
- (d) The name of key personnel identified in Volume 2, Section 1 who will be assigned to complete each task;
- (e) The approximate amount of time each day that each of the key personnel identified in Volume 2, Section 1 will spend on the project (e.g. Project Director will spend approximately 25 percent of his/her time during Step 1 of the project);
- (f) The items specified in the Appendices to the RFP, to the extent not provided in response to the foregoing;
- (g) All assumptions relied upon to develop the work plan and estimate and all conditions for its fulfillment as proposed, with specific emphasis on City responsibilities; and
- (h) Any other technical or management approach or process that the Applicant will use to ensure that the project plan can be completed as proposed and in accordance with the time-of-performance constraints provided in the RFP.

Volume 2, Section 3: Technical Proposal. Section 3 should include detailed information addressing each of the following:

- (a) Dedicated project manager and specific project plan for all potential implementation and Data migration (if needed) activities;
- (b) Data migration plan incorporating existing Citywide OST infrastructure;
- (c) Topology and infrastructure diagrams defining the technology proposed;
- (d) The software architecture of the proposed solution (two-tier or three-tier environment, etc.), including detailed justification for the architecture selected and information correlating each software component or tool proposed to the following architecture layers, each of which must be described in detail:



- workflow-processing plan that defines the solution with respect to process definition and workflow API and interchange.
  - reporting infrastructure proposed to handle predefined and ad hoc reports.
  - archiving and auditing plan to address the business requirements;
- (e) Logistical and support plan for deployment of the application;
- (f) Outline of city resource requirements for supporting the proposed solution;
- (g) Outline of the disaster recovery plan for supporting the proposed solution;
- (h) Anticipated bandwidth requirements;
- (i) Server storage and hardware requirements with associated cost;
- (j) Network issues such as latency, coverage issues, time-of-day performance, network congestion, packet size, and other performance factors.
- (k) Performance standards for the software system proposed, including, but not limited to, the items identified below, together with any network or other equipment specifications or characteristics, and any assumptions as to number of concurrent users and their levels of access, on which the performance standards are conditioned:
- Server Disk input/output (I/O)
  - Transactions Per Minute (TPM)
  - Page Swapping
  - Response Time
  - Throughput
  - Performance assumptions
  - System Availability expressed in “mean time to failure” and “mean time to repair”
  - Bandwidth utilization, expressed in bytes per second required by the system under all anticipated load conditions

#### Volume 2, Section 4: Cost Proposal.

The Cost Proposal must conform to the requirements provided in Appendix C, *Cost Proposal Requirements*, and must be submitted on the template provided on eContract Philly.

Applicants should note that the City is not subject to federal, state, or local sales or use taxes or to federal excise tax. The cost proposal may not include any such taxes.

#### Volume 2, Section 5: Requirements Compliance Certification

Detailed requirements for the System are provided in Appendix A, *Detailed Project Requirements*. The Proposal must specify, for each requirement, that the proposed solution and/or services is available as: 1 = Out-of-the-box, 2 = Standard tailoring (i.e., no code rewrite or programming), 3 = Customization required, 4 = Future release, 5 = Not available. Any proposed customizations must be clearly identified and justified by the Applicant, future release date must be provided and non-compliance with the features not provided must be fully explained.

Applicants are accordingly required to fill out and submit the Requirements Compliance Matrix attached in Appendix D, *Requirements Compliance Matrix*. To facilitate responses and the City’s review, the City has provided an electronic version of the Matrix in Excel (see Appendix D).

The Requirements Compliance Matrix, in the form of a Microsoft Excel 97 or above spreadsheet, is available on eContract Philly along with this proposal. The completed Matrix must be included with the Proposal materials submitted to eContract Philly.

### **3.4 Certification of Compliance with Equal Benefits Ordinance**

If this RFP is a solicitation for a “Service Contract” as that term is defined in Philadelphia Code Section 17-1901(4), and results in a Service Contract in an amount in excess of \$250,000, then, pursuant to Chapter 17-1900 of The Philadelphia Code, the contractor shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Philadelphia Code Section 19-1502(1)(b), be required to extend the same employment benefits contractor extends to spouses of its employees to life partners of such employees, absent a waiver by the City under Section 17-1904. By submission of their Proposals in response to this RFP, all Applicants so acknowledge and certify that, if awarded a Service Contract pursuant to this RFP, they will comply with the provisions of Chapter 17-1900 of The Philadelphia Code and will notify their employees of the employment benefits available to life partners pursuant to Chapter 17-1900. Following the award of a Service Contract subject to Chapter 17-1400 and prior to execution of the Service Contract by the City, the successful Applicant shall certify that its employees have received the required notification of the employment benefits available to life partners and that such employment benefits will actually be available, or that the successful Applicant does not provide employment benefits to the spouses of married employees. The successful Applicant’s failure to comply with the provisions of Chapter 17-1900 or any discrimination or retaliation by the successful Applicant against any employee on account of having claimed a violation of Chapter 17-1900 shall be a material breach of any Service Contract resulting from this RFP.

### **3.5 Local Business Entity or Local Impact Certification**

Pursuant to Mayoral Executive Order No. 04 -12, the Department will, in the selection of the successful Applicant, consider whether that Applicant has certified that either (1) Applicant meets the criteria stated in Section 17-109(3) (b) of the Philadelphia Code to qualify as a Local Business Entity or (2) in the performance of the resulting contract, Applicant will employ City residents, or perform the work in the City. Any Applicant who wishes to demonstrate its eligibility for this consideration shall do so by completing, executing and attaching to its application a completed Local Business Entity or Local Impact Certification, the form of which is attached to this RFP as Exhibit D. The Applicant shall then also include in a separate section of the application, labeled “Local Business Entity or Local Impact Certification,” a statement that the Applicant believes it has met the Local Business Entity or Local Impact criteria “as set forth in the attached Local Business Entity or Local Impact Certification.” The City Department shall deem it a positive factor where the Applicant has, in the City’s sole discretion, met the Local Business Entity or Local Impact criteria.

### **3.6 The Philadelphia Tax and Regulatory Status and Clearance Statement**

It is the policy of the City of Philadelphia to ensure that each contractor and subcontractor has all required licenses and permits and is current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City

on behalf of the School District of Philadelphia), and is not in violation of other regulatory provisions contained in the Philadelphia Code. To assist the City, through its Department of Revenue and Department of Licenses and Inspections, in determining this status, each Applicant is required to submit with its proposal the certification statement entitled City of Philadelphia Tax and Regulatory Status and Clearance Statement which is attached to this RFP as Appendix H.

If the Applicant is not in compliance with the City's tax and regulatory codes, an opportunity will be provided to enter into satisfactory arrangements with the City. If satisfactory arrangements cannot be made, Applicants will not be eligible for award of the contract contemplated by this RFP.

The selected Applicant will also be required to assist the City in obtaining the above information from its proposed subcontractors (if any). If a proposed subcontractor is not in compliance with City Codes and fails to enter into satisfactory arrangements with the City, the non-compliant subcontractor will be ineligible to participate in the contract contemplated by this RFP and the selected Applicant may find it necessary to replace the non-compliant subcontractor with a compliant subcontractor. Applicants are advised to take these City policies into consideration when entering into their contractual relationships with proposed subcontractors.

If an Applicant or a proposed subcontractor is not currently in compliance with the City's tax and regulatory codes, please contact the Revenue Department to make arrangements to come into compliance at 215-686-6600 or [revenue@phila.gov](mailto:revenue@phila.gov).

Applicants need not have a City of Philadelphia Business Income and Receipts Tax Account Number (formerly Business Privilege Tax Account Number) and Commercial Activity License Number (formerly Business Privilege License Number) to respond to this RFP, but will, in most circumstances, be required to obtain one or both if selected for award of the contract contemplated by the RFP.<sup>[1]</sup> Applications for a Business Income and Receipts Tax Account Number or a Commercial Activity License<sup>[2]</sup> may be made on line by visiting the City of Philadelphia Business Services Portal at <http://business.phila.gov/Pages/Home.aspx> and clicking on "Register Now." If you have specific questions, call the Department of Revenue at 215-686-6600 for questions related to City of Philadelphia Business Income and Receipts Tax Account Number or the Department of Licenses and Inspections at 215-686-2490 for questions related to the Commercial Activity License.

## **4 City-Wide Contract Requirements**

Any Applicant selected to enter into final negotiations will be expected to enter into a contract with the City containing terms acceptable to the City, including, but not limited to, terms substantially similar to the insurance, indemnification and other provisions set forth or described

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<sup>[1]</sup> Applicants that have a Business Privilege Tax Number should use that number, as it is automatically their Commercial Activity License Number, and need not apply for a new Commercial Activity License Number. Similarly, Applicants with a Business Privilege Tax Account Number should use that number as their Business Income and Receipts Tax Account Number.

<sup>[2]</sup> Commercial Activity Licenses are not typically required for non-profit organizations; however, Business Income and Receipts Tax Account Numbers typically are required.

below, which are generally required by the City in contracts for software systems and/or consulting services that involve software design, development or implementation. The City reserves the right, however, to require or negotiate different and/or additional terms and conditions in any final contract resulting from this RFP if, in the sole judgment of the City, it is in the best interest of the City to do so, without notice to other Applicants and without affording other Applicants any opportunity to revise their proposals based on such different or additional terms

Applicants may state for the City's consideration any objections to the following contract terms, in a separate section of the Proposal. Any such objection must identify the specific section(s) objected to, state the reason(s) for the objection, and propose alternative language or terms. Terms to which no objection is asserted will be presumed acceptable to the Applicant. The City may, in its sole discretion, evaluate proposals in part according to whether the Applicant so objects, and the number and type of objections asserted.

#### **4.1 Term and Renewal**

The initial term of the Contract shall commence on 7/1/2017, and, unless sooner terminated by the City pursuant to the terms of the Contract, shall expire twelve (12) months thereafter, on 6/30/2018. The City may, at its sole option, amend the Contract to add up to three (3) additional successive one year terms ("Additional Terms"). Except as may be stated otherwise in such amendment, the terms and conditions of this Contract shall apply throughout each Additional Term.

#### **4.2 Certificate of Non-Indebtedness**

The Contractor hereby certifies and represents that the Contractor and the Applicant's parent company (ies) and subsidiary (ies) are not currently indebted to the City and will not, if awarded the Agreement, at any time during the term of the Contract (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent water bills and/or delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written Contractor payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, the Contractor acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to the Contractor under the Agreement and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Agreement for default (in which case the successful Contractor shall be liable for all excess costs and other damages resulting from the termination).

The Sub-consultant hereby certifies and represents that the sub-consultant and sub-consultant's parent company (ies) and subsidiary (ies) are not currently indebted to the City and will not at any time during the term of the Contractor's Agreement with the City, including any extensions or renewals thereof, be indebted to the City, for or on account of any delinquent water bills and/or delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written Contractor payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, sub-consultant acknowledges that any breach or

failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to sub-consultant for services rendered in connection with the Contract and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to sub-consultant and/or the termination of sub-consultant for default (in which case sub-consultant will be liable for all excess costs and other damages resulting from the termination).

### **4.3 Insurance; Performance and Payment Bonds**

#### **4.3.1 Insurance**

The Contractor will be required to procure and maintain, at its sole cost and expense, the types and minimum limits of insurance described below, on the terms specified; provided, however, that the City may, at its sole discretion, establish different minimum limits based on the final scope of work for the project.

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

- (a) Workers Compensation and Employers Liability
  - Workers Compensation: Statutory limits
  - Employers Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
  - Other states insurance including Pennsylvania.
- (b) General Liability Insurance
  - Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City sole discretion, the potential risk warrants.

- Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).
- (c) Automobile Liability
  - Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - Coverage: Owned, non-owned and hired vehicles.
- (d) Professional Liability Insurance
  - Limit of liability: \$1,000,000 with a deductible not to exceed \$50,000.
  - Coverage: Errors and omissions including liability assumed under contract.
  - Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the work required under this contract shall be maintained in full force and effect under the policy or “tail” coverage for a period of at least two (2) years after completion of the work.

Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted. The original certificates of insurance must be submitted to the City’s Risk Management Division, and copies shall be submitted to the City at the address set forth in the contract. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each renewal term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of in such situations where such waiver will benefit the City, but under no circumstances shall the Contractor actually begin work (or continue work, in the case of renewal) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City’s Risk Management Division. The City reserves the right to require the Contractor to furnish certified copies of the original policies of all insurance required under the Contract at any time upon ten (10) days written notice to the Contractor.

Contractor may not self-insure any of the coverages required under the Contract without the prior written approval of the City. In the event that Contractor desires to self-insure any of the coverages listed above, it shall submit to the City, prior to the commencement of work hereunder, a certified copy of Contractor’s most recent audited financial statement, and such other evidence of its qualifications to act as a self-insurer (e.g., state approval) as may be requested by the City. In the event the City grants, Contractor understands and agrees that the City, its officers, employees, and agents, shall be entitled to receive the same coverages and benefits under Contractor’s self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the Term of the Contract, Contractor self-insures its professional liability or workers’ compensation and employers’ liability coverage, Contractor may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner’s letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed

to modify, limit, or reduce the indemnifications made in the contract by Contractor to the City, or to limit Contractor's liability under the contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Contractor hereunder.

#### **4.3.2 Performance and Payment Bonds**

Upon the execution of the Contract, the Contractor shall, at its sole cost and expense, provide the City with a performance bond and a payment bond, as prepared by the Law Department of the City, in the amount of at least 50 percent of the contract amount as security for the faithful performance of and compliance with all the terms and conditions of the Contract. (The City reserves the right to require a performance bond and/or payment bond in a greater amount, based on the proposal(s) of the successful Applicant(s).) The performance and payment bonds shall be with a surety acceptable to the City and shall name the City as obligee thereon. The performance and payment bonds required by this section shall be for the duration of the term of the contract, and all renewal terms or shall be renewed in a sequence to achieve such duration.

#### **4.4 Indemnification**

The Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses occasioned wholly or in part by the Contractor's act or omission or negligence or fault or the act or omission or negligence or fault of the Contractor's agents, Subcontractors, employees or servants in connection with the Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, failure to pay such Subcontractors and suppliers, any breach of the Contract, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret). This obligation to indemnify, defend and hold harmless City, its officers, employees and agents, shall survive the termination of the Contract.

#### **4.5 Proprietary Rights Indemnification**

##### **4.5.1 Indemnification**

- (a) Contractor warrants that all Software, Documentation, Services, and Deliverables do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the City, the City shall promptly notify Contractor in writing and Contractor shall defend such claim, suit or action at Contractor's expense, and Contractor shall indemnify the City against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs and counsel fees) whether or not such claim, suit or action is successful.
- (b) Contractor will not, however, be responsible for such loss, cost, damage, expense or liability if infringement is finally determined by a court of competent jurisdiction to be the sole result of (1) the City's modification of the Software or its use of the Software in a manner not intended by the Parties or contemplated by this Contract; (2) the City's failure to use corrections or enhancements made available by Contractor that do not materially alter the

functionality of the Software as it exists at the time furnished; (3) the City's distribution or marketing of the Software to third parties for revenue producing purposes; or (4) the act or omission of the third party supplier of a software product used in combination with Contractor's Software but not furnished by Contractor under this Contract. Prior to such final determination, however, Contractor shall remain fully responsible, at its expense, for the defense and indemnification of any infringement claim in accordance with this Section; provided, that if the claimed infringement is finally determined to be solely the result of one or more of (1)-(4) noted above, the City will reimburse Contractor for its reasonable expenses (including reasonable litigation costs and attorney's fees) incurred therein.

#### **4.5.2 Infringing Products**

If Software, Documentation, or Deliverables furnished by Contractor is, or in Contractor's reasonable judgment is likely to be, held to constitute an infringing product, Contractor shall at its expense and option either:

- (a) Procure the right for the City to continue using the Software or other product;
- (b) Replace the Software or other product with a non-infringing equivalent;
- (c) Modify the Software or other product to make it non-infringing, provided that the modification does not materially alter the functionality of the Software or other product, or the City agrees to and accepts the modification in writing; or

In the event Contractor is ordered by a court of competent jurisdiction to remove the Software or other product, and all right of appeal or stay is exhausted as to such order, accept return of the Software or other product and refund to the City the full amount paid by the City to Contractor pursuant to this Contract.

#### **4.5.3 Exclusive Remedy**

The foregoing remedies constitute the City's sole and exclusive remedies and Contractor's entire liability with respect to infringement of proprietary rights. To receive the foregoing indemnity, the City must promptly notify Contractor in writing of an infringement claim or suit, provide reasonable cooperation (at Contractor's expense), and full authority to Contractor to defend or settle the claim or suit. Contractor will have no obligation to indemnify the City under any settlement made without its written consent.

### **4.6 Century Date Standard**

#### **4.6.1 Covered Work**

Contractor represents and warrants that the following items furnished under the contract shall conform to the City of Philadelphia Century Date Standard set forth below; such warranties and representations are in addition to, and not in lieu of, Contractor's warranties and representations set forth in Propriety Rights Indemnification in this section, Warranty and elsewhere in the Contract, and shall not limit or excuse any of Contractor's obligations under such warranties:

All operating system software, application software, and other software, and all firmware, including, but not limited to, any authorization code or other code incorporated in such software or firmware for the purpose of disabling or limiting the functionality of the software under conditions specified by the manufacturer or publisher of the software;



#### **4.6.2 Century Date Standard**

The City of Philadelphia Century Date Standard consists of the following standards for General Integrity, Date Integrity, and Interface Integrity:

- (a) General Integrity. No value for current date will cause interruptions in the operation of the software, firmware, or equipment and the software, firmware and equipment will operate without any date-related faults or failures and without producing inaccurate data, including any calculation involving a span of time, which crosses a century.
- (b) Date Integrity. All manipulations of time-related data (including, without limitation, dates, durations, days of week, month, and year) will produce results that conform to the manufacturer's specifications for the software or equipment for all valid date values within the application domain.
- (c) Interface Integrity.
- (d) Explicit Century: Date elements in interfaces and data storage shall permit specification of the century by means that will eliminate all ambiguity as to the applicable century for date and date-related data.
- (e) Implicit Century: For any date element represented without century, the correct century shall be unambiguous for all manipulations involving that element before, during, and after January 1, 2000.
- (f) Source code. Source code for software shall comply with the standard set forth in Federal Information Processing Standard Publication 4-2 (FIPS PUB 4-2), Representation of Calendar Date for Information Interchange.

#### **4.6.3 Defects and Errors**

Contractor shall, at no cost to the City, repair any equipment, firmware and/or software that does not conform to the standards set forth above and cause it to conform such standards, or shall replace the software or equipment with software that does conform to such standards.

#### **4.7 Performance Standards**

The City expects that the contract resulting from this RFP will include performance standards for the System, including but not limited to response times for System functions and data-throughput/transfer rates.

#### **4.8 Acceptance**

##### **4.8.1 Conditional Acceptance**

- (a) Contractor shall notify the City in writing when Contractor contends that all Work comprising a Milestone is completed and ready for Conditional Acceptance by the City. Within thirty (30) days following receipt of Contractor's written notice, the City shall issue its written statement of Conditional Acceptance of the Milestone, or its written notice that the Work comprising the Milestone is not Conditionally Accepted. Conditional Acceptance will not be unreasonably withheld provided that all Work comprising the Milestone is completed and conforms to the Conditional Acceptance Standards.
- (b) In the event any Work comprising a Milestone is rejected by the City, the City shall, in its notice of rejection, specify in reasonable detail the reasons for the rejection, including a description of the defects on which the rejection is based. Contractor shall, within five (5)

business days following receipt of the City's notice, deliver to the City its plan for correcting all defects identified in the City's notice. Upon the City's written approval of the plan of correction, Contractor shall proceed to correct the defective Work in accordance with the approved plan and shall complete all corrections within thirty (30) calendar days following receipt of the City's approval of the plan, or such longer period as the City may agree to in writing (the "First Correction Period"). Upon completion of the corrections, Contractor shall notify the City in writing of such completion. The City shall determine whether the corrected Work complies with the Conditional Acceptance Standards and issue its written notice of Conditional Acceptance or rejection of the corrected work to Contractor. If the Work is rejected a second time, Contractor shall again be required to correct the defects within thirty (30) days; and if the Work still does not comply with the Conditional Acceptance Standards, following the Second Correction Period, the City may, in its sole discretion, (i) request Contractor, in writing, to remove the rejected portion at Contractor's expense and to restore the System (and the premises, if applicable) to its condition prior to performance of the Milestone; and/or (ii) remove the rejected portion itself, at Contractor's expense, if Contractor does not comply with such request; and/or (iii) perform the rejected portions of the work itself, through its own personnel or third parties, at Contractor's expense.

- (c) The Conditional Acceptance Standards consist of the following:
- the descriptions of functionality and standards of performance that are set forth in the Statement of Work, the Performance Standards, the Functional Requirements, and elsewhere in this Contract, and that apply to the Milestone;
  - the manufacturer's (including, without limitation, Contractor's, where applicable) most current published specifications for the Software, Equipment, and Deliverables that apply to the Milestone;
  - the Preliminary Design and Detailed Design;
  - the test criteria and standards of performance provided in the Test Plan(s) that are accepted and approved by the City and apply to the Milestone; and
  - successful completion of the Conditional Acceptance Tests and the Reliability Period.

#### **4.8.2 Final Acceptance**

- (a) Contractor shall notify the City in writing when Contractor contends that all Work required for the Project is completed and that the System and all other components of the Project have been fully performed in accordance with the Contract, including, without limitation, the Final Acceptance Standards, and the Work is ready for Final Acceptance Test(s). Following receipt of such notice, the City shall establish a schedule for commencing and conducting the Final Acceptance Test(s); the commencement date shall be not more than thirty (30) calendar days following the date on which the City receives Contractor's notice except as may be agreed otherwise by the parties. The Project shall not be Finally Accepted unless and until the System and all other components of the Project function together as an integrated whole in accordance with the Final Acceptance Standards.
- (b) The Final Acceptance Standards consist of the following:
- the descriptions of functionality and performance and all standards of performance that are set forth in the Statement of Work, the Performance Standards, the Functional Requirements, and elsewhere in this Contract;
  - the Documentation;

- the manufacturer's (including, without limitation, Contractor's, where applicable) most current published specifications for all Software, and Deliverables;
- all design documents prepared by Contractor under the Contract, including, without limitation, the Preliminary Design and Detailed Design;
- the test criteria and standards of performance set forth in the Test Plan(s), as accepted and approved by the City; and
- successful completion of the Final Acceptance Tests and the Reliability Period.

#### **4.8.3 Acceptance Test(s); Test Plan(s)**

The Services and Deliverables comprising each Milestone in the Milestone Payment Schedule shall be subject to conditional acceptance testing as approved and accepted by the City (the "Conditional Acceptance Tests"), and the Services and Deliverables as an integrated system shall be subject to final acceptance testing as approved and accepted by the City (the "Final Acceptance Tests"). No Conditional or Final Acceptance Test or other test of the Services and Deliverables shall commence unless and until Contractor has delivered and the City has accepted and approved, in writing, Contractor's written plan or plans setting forth, for the Conditional Acceptance Test(s) and the Final Acceptance Test(s), a test method and criteria and standards of performance that must be satisfied for the test to be successful (collectively, the "Test Plan(s)"). The Test Plan(s) shall include, without limitation, test methods and criteria and standards of performance for all Project Milestones, shall include all elements provided in the Statement of Work and otherwise conform to the general test requirements set forth in the Statement of Work, and shall fully test the System for conformance to the Performance Standards and other Final Acceptance Standards. The Test Plan(s) shall be Deliverables under the Contract.

#### **4.8.4 Reliability Periods**

- (a) For Conditional Acceptance: The Software to be Conditionally Accepted must function in conformance with the Conditional Acceptance Standards and without any Material Defect or Material Failure for a period of [TBD during contract negotiation] consecutive calendar days, commencing on the day following the first successful completion of the Conditional Acceptance Test. In the event such Software suffers any Material Defect or Material Failure prior to the expiration of such period (the "Reliability Period"), Contractor shall remedy such Material Defect, and a new [TBD during contract negotiation] consecutive calendar day Reliability Period (the "Second Reliability Period") shall begin on the day that Contractor notifies the City that the remedy has been completed. In the event the Software does not successfully complete the Second Reliability Period without any Material Defect, the City may, at its sole discretion, proceed in accordance with this Section and exercise any remedy provided herein. For purposes of this Section, the following conditions shall also be deemed to be Material Failures sufficient to trigger the foregoing requirements and remedies: [TBD during contract negotiation]
- (b) For Final Acceptance: It shall be a condition of Final Acceptance that the completed and fully integrated System function in conformance with the Final Acceptance Standards and without any Material Defect for a period of [TBD during contract negotiation] consecutive calendar days, commencing on the day following the first successful completion of the Final Acceptance Test. In the event the System suffers any Material Defect or Material Failure prior to the expiration of such period (the "Reliability Period"), Contractor shall remedy such Material

Defect Failure, and a new [TBD during contract negotiation] consecutive calendar day Reliability Period (the “Second Reliability Period”) shall begin on the day that Contractor notifies the City that the remedy has been completed. In the event the System does not successfully complete the Second Reliability Period without any Material Defect, the City may, at its sole discretion, terminate the Contract for default and exercise any one or more of the remedies provided to the City in the Contract.

#### **4.9 Retainage**

The City shall retain twenty (20) percent of each Milestone Payment set forth in the Milestone Payment Schedule unless and until the Services and Deliverables are finally accepted in accordance with the Contract. The retained amounts shall be payable to Contractor sixty (60) days following such final acceptance of the Services and Deliverables by the City.

#### **4.10 City Audit**

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

#### **4.11 Termination for Convenience**

The City shall have the right to terminate this Contract at any time during the term of the Contract, for any reason, including, without limitation, its own convenience. If the Contract is terminated solely for the City’s convenience, the City shall issue a written Termination Notice, which shall set forth the effective date of the termination.

#### **4.12 Termination for Default**

If Contractor commits or permits an event of default, as set forth in this Section, the City shall so notify Contractor in writing, specifying in reasonable detail the nature of the default. Contractor shall have thirty (30) calendar days from receipt of that notice to correct the default. If the default is not cured within that time period, the City may terminate the Contract by providing Contractor with written notice of termination for default. The following shall constitute events of default on the part of Contractor:

- (a) Contractor’s failure to comply with any provision, term, or condition of this Contract.
- (b) the appointment of a receiver, trustee or custodian to take possession of all or substantially all the assets of Contractor for the benefit of creditors, or any action taken or suffered by Contractor under any federal or state insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute;
- (c) falseness of any warranty or representation of Contractor contained in any of the Contract Documents;

- (d) misappropriation by Contractor of any funds provided under the Contract or failure by Contractor to notify the City upon discovery of any misappropriation;
- (e) a violation of law which results in a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Contractor, its directors, employees, or agents (1) directly or indirectly relating to the Contract or the Work required under the Contract, whether or not such offense is ultimately adjudged to have occurred or (2) which adversely affects the performance of the Contract; and/or
- (f) indictment of or issuance of charges against Contractor, its directors, employees or agents for any criminal offense or any other violation of law directly relating to the Contract or the Work required under the Contract or which adversely affects the performance of the Contract, whether or not such offense or violation is ultimately adjudged to have occurred.

#### **4.13 Sales and Use Tax Exemption**

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

#### **4.14 Unavailability of Funds**

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

- (a) Terminate the Contract effective upon a date specified in a Termination Notice; or
- (b) Continue the Contract by reducing, through written notice to Contractor, the amount of the Contract and Services and Deliverables, consistent with the nature, amount, and circumstances of available funding.
- (c) The City's exercise of either option under this Section shall not affect any obligations or liabilities of either party accruing prior to such termination or reduction of Services or Deliverables. Contractor shall be compensated in accordance with the terms of the Contract for Services and Deliverables, satisfactorily performed and delivered prior to such termination under this Section.

Commodities or services on the contract resulting from this RFP to be ordered after the end of the current fiscal year are subject to the issuance of purchase orders for the following fiscal years. The City is not liable for the portion of the award involving following fiscal year's funds until such orders are issued. The Vendor's obligation to deliver on such purchase orders shall not take effect until the orders are issued.

#### **4.15 Tax Requirements**

Contractor is subject to Philadelphia's business tax and Ordinances and regulations. The City Solicitor has ruled that anyone who is awarded a contract by the City and/or School District pursuant to a bid has entered into a contract within the City, and the subsequent delivery of goods

into the City or performance of services within the City constitutes “doing business” in the City and subjects the successful bidder, including but not limited to, one or more of the following taxes:

- (a) Business Income and Receipts Tax
- (b) Net Profits Tax
- (c) City Wage Tax

The successful Applicant, if not already paying the aforesaid taxes, is required to apply to the Department of Revenue, 1401 John F. Kennedy Blvd., Public Service Concourse, Municipal Services Building, Philadelphia, PA 19102, for a tax identification number and to file appropriate business tax returns as provided by law. Questions should be directed to the CBET Unit at (215) 686-6600.

#### **4.16 Assignment**

Contractor shall not assign or otherwise transfer its rights, duties or obligations under this Contract, except with the prior written consent of the City; any assignment or transfer (including, but not limited to, assignment of any subcontract) without such consent shall be null and void. In no event shall the City's consent to any assignment or transfer by Contractor of any rights, duties or obligations under the Contract relieve Contractor from its duties or obligations hereunder or change the terms of the Contract. Contractor retains full responsibility for and guarantees the performance of any and all assignees and transferees of Contractor, including but not limited to, their subcontractors, notwithstanding the assignment or transfer.

#### **4.17 Document Preparation Fee**

Pursuant to Chapter 17-700 of The Philadelphia Code, the successful Applicant must generally pay a contract preparation fee. Regulations promulgated by the City Solicitor currently establish the following schedule of fees for preparation of the initial contract and subsequent amendments, based upon the amounts involved and whether the successful Applicant is a for-profit or nonprofit entity:

<b><u>Amount of Contract or Amendment</u></b>	<b><u>For-Profit Fees</u></b>		<b><u>Non-Profit Fees</u></b>	
	<b><u>Contract</u></b>	<b><u>Amendment</u></b>	<b><u>Contract</u></b>	<b><u>Amendment</u></b>
\$0-\$30,000	\$50	\$50	\$50	\$50
\$30,001-\$100,000	\$200	\$170	\$100	\$85
\$100,001-\$500,000	\$500	\$340	\$200	\$170
\$500,001-\$1,000,000	\$900	\$520	\$300	\$260
Over \$1,000,000	\$1,500	\$1,000	\$500	\$500

In its discretion, the Law Department may grant a full or partial waiver of any of the above fees in exceptional cases for good cause shown, such as violation of a grant covenant. Governmental entities are exempt from the fees. The Law Department reserves the right to collect up to twice the stated fee if extensive negotiation is required to reach a final contract with the successful Applicant.

## **4.18 Nondisclosure of City Data and Contractor Data**

### **4.18.1 Nondisclosure**

Contractor and its employees, agents, Subcontractors, suppliers, and any person or entity acting on its behalf (i) will maintain in strict confidentiality all of the “City Data,” as defined and set forth below; (ii) will not, without the City’s written permission, divulge, disclose, communicate, or distribute any of the City Data to any person or entity except as may be strictly necessary to perform the Contract; (iii) will not, without the City’s written permission, in any way use any of the City Data for their businesses or other advantage or gain (except as may be necessary to perform the Contract), including, without limitation, any use of the City Data in any presentation, demonstration, or proposal to perform work, to the City or to others, that may be conducted or created as part of their business activities or otherwise; (iv) will use the City Data solely and exclusively in accordance with the terms of this Contract in order to carry out its obligations and exercise its rights under this Contract; (v) will afford the City Data at least the same level of protection against unauthorized disclosure or use as Contractor uses to protect its own trade secrets, proprietary information, and other confidential information (but will in no event exercise less than reasonable care and protection); and (vi) will, immediately upon the City’s Final Acceptance of the Services and Deliverables required under the Contract, return all City Data to the City, destroy any and all copies of any City Data that are in their possession, whether on paper or in electronic or other form, and if requested by the City in writing, will certify in writing that there has been full compliance with this Section. The City will maintain the “Contractor Data,” as defined and set forth below, in confidence and will afford the Contractor Data at least the same level of protection against unauthorized disclosure or use as the City uses to protect its own trade secrets, proprietary information, and other confidential information (but will in no event exercise less than reasonable care and protection).

### **4.18.2 City Data**

Except as provided otherwise in this Contract, the City Data shall include any and all of the following, whether in electronic, microfilm, microfiche, video, paper, or other form, and any copies or reproductions thereof:

- (a) any and all other records, documents, computer software (whether owned by the City or licensed or otherwise furnished to the City by third parties), and data furnished by the City to Contractor in relation to the work required under the Contract; and
- (b) all Deliverables and other work product(s) and items of work created by Contractor for the City as part of the work required under the Contract.

### **4.18.3 Contractor Data**

Except as provided otherwise in this Contract, the Contractor Data shall include any and all of the following, whether in electronic, microfilm, microfiche, video, paper, or other form, and any copies or reproductions thereof: [TBD during contract negotiation.]

### **4.18.4 Exclusions**

Neither the Contractor Data nor the City Data shall include any information or data which:

- (a) was known to the party receiving the Data (the “Receiving Party”), prior to the commencement of its performance of the Contract, free of any obligation to keep it confidential, and/or is proprietary to the Receiving Party; or
- (b) was generally known to the public at the time of receipt by the Receiving Party, or becomes generally known to the public through no act or omission of the party disclosing or furnishing the Data (the “Disclosing Party”); or
- (c) was independently developed by the Receiving Party without knowledge or use of any Data of the Disclosing Party; or
- (d) is required to be disclosed by law or judicial process.

#### **4.18.5 Remedy for Breach**

In the event of any actual or threatened breach of any of the provisions of this Section by the Receiving Party, and in addition to any other remedies that may be available to the Disclosing Party in law or equity, the Disclosing Party shall be entitled to a restraining order, preliminary injunction, permanent injunction, and/or other appropriate relief to specifically enforce the terms of this Section. The parties agree that a breach of the terms of this Section by the Receiving Party would cause the Disclosing Party injury not compensable in monetary damages alone, and that the remedies provided herein are appropriate and reasonable.

#### **4.19 Ethics Requirements**

To preserve the integrity of City employees and maintain public confidence in the competitive bidding system, the City intends to vigorously enforce the various ethics laws as they relate to City employees in the bidding and execution of City contracts. Such laws are in three categories:

##### **4.19.1 Gifts**

Pursuant to Executive Order 03-11, no official or employee in the Executive and Administrative Branch of the City may solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment or loan from any of the following sources:

- (a) A person seeking to obtain business from, or who has financial relations with the City;
- (b) A person whose operations or activities are regulated or inspected by any City agency;
- (c) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;
- (d) A person seeking legislative or administrative action by the City; or
- (e) A person whose interests may be substantially affected by the performance or nonperformance of the official’s or employee’s official duties.

If an Applicant offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of Executive Order 03-11, the Applicant may be subject to sanctions with respect to future City contracts, ranging from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

##### **4.19.2 City Employee Interest in City Contracts**

In accordance with Section 10-102 of The Philadelphia Home Rule Charter, no proposal shall be accepted from, or contract awarded to, any City employee or official, or any firm in which a City



employee or official has a direct or indirect financial interest. All Applicants are required to disclose any current City employees or officials who are employees or officials of the Applicant's firm, or who otherwise would have a financial interest in the contract.

#### **4.19.3 Conflict of Interest**

The State Ethics Act and the City Ethics Code prohibit a public employee from using his/her public office or any confidential information gained thereby to obtain financial gain for himself/herself, a member of his/her immediate family, or a business with which he/she or a member of his/her immediate family is associated. "Use of public office" is avoided by the employee or official publicly disclosing the conflict and disqualifying himself/herself from official action in the matter, as provided in The Philadelphia Code §20-608.

#### **4.20 Non-Discrimination; Fair Practices**

This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. Nor shall Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section, the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

#### **4.21 The Philadelphia Code, Section 17-400**

In accordance with Chapter 17-400 of The Philadelphia Code, as it may be amended from time to time, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

Contractor agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Contractor's failure to so cooperate shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

## **4.22 Americans with Disabilities Act**

Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in the Contract or from activities or Services provided under the Contract. As a condition of accepting and executing the Contract, Contractor shall comply with all provisions of the Americans With Disabilities Act (the "Act"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Contractor, (b) to the benefits, Services, activities, facilities and programs provided in connection with the Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, if any funds under the Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, facilities, activities, facilities and programs. Without limiting the applicability of the preceding sentence, Contractor shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of "The Americans With Disabilities Act," as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

## **4.23 Business Interests in Northern Ireland**

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

In the performance of this Agreement, the Contractor agrees that it will not utilize any suppliers, subcontractors or sub-consultants at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier, sub-consultant or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. The Contractor further agrees to include the provisions of this subparagraph, with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements that are entered into in connection with the performance of this Agreement.

The Contractor agrees to cooperate with the City's Director of Finance in any manner, which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. The Contractor expressly understands and agrees that any false certification or representation in connection with this Paragraph and/or any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity.

In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

#### **4.24 Business, Corporate and Slavery Era Insurance Disclosure**

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

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

#### **4.25 Limited English Proficiency**

Contractor understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to Services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, shall comply with all provisions of Title VI of the Civil Rights Act of 1964, the President of the United States of America Executive Order No. 12250, the Mayor of the City of Philadelphia Executive Order No. 04-01, “Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency” dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Contractor, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

#### **4.26 Health Insurance Portability and Accountability Act**

Where applicable, the contract will require the Contractor to comply fully with the federal Health Information Portability and Accountability Act and all related federal regulations (collectively, “HIPAA”), including, but not limited to, HIPAA requirements relating to the confidentiality of protected health information and HIPAA requirements relating to the security of information systems. City contracts subject to HIPAA requirements will be governed by “Terms and Conditions Relating to Protected Health Information” which are posted on the City’s website at

<https://secure.phila.gov/eContract/> under the “About” link and which will be incorporated into the contract.

#### **4.27 Philadelphia 21<sup>st</sup> Century Minimum Wage and Benefits Standard**

Applicants are advised that any contract awarded pursuant to this RFP is a “Service Contract,” and the successful Applicant under such contract is a “Service Contractor,” as those terms are defined in Chapter 17-1300 of the Philadelphia Code (“Philadelphia 21st Century Minimum Wage and Benefits Standard Ordinance”). Any subcontractor at any tier proposed to perform services sought by this RFP is also a “Service Contractor” for purposes of Chapter 17-1300. If any such Service Contractor (i.e. Applicant and subcontractors at any tier) is also an “Employer,” as that term is defined in Section 17-1302 (more than five employees), and is among the Employers listed in Section 17-1303 of the Code, then during the term of any resulting contract, it is subject to the minimum wage and benefits provisions set forth in Chapter 17-1300 unless it is granted a waiver or partial waiver under Section 17-1304. Absent a waiver, these minimum wage and benefits provisions, which include a minimum hourly wage that is adjusted annually based on the CPI, health care and sick leave benefits, are mandatory and must be provided to Applicant’s employees or the employees of any subcontractor at any tier who perform services related to the City contract resulting from this RFP. Applicants and any subcontractors at any tier proposed by Applicants are strongly encouraged to consult Chapter 17-1300 of the Philadelphia Code and the “About/Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors” links on the eContract Philly home page for further details concerning the applicability of this Chapter to, and obligations it imposes on certain City contractors and subcontractors at any tier. In addition to the enforcement provisions contained in Chapter 17-1300, the successful Applicant’s failure or the failure of any subcontractor at any tier to comply (absent an approved waiver) with the provisions of Chapter 17-1300, or any discrimination or retaliation by the successful Applicant or Applicant’s subcontractors at any tier against any of their employees on account of having claimed a violation of Chapter 17-1300, shall be a material breach of any Service Contract resulting from this RFP. By submitting a proposal in response to this RFP, Applicants acknowledge that they understand, and will comply with the requirements of Chapter 17-1300, and will require the compliance of their subcontractors at any tier if awarded a contract pursuant to this RFP. Applicants further acknowledge that they will notify any subcontractors at any tier proposed to perform services related to this RFP of the requirements of Chapter 17-1300.

## **Appendix A**

### **Detailed Project Requirements**

#### **1. Current and anticipated OST/After School Data systems infrastructure:**

The Out-of-School Time landscape encompasses three main City Departments (reporting to the Managing Director's Office), and includes the Department of Human Services (DHS), Philadelphia Parks & Recreation (PPR) and the Free Library of Philadelphia (FLP). The other partners and stakeholders include the School District of Philadelphia and non-City funded OST providers. As indicated in section 1.2 of this RFP, for the past three years the City has been using a Software as a Service (SaaS)-based System (ETO, from Social Solutions Global Inc.) to track and to integrate OST data between the three City departments and a few non-City funded providers. ETO is a web based, locally managed, remotely hosted application that can be modified by local administrators to meet the specific programming needs of the various networks. With the City's new initiative, we are poised to bolster the current data collection effort by further integrating the said efforts across the City, thereby reducing silos, and to focus on program quality and outcomes. MDO reserves the right to consider all proposals for satisfying the business and technical requirements identified in this RFP, including proposals from the incumbent vendor to upgrade and extend the ETO software, as well proposals from other software vendors or implementation vendors to replace the ETO software with a new System.

#### **The networks utilizing the current Data System (ETO) include:**

- These providers/OST Networks use ETO as their primary data tracking system:
  - **Philadelphia Parks & Recreation Department (PPR)**  
After school programs exist at 81 of this Department's physical locations. In total, there are around 2,700 youth served at those locations during the school year and about 7,000 during the summer. PPR is utilizing the City provided Data System (ETO) to enter their OST data. However, their process is still dependent on field staff at most of the locations sending paper records to the central location for data entry into the ETO System. It is expected that with internal infrastructure development (inclusion of smart devices) staff will be able to enter data directly into the integrated system. Furthermore, what is currently missing is PPR's data on youth development programs like athletics offered before, during and after-school hours. This specific dataset is anticipated to be shared via integration with the City's MIS.(See Exhibit-A-Data Dictionary and Data Integration for more details)
  - **Free Library of Philadelphia (FLP)**  
The FLP operates a drop-in program called "LEAP" at each of its 50 community library branches. Currently, data is collected at all locations and entered into the ETO System. Barcode scanning is one of the ways staff can enter daily attendance.
  - **Other Non-City Funded Providers:**  
Some of the DHS-funded Community Based Organizations ("CBOs") enter non-City funded Data directly into the ETO (See below about DHS).
  - **Enrichment Service Providers:**
    - **After School Activities Partnerships (ASAP):** ASAP, which manages various clubs (chess, scrabble, debate and drama) at over 100 school and community sites, uses the current system to enter attendance data for sites where they provide such services directly. For sites that are DHS funded, they add enrichment service attendance data

to participants entered via uploads from PCAPS (see additional PCAPS information below).

- **Philadelphia Out of School Time Literacy Initiative (POSTLI):** POSTLI provides literacy enrichment services at 14 of the DHS-funded sites, and they use the ETO system to track literacy assessment data and POSTLI attendance for youth whose enrollment data is uploaded via PCAPS\* uploads (see below).
- These providers/OST Networks enter data via external data system integrations or manual uploads:
  - **Department of Human Services (DHS):**  
Through a contract with an Administrative Entity (currently, the Public Health Management Corporation), there are nearly 172 different programs serving youth ages 5-18 that are operated by about 67 community-based providers. Ninety-five (95) programs are in public schools with 77 at private or charter schools, community sites and other settings. All these programs utilize the PCAPS\* information system (PHMC managed Database used by DHS-funded provider network). The data collected in PCAPS\* is used to pay provider invoices and is uploaded daily to the ETO system via an automatic Data-link. Uploaded data in the ETO system gives DHS funded OST provider network access to a rich variety of custom built reports. (\*See below for PCAPS overview.)
  - **Police Athletic League (PAL)**  
PAL uses a separate ASP based COTS system. Currently, Data which includes enrollment and attendance is uploaded manually from that system to our system monthly.

**Brief overview of what is currently collected and reported out by the City provided ETO Data system:**

The current ETO system primarily tracks demographics, enrollment, attendance and other related information for each network's youth participants. Furthermore, over the course of the last few years and after actively soliciting feedback from the various provider networks and City leadership, the system now offers custom reports and assessment tools to meet the specific needs of each network. Some of these added features/tools include:

- Assortment of on-demand custom reports meeting the needs of specific providers and/or OST networks.
- Scheduled reports delivered weekly providing status reports on attendance and enrollment.
- Afterschool Program Assessment System (APAS) tools (SAYO-S) developed by the National Institute on Out-of-School Time (NIOST), which track youth outcomes through a series of pre and post surveys;
- Surveys and assessments for the DHS funded CBO network;
- Surveys and Reading Assessment Tools for literacy service providers (like POSTLI);
- State Department of Public Welfare (DPW) child care licensing requirements for many providers who provide services to pre-school aged participants and are subject to these regulations;
- Custom reports for providers who receive state 21st Century Community Learning Center (21CCLC) funds.

**(See Table 1 below for an outline of current programs.)**

**Further Data Integration anticipated through this RFP:**

Other OST networks with which the initiative is keen on integrating data include the many organizations that operate afterschool programs using non-City resources. While several such providers are among

those included in the DHS-funded OST system of contracted agencies, e.g., Boys & Girls Clubs -- there are many more programs that the initiative is reaching out to, to include in this citywide effort. Some of the main networks that we anticipate to collaborate with to aggregate their data with our current data set include Sports and Athletics based programs offered at:

- ***Philadelphia Youth Sports Collaborative (PYSC):*** These programs (about 30 providers) are in the process of looking for a COTS system to assist them in their Data collection effort.
- ***Philadelphia Parks and Recreation Youth Development Programs:*** PPR offers a variety of youth development programs (athletic, cultural, camps and others based on age groups) which are not currently being tracked in the same manner and level of detail as their OST data. Like PYSC, they are in the process of looking at a similar sports-based data collection system.
- ***Athletic programs at the School District of Philadelphia (SDP)***

With all three above networks, it is highly likely that we may integrate their enrollment and attendance data with our data system. Furthermore, as we extend the data integration efforts to other providers, we expect the MIS to integrate with already established systems, as well as be the system of choice where none currently exists.

**\*PCAPS Overview:**

The DHS OST Project programs funded by DHS through its administrative entity are using an information system called “PCAPS: Provider Contract Attendance Performance System,” which has been in place since 2007. PCAPS is a Web-based 3-Tiered system running on Microsoft.NET with SQL Server 2008 Database; additional development components include Dot Net Nuke and Microsoft shared development components. PCAPS collects data at the organizational, client and staff levels for these DHS-funded programs. The number of organizations utilizing PCAPS is around 67. We expect the MIS to integrate seamlessly with PCAPS and to import demographics and attendance data, as well as any other identified datasets to produce comprehensive OST system-wide reports. See Attached “Exhibit-A-Data Dictionary and Data Integration” document for current Data Link between PCAPS and ETO and the anticipated Data fields expected to be included in the updated Data Link(s).

## **2. Software Requirements:**

**Leverage Out-of-the-Box Functionality:** The Applicants must maximize the software’s out-of-the-box delivered functionality and look to finding creative ways to configure gaps between the City’s requirements and out-of-the-box software instead of proposing customizations, unless absolutely warranted and cost-value justified. Any proposed customizations must be clearly identified and justified by the Applicant and submitted to the City’s project team for consideration.

**Functional and Technical Capability:**

**(The Matrix below is available as Appendix D –in Excel Format and should be completed in the excel format only)**

**Using the rating scale below please rate each question as appropriate.**

(1 = Out-of-the-box 2 = Standard tailoring (i.e., no code rewrite or programming) 3 = Customization required 4 = Future release 5 = Not available)	Rating	Your Comments
<b>General Data Entry Functionality and Technical Capabilities</b>		
Data entry interface is intuitive with plenty of contextual help available such that there is a quick learning curve and adoption.		
Logical workflow—in other words, Data entry from enrollment to attendance follows a logical path, preferably with redirections based on responses.		
System allows for straightforward tracking of and reporting on participant information that changes from year to year, such as grade levels and school information.		
MIS is flexible to easily allows for enterprise administrators to create custom Data Fields.		
Allows for enterprise administrators to show or hide fields to specific staff or programs based on program groups and user roles.		
Has the capacity and flexibility to easily expand and upgrade to accommodate future providers that are added and need to quickly begin capturing data.		
Has easy-to-use roster-based daily attendance tracking interface.		
Software optimized to enter data over mobile devices.		
Barcode scanning functionality available over smartphone or similar devices.		
Software has inbuilt functionality to check for missing, invalid or duplicate data.		
Includes the ability to create groups of participant records for data entry like attendance or surveys.		
Seamlessly allows for "Enrichment" service providers to track Data for youth already enrolled by other OST providers. This may involve giving select staff members access to subsets of data from multiple provider agencies.		
Allows tracking of information for external entities like "Schools," etc.		
Software will have the ability to track provider agency-related Data.		
Allows tracking of staff information, including individual and group trainings.		
Has ability to display configurable dashboards at participant and agency level.		



Tools for enterprise administrators for managing the system.		
<b>Outcomes and Assessments</b>		
Allows for administration of surveys and outcomes measurement tracking.		
Has ability to link outcome indicators to youth participants.		
Has inbuilt program quality measuring tools or ability to easily create such tools (compatible with multiple funding streams, NIOST's tools or reading assessments, etc.).		
<b>Reporting Capabilities</b>		
Has a wide variety of standard inbuilt reports.		
To allow for custom reporting, software has a reporting tool like SAP Business Objects, Crystal Reports or SQL Report Writer.		
Ability for reports to be scheduled for email delivery.		
<b>Data Integration</b>		
Will allow for live aggregation with other MIS system(s) like PCAPS.		
Has an API or an interface that would allow for third party applications to access and share data.		
Allows for data to be imported and/or exported (including batch uploads) in various formats like CSV, XLS, MDB, etc.		
Has inbuilt tools to de-duplicate records and clean up any synchronization issues.		
Has underlying rules in place that govern data flow, data quality and monitor user access.		
<b>Data Security and Assurance</b>		
Data encryption and authentication provided at various levels (at database, web transmittal level, etc.).		
Allows for role-based user access.		
Prohibits access without proper credentials.		
Provides system administrators the ability to track usage and modifications.		

Uptime of 99.9% supported.		
<b>Disaster Recovery</b>		
The software is hosted with vendor providing ongoing support, maintenance, management and security.		
Has back-up procedures in place.		
Ability to restore and recover historical data.		
Stated recovery time after an outage (planned or unplanned).		
Vendor will provide copy of the Database to the City if requested.		
<b>Vendor Support and Service Level Agreements (SLA's)</b>		
Vendor will have to agree to a separate Service Level Agreement (SLA) that will address the following areas:		
<ul style="list-style-type: none"> <li>• Speed with which software loads and reports are generated;</li> <li>• Support for various types of batch uploads;</li> <li>• Turnaround time for technical requests;</li> <li>• Turnaround time to address any software defects;</li> <li>• Turnaround time to complete any additional custom requests to enhance the software functionality.</li> </ul> <p>Potential (including monetary) penalty if vendor fails to meet the SLA requirements (details will be spelled out in SLA after the final bid is selected).</p>		
<b>Contract management:</b> <i>(Implementation of this module will be limited and not part of the initial implementation)</i>		
i. Contract management .i.1. Proposal review .i.2. Generate and track invoicing and payment .i.3. Provide Contract Directory .i.4. Site assessments and other compliance related tasks .i.5. Progress reports		
<b>Miscellaneous:</b>		
Allows for scanning and saving of forms		
Some of the OST providers have requested other desirable modules (like Customer Management Software(CRM)). Based on your experience in youth Development field, if there are other related modules that are available as part of your overall solutions package, please include those as well.		

**In compiling responses, as to how your software solution will accomplish the above-mentioned tasks, please supplement your responses by answering the questions below:**

- Describe how your software will allow for data aggregation. Provide similar examples of other projects where data aggregation within the system and through integration with other systems was carried out successfully.
- Describe the reporting functionality that your software provides. In general terms, list the types of reports that are built in. Furthermore, describe in detail what report generation tools are in place to allow for end users or enterprise administrators to generate customized reports. Describe your process for creating such customized reports not otherwise available through such tools or built-in templates.
- Describe in detail how your software will allow access to data over mobile devices and indicate any instances where it may not work.
- Describe in detail how your software will allow for creation of custom forms such as needed for tracking program quality and participant outcomes. If your program has any built-in afterschool/Youth Development quality tools please describe them, and if desired, how they can be adapted to meet our needs.
- List other features or tools that the software has in place that fall within the purview of Youth Development and are not touched upon in any of the questions above.
- Explain in specific detail any work you have done with any of the school districts in other cities. Specifically, describe what type of data integration or sharing was done if any.
- To track attendance and/or participation in various activities, describe in detail how different methods of identification can be integrated in your solution (Examples are Biometrics, Swipe Cards, Barcodes, etc.). Provide a proposed solution for client identification.
- Describe your data encryption standards.
- Carefully describe your Service Level Agreements (SLA's) as they relate to the following performance metrics:
  - Response time (Maximum system response time)
  - Throughput (Rate that data will be delivered)
  - Utilization (Maximum usage during which the system will perform within guaranteed response times and throughput)
  - Customer Support (General help desk problem reporting and problem resolution guarantees based on severity level)
  - Availability (System availability guarantees over a period-of-time); this should be calculated at 24/7 level.

***Support and Technology Capabilities:***

- Describe the methods for contacting technical/help-desk support. State the policy regarding acceptable response time when support request call is made by end-user/administrator.
- What are your proposed hours of operation for technical support?
- Describe the organization and structure of your technical support services.
- What percentage of your total employees are responsible for direct client support?
- Describe the ongoing system support provided.
- Describe your software upgrade process.
- How often are new versions of your software released? When was the last upgrade released and what type of quality testing do you do before the release?

- How many separate modifications were included in your last software release?
- How many separate modifications were included in the last release requested by current users?
- How are customer requests for enhancements and customizations handled?
- Describe the qualifications of your product development department.
- What percentage of your total employees are responsible for product development?
- Describe your back-up procedures including Restoration and Recovery procedures.
- Is there a formal users' group(s) for your software?

**Table 1**

Currently, data is entered by about 486 programs during the School Year and about 286 during the summer (as of SY 2016). See table below:

*(The numbers reported elsewhere in this RFP are from the current School Year (SY-17) and may be slightly different than the numbers listed below from SY-16)*

School Year 2016: Enrollment and program numbers

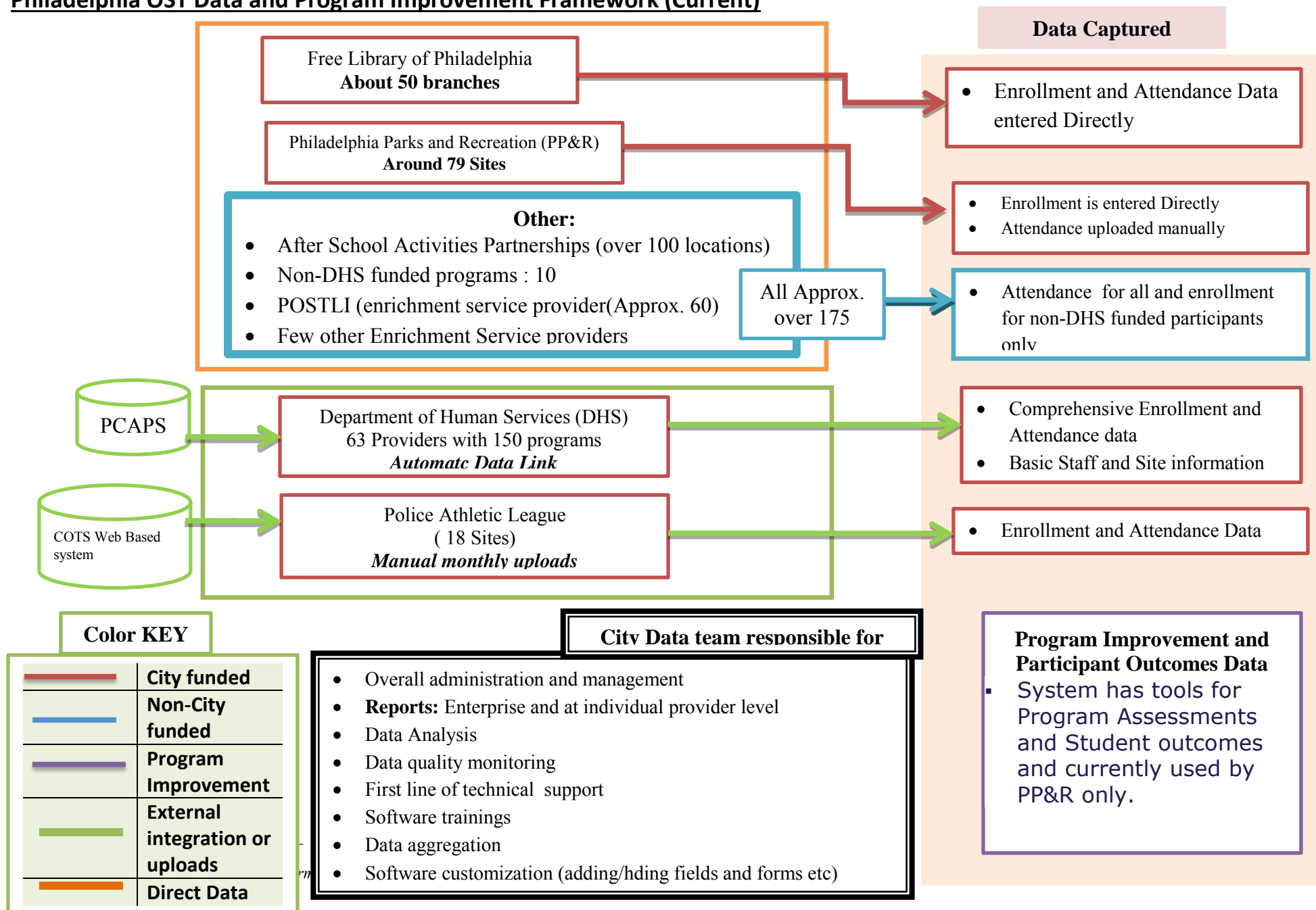
OST Network	SY16 Participants (Excluding Summer)	SY16 # of Programs
DHS OST provider network	10,219	182
Free Library of Philadelphia	5007	51
Philadelphia Parks and Recreation	2497	88
Police Athletic League	6312	18
After School Activities Partnerships (non-DHS)	1987	132
Non-DHS (21CCLC, other)	504	15
<b>TOTAL</b>	<b>26,526</b>	<b>486</b>

Summer 2016: Enrollment and program numbers

OST Network	Summer 2016 Participants	Summer 2016 # of Programs
DHS OST provider network	7203	132
Philadelphia Parks and Recreation	6997	128
Police Athletic League	882	18
Non-DHS (21CCLC, other)	253	8
<b>TOTAL</b>	<b>15,335</b>	<b>286</b>

**Table 2**

**Philadelphia OST Data and Program Improvement Framework (Current)**



## Anticipated OST Data and Program Improvement Framework

### Enhanced and Anticipated Data and Quality

Free Library of Philadelphia  
About 50 branches

Philadelphia Parks and Recreation (PP&R)  
Around 79 Sites

#### Other:

- After School Activities Partnerships (over 100 locations)
- Non-DHS funded programs : 10
- POSTLI (enrichment service provider(Approx. 60))
- Few other Enrichment Service providers

All Approx.  
over 175

### Data Captured

- Providers and Networks using the MIS system as their main Data System would be entering Enrollment and Attendance Data directly using various input modes including Barcodes etc.

For Integrated systems link/upload:

- Enrollment and Attendance data
- Basic Staff and Site information

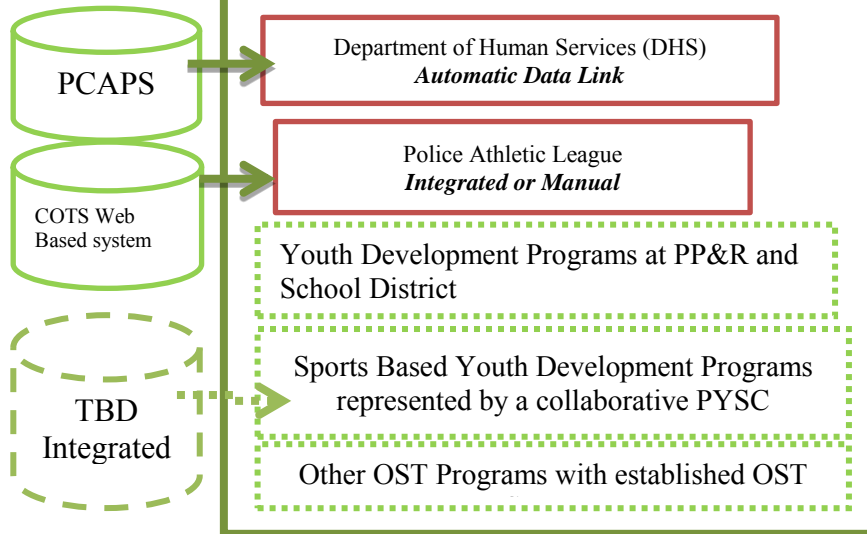
### Color KEY

	City funded
	Non-City funded
	Program Improvement
	External integration or uploads
	Direct Data Entry
	Anticipated
	Phase 1
	Phase 2

### Program Improvement and Participant Outcomes Data

System will have the ability to capture Quality improvement Data at, program and participant level irrespective of whether the enrollment Data is entered directly or integrated with another system.

**Data team functions to continue as indicated in current set-up**



# Data Dictionary for Philadelphia OST Initiative

Version-5: 4/11/2017

## Initial Enrollment Information

### Demographics--Standard

Field Name	Type	Choices (if applicable)	Notes	Tracked by all the current networks/providers?	Currently Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
First Name	free text			Y	Y	Y
Middle Name	free text			Y	Y	Y
Last Name	free text		This is the primary field by which you will likely search for records throughout the System	Y	Y	Y
Suffix	choose one	Jr., Sr., I, II, III, IV		N	N	N
Nick Name	free text			N	N	N
Case Number			Currently set to auto-generate but can also be entered manually. The current system also generates a truly Unique ID that is available through reports	Y	N	N
DOB	Date		Currently the standard DOB field is auto-calculating the participant's age, which is continuously updated over time. This field is often chosen, along with full name, as part of an agency's duplicate check settings.	Y	Y	Y
Gender	choose one	Male, Female, Unknown, Other	This is open to adding other choices	Y	Y	Y
Race	choose one	Black/African American, Asian, White/Caucasian, American Indian/Pacific Islander, Multi-Racial, Unknown	Given the various reporting requirements, we often combine the values between Race and Ethnicity on the reporting end	Y	Y	Y
Ethnicity	choose one	Hispanic, Not Hispanic, Unknown		Y	Y	Y
Address 1	free text			Y	Y	Y
Address 2	free text			Y	Y	Y
Zip Code	formatted		Should only accept valid zip codes and preferably should automatically generate city, state based on the zip code.	Y	Y	Y
Email	formatted		Only accepts valid email address format	N	Y	Y
Home Phone	formatted		Only accepts 10 digit phone number. Note that it may be desirable to make custom demographic fields for phone numbers of the type free text which will allow any alphanumeric data entry. This is ideal if you want to make the phone number field required, but want to allow the user to enter none or not applicable.	Y	Y	Y
Cell Phone	formatted		same as above	Y	Y	Y
Referral Source	choose one	City Agency, School, Family/Friend, Flyer/Newsletter		N	N	N
Alert	free text		This is a place to enter an important message about the participant, such as "This client has a history of violence towards staff", or "This child is allergic to peanuts". The message will appear in a pop-up box whenever someone views the record, records services or assessments for the client, or re-enrolls a former client.	N	N	N

### Demographics--Custom

Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Currently Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
Age	Number		Auto-calculates based on DOB	Y	N	Y
Primary Language Spoken at Home	Number	English, Spanish or Spanish Creole, Chinese, Vietnamese, Mon-Khmer, Cambodian, Other Asian Language, Russian, African Language, Arabic, French, Other or Unspecified Language	Provides us insights into demographics	N	Y	Y
School Name	Text	cross reference with Education Institution entities	Reporting need and mapping	Y	Y	Y
Grade	varchar	K, 1, 2, ..., 12	Must have robust ability to track and report on changes in this field from year to year	Y	Y	Y
Student ID #	Number		As a requirement for any data sharing with the School District	N	Y	Y
IEP	Choose one	Yes, No, Undeclared	Reporting need to gain insight of demographics served	N	Y	Y-P
HS Graduation Date	Date		For high school programs	N	Y	Y-P
HS Graduation School	Text	cross reference with Education Institution entities	For high school programs	N	Y	Y-P
Shirt Size	Choose one	X-Small, Small, Medium, Large, X-Large	For providers that offer shirts to participants	N	N	N
PCAPS Client ID	Number		Uniquely identifies participants coming over from PCAPS via uplink	N	Y	Y
DHS Status	Choose one	DHS Funded, Non-DHS	All participants coming over from PCAPS will have this checked.	N	Y	Y

### Consents:

Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Currently Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
Emergency Contact Consent Date	Date		Most of these fields are either used as part of compliance requirements or have been requested by individual networks/programs.	N	Y	Y
Agency Consent Form Date	Date			N	Y	Y
Health Assessment Form Date	Date			N	Y	Y
OST Consent Form Date	Date			N	Y	Y
OST Consent	Y/N			N	Y	Y
SDP Consent Form Date	Date			N	Y	Y
SDP Consent	Y/N			N	Y	Y
Media Release	Y/N			N	N	N
Permission for Trips	Y/N			N	N	N
Voluntary Surveys Consent Form	Y/N			N	N	N

### Participant Enrollment



Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Currently Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
Program Name			For reporting and to track participants	Y	Y	Y
Program Start Date	Date			Y	Y	Y
Program End Date	Date			Y	Y	Y
Dismissal Reason	Choose one	Behavioral Problems, Caregiver won't complete eligibility forms, Completed Program, Explicitly reassigned to a different site, Family situation, Graduated High School, Medical reasons, Moved away, Other, Outside activity participation, Poor attendance, Provider Site Relocated		Y	Y	Y
Sucessfully Completed	Y/N			N	Y	Y

#### Caregiver Information

Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Currently Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
Name (of caregiver)	Text		Most of these fields are either used as part of compliance requirements or have been requested by individual networks/programs.	N	Y	Y
Relationship to Student	Choose one	Mother, Father, Legal Guardian, Grand Parent, Sibling, Unknown, Other		N	Y	Y
Caregiver Phone	same as in first section			N	Y	Y
Caregiver Cell				N	Y	Y
Address 1				N	Y	Y-P
Address Line 2				N	Y	Y-P
Caregiver Email				N	Y	Y-P
City				N	Y	Y-P
State				N	Y	Y-P
Zip Code				N	Y	Y-P
Authorized for Pick Up?	Y/N			N	N	N

#### Emergency Contact Information

Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Currently Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
Name (of emergency contact)	same as in first section		Most of these fields are either used as part of compliance requirements or have been requested by individual networks/programs.	N	Y	Y
Email Address				N	Y	Y
Home Phone				N	Y	Y
Cell Phone				N	Y	Y
Business Phone				N	Y	Y

### Daily Attendance Information

#### Attendance: For School Year and Summer

Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Currently Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
Attendance Date	Date	Date (mm-dd-yyyy format) of the attendance	Needed by all the networks to track daily attendance	Y	Y	Y
Start of Programming	Time	Time (military format – hh:mm) of when the attendance started		N	Y	Y
End of Programming	Time	Time (military format – hh:mm) of when the attendance ended		N	Y	Y
Total Program Time	Time	Time spent in attending the activity (derived: End_time – Start_Time)		N	Y	Y
Attendance	choose one	Present, Absent		Y	Y	Y
Notes about today	text			N	N	N
Activities	choose multiple		Not currently in use, but possibly at some point in future	N	N	N

### Additional Information

#### Entities: Staff:

Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Currently Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
First Name	text		Most of these fields are either used as part of compliance requirements or have been requested by individual networks/programs.	Y	Y (PCAPS only)	Y
Last Name	text			Y		Y
DOB	Date			N		Y-P
Agency Hire Date	Date			N		Y-P
Email	Email	valid email address format		Y		Y
Contact Phone	Phone	valid phone number format		N		Y-P
Contact Cell	Phone	valid phone number format		N		Y-P
Contact Address	text					Y-P
Contact Zip Code	number	valid zip codes				Y-P
Title	choose one					Y-P
Race	choose one	Black/African American, White/Caucasian, Undeclared, Asian, American Indian/Pacific Islander		N		Y-P
Ethnicity	choose one	Hispanic, Not Hispanic, Unknown		N		Y-P
Gender	choose one	Male, Female, Unknown		N		Y-P
Resident of Target Community?	choose one	Y/N		N		Y-P
Educational Level	choose one	High School Diploma/GED, Youth Worker Certificate, Associates, Bachelors, Masters, Doctorate		N		Y-P

Field	choose one	Child Development, Special Education, Elementary Education, Behavioral Science, Counseling, Criminology, Human Behavior, Psychology, Social Work/Social Welfare, Sociology, Secondary Education, Nursing, Recreation, Early Childhood Education, Other, Not Applicable		N		Y-P
Years of Experience	choose one	1 year, 2 years, 3 years, 4 or more years		N		Y-P
Credits/Hours	choose one			N		Y-P
Credentials	choose one	Youth Worker Certificate, Child Worker Associate/CDA, Director Credential, Other		N		Y-P
Communication Type:	choose one	Executive, Program, Fiscal, General, Data Entry		N		Y-P
Health Assessment Date		Date		N		Y-P
FBI Clearance Date		Date		N		Y-P
Confidentiality Agreement Date		Date		N		Y-P
Criminal Check Date		Date		N		Y-P
Child Abuse Check Date		Date		N		Y-P

#### Educational Institutions\*:

Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Currently Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
Name	text		To track accurate educational institutions attached to each youth; reporting; mapping	Y	Y	Y
Address	same as in first section			Y	Y	Y
Zip Code				Y	Y	Y
Phone				Y	N	N
Description	text			N	N	N
CUA	choose one	CUA 1,2,3,4,5,6,7,8,9,10		Y	N	N
Police District	choose one	1,2,3,5,6,7,8,9,12,14,15,16,17,18,19,22,24,25,26,35,39		Y	N	N
School Level	choose one	Elementary School, Middle School, High School, K-12, K-8, 6-12, Accelerated High School, Unknown		Y	Y	Y
School Type	choose one	Public, Charter, Private, Parochial		Y	Y	Y

#### Programs\*:

Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Currently Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
Name	text		Needed by programs to track program-level data; reporting; mapping	Y	Y	Y
Address	same as in first section			Y	Y	Y
Zip Code				Y	Y	Y
Phone				N	N	Y
Description	text			N	N	N
Contact Name	text	cross reference with staff entities		N	N	Y
Executive Director	text	cross reference with staff entities		N	N	Y
Site Director	text	cross reference with staff entities		N	N	Y
Site Type	choose one	Library, Rec Center, Community Center, Provider, School, Church		Y	Y	Y
Program Model	choose one	Elementary, Middle, High		N	Y	Y
PPR District	choose one	1,2,3,4,5,6,7,8	Yes, No, Unknown cross reference with Education Institution entities	N	N	N
CUA	choose one	CUA 1,2,3,4,5,6,7,8,9,10		Y	N	N
Police District	choose one	1,2,3,5,6,7,8,9,12,14,15,16,17,18,19,22,24,25,26,35,39		Y		N
City Council District	choose one	1,2,3,4,5,6,7,8,9,10		Y		N
Latitude	Decimal			Y		N
Longitude	Decimal			Y		N
Is program public school-based?	choose one	Yes, No, Unknown		Y		N
School Location	text	cross reference with Education Institution entities		Y		N

\* Programs and School based programs have a unique relationship in PCAPS that determines how the integration is constructed to maintain integrity between the two systems

#### Organization

Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
Organization Name, Address and Executive Director Information			Custom built forms to track certain general or unique data as requested by different networks/providers; compliance requirements for some; reporting; mapping	N	N	Part of Staff

## Assessment Tools, Surveys and Other Forms, etc.

Most of these tools are related to quality assessment, custom schedules and tracking program compliance requirements

Field Name	Type	Choices (if applicable)	Notes / Why We Track This Field	Tracked by all the current networks/providers?	Mapped to External System(s)	Anticipated Future Mapping to External Systems Y-P : PCAPS only Y : All External Systems
NIOST's SAYO-S (Different versions)			A set of about 10 forms from NIOST (outcomes and standards-based OST tools and surveys)	N	N	N
APT-O (grades K-8 and Teen versions)					N	N
Literacy related: A set of about 10 literacy assessment and survey forms			Set of surveys and observation tools to track literacy in literacy enrichment programs (POSTLI, Read By 4th)		N	N

Activity Schedule			Attached to a group of participants, used by enrichment service providers to track the days when enrichment services are provided		N	N
Family Public Benefits Profile (aka Means Test)			Attached to a participant: A multi-question form used to determine welfare/public support eligibility		Y	N
Structured Activities Rubric			Multi-question form		N	N
Staff Training			Attached to staff or group of staff: Multi-question form used to track staff trainings		N	N
Miscellaneous: A set of about 20 forms to track general and custom program tasks like staff DPIW (Department of Public Welfare) requirements, Site Visits, etc.			Mostly for monitoring program compliance		N	N

## APPENDIX B

### REQUIREMENTS FOR IMPLEMENTATION PLAN, STATEMENT OF WORK, PROJECT SCHEDULE, AND MILESTONE PAYMENT SCHEDULE

#### 1. **Tasks and Deliverables:**

##### a. Services

###### ▪ Project Management:

The Applicant should respond with a detailed statement of work describing the tasks, deliverables, responsibilities, activities, and completion requirements for the implementation process. The City recognizes that the Applicant may have their own implementation methodology to implement a project of this magnitude and nature and encourages the Applicant to propose its own methodology. It is the responsibility of the Applicant to map their implementation methodology with the specified project requirements and tailor the proposed methodology to comply with the City's requirements, addressing all the services described above. However, the Contractor is expected to work closely with the Project's Data Lead in managing this project. Unless otherwise specified, deliverables and reports associated with this project will be delivered to the Data Lead. The Data Lead with input from Project Director will be responsible for the review and acceptance of the deliverables and reports.

###### ▪ Knowledge Transfer:

For project work that involves City staff for knowledge sharing or transfer, the Applicant will work closely with the City's Data Team and assigned project personnel to ensure day-to-day project knowledge transfer on all functional, technical, and change management aspects of the project as appropriate.

###### ▪ Coordination with Partners

Regular status update meetings (either in person or via telephone) will be held during the implementation and subsequently, on an as-needed basis. Progress and any other updates will be relayed to project core members and Data Work Group members representing various partner agencies.

###### ▪ Implementation Assistance

The successful Applicant will provide remote or on-site (as mutually agreed upon) implementation assistance and it will include defining security requirements and providing technical support, especially during the first few weeks of live operation. These product implementation activities will be distinct from the successful Applicants services provided through ongoing support and maintenance. All on site trips should be included as part of the fixed cost proposal.

##### b. Tangible Work Products

###### ▪ Implementation Plan:

- Detailed implementation plan, including the length of time support/installation team will be working with the City's Data team during implementation and the exact scope of the work performed.

###### ▪ Work Plan:

- A detailed work plan outlining various tasks will be the first deliverable upon the successful contract award.
- Training Plan.
  - *See Appendix E*
- Documentation
  - **Product Technical documentation:** This will include technical architecture of the system including Data Dictionary, table layouts, performance, and hardware specifications.
  - **Product Operations documentation:** This will include steps and procedures needed to operate the system on a daily basis including batch upload or download procedures, managing access roles etc.
  - **Product User documentation:** This should include end user operation documentation and will include such things as log-in and log out sequences, menu operations, screen descriptions, means of invoking online help etc. The Applicant will also provide more in-depth documentation for staff with administrative rights.

## 2. **Hours and Location of Work**

The selected Contractor should be able to perform all project planning, requirements gathering, design and development, reporting and programming tasks at the Contractor's facility, except for trips to Philadelphia, PA. as specified and agreed upon in the project implementation plan submitted by the Contractor. Anticipated trips should be identified in the implementation plan and included as part of the fixed cost proposal.

## 3. **Reporting Requirements**

The identified project manager from the Contractor shall establish a project reporting system that will provide routine and realistic assessments of project progress through completion. The Data Lead in consultation with Project Director, will first review and approve all the requirements and design specifications documents before the Contractor can commence with the configuration, customization, integration and any needed coding. Furthermore, the vendor will ensure day-to-day project knowledge transfer on all functional, technical, and change management aspects of the project as appropriate for the nature of the software and managed services solution under the Project Scope of Work.

Reports shall include:

- a. Weekly status updates;
- b. Issue management log – The Contractor shall bring problems/potential problems affecting performance to the attention of the Data Lead within 5 working days of occurrence. Verbal reports will be followed up with written reports when directed by the City;
- c. Project risk management log.

## 4. **Timetable/Project Schedule**

The project implementation is expected to be completed through two Phases. The first Phase will begin no later than July 2017 as per the procurement timetable and should be completed by December 2017.

**The 1<sup>st</sup> Phase will include the following main tasks:**

- Roll-out of the MIS system for Philadelphia Parks and Recreation, Free Library of Philadelphia, and After School Activities Partnerships;
- Integration and uploading of data from PCAPS (There is a working Data Link in place which can be utilized to fast track connection);
- Roll-out for DHS funded providers who are currently using the ETO system for collecting data not being tracked in PCAPS;
- Roll-out for other entities like ReadBy4, POSTLI and a limited number of 21CCLC sites.

**The 2nd Phase is expected to start in December 2017 and conclude by end of April 2018 and will include:**

- Data integration with agencies receiving some or no City funding;
- Data Integration with PPR Athletic Programs and Philadelphia Sports-Based OST programs;
- Integration/Data sharing with non-City funded providers with established MIS systems like PAL.

**Payment Schedule:**

- Payments for the software will be made based on the Milestone Payment schedule indicated under section 3.2. Vendor should define milestones within the above two phases.

## APPENDIX C

### COST PROPOSAL REQUIREMENTS

We anticipate the project to be implemented in at least two phases with each phase having a combination of associated fixed and variable costs. It is expected that most of the implementation and any (well justified) customization costs will be incurred in Phase 1. However, in Phase 2 there will be further integration involved as we extend the MIS to partners with established systems.

#### **Fixed Costs:**

##### **A. Implementation and Deployment Services (Phase 1)**

List all costs associated with the development and execution of the deployment strategy for the proposed system. Costs can be broken down by Project Management, Interfaces Testing and Implementation, On-site “Go-Live” Assistance (during roll-out) and Knowledge Transfer.

##### **B. Software Customization**

List each functional requirement (see Appendix D) which would be met by proposed customization to the proposed base software package and the associated cost of the proposed customization. As indicated earlier, please include a full explanation of the rationale for not incorporating such functionality in the base System; and detailed cost information for each option/alternate, in accordance with the cost proposal requirements of the RFP.

#### **Data Integration Costs**

List Data Integration costs, including developing any custom links or providing facility for manual uploads. List costs for both approaches. See Appendix A for Integrations expected.

##### **C. Software Licensing (Yearly), Maintenance and Support**

This section contains information on yearly licensing costs and other costs for all proposed software, whether required or optional. Describe software functionality for which licensing is required, as defined by user/agency/location. Specify the number of users licensed in this proposal for each software component, including the maximum number of concurrent users with either full access, inquiry-only (or otherwise restricted) users.

If there are no restrictions on the number of users i.e., an Enterprise License are provided) please enter “NO LIM”.

##### **D. Training Services (Both Phases)**

List all costs associated with providing training for the MIS implementation as described in the technical proposal. As defined in Appendix E, “Training Requirements,” there are multiple categories of training to

be provided, including direct training to end-users, System Administration and Technical Staff, and Train-the-Trainer training that will enable the City to train future end-users.

*Include the templates below to list your costs:*

<b>SUMMARY OF FIXED COSTS</b>			
Section / Subsection	Cost Category	One-Time Cost	Annually Recurring
<b>A</b>	Implementation and Deployment Services		
<b>B</b>	Software Customization (List each required feature not available out of the Box )		
<b>C</b>	Integration with other systems (cost out different approaches manual vs. automatic)		
<b>D</b>	Software License		
<b>F</b>	Maintenance and Support Agreements (Yearly maintenance and support payments will be contingent upon SLA agreement signed at the time of contract award)		
<b>F</b>	Training Services		
TOTAL COSTS			

**Total Costs:**



## **APPENDIX D**

### **REQUIREMENTS COMPLIANCE Matrix (Attached as an Excel Document)**

## **APPENDIX E**

### **TRAINING REQUIREMENTS**

The selected software provider will support the system by offering Training and related support. It is expected that the software provider has a robust training program in place utilizing the latest technology tools and other resources to allow for easy training options for newer partners and staff beyond the initial implementation phase.

As part of the Training requirements documentation, please provide the following:

- Training Methodology (to include timeline of when training should be conducted during the Implementation phase).
- Description of trainings provided, including their objectives and a training timeline.
- Describe on-going training availability after implementation (for new users, upgrades and re-training purposes).
- Recommended approach for training administrator of the new system
  - The following group of users will require training in the day-to-day use of the software system:
    - 2-3 Enterprise System Administrators
    - 60-70 power users
    - 250-300 end users (estimate)

The City will make arrangements to provide a training room with computers having both network and internet access, if hands-on training is proposed/recommended. The City also requests information on train-the-trainer sessions, self-guided online training, and/or training videos.

## **APPENDIX F**

**CITY OF PHILADELPHIA  
OFFICE OF ECONOMIC OPPORTUNITY  
ANTIDISCRIMINATION POLICY- MINORITY, WOMAN AND DISABLED OWNED BUSINESS  
ENTERPRISES  
FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS  
(NON-COMPETITIVELY BID CONTRACTS)**

**CITY OF PHILADELPHIA  
OFFICE OF ECONOMIC OPPORTUNITY  
ANTIDISCRIMINATION POLICY- MINORITY, WOMAN AND DISABLED OWNED BUSINESS  
ENTERPRISES  
FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS  
A Web Based Information System Serving Philadelphia's Out-of -School Time (OST) Program**

Under the authority of Executive Order No. 03-12, the City of Philadelphia has established an antidiscrimination policy ("Policy") relating to the participation of Minority (MBE), Woman (WBE) and Disabled (DSBE) Owned Business Enterprises in City contracts. Executive Order 03-12 is administered by the City's Office of Economic Opportunity ("OEO").

The purpose of this Policy is to provide equal opportunity for all businesses and to assure that City funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The City is committed to fostering an environment in which all businesses are free to participate in business opportunities without the impediments of discrimination and participate in all City contracts on an equitable basis. In accordance with the contracting requirements of the City, the City's antidiscrimination policy is applicable to this Notice of Contracting Opportunity (hereinafter, "NOCO").<sup>1</sup>

The Office of Economic Opportunity has approved the following projected ranges of participation for this NOCO which serve as a guide in determining each applicant's responsibility:

MBE      15   % -   20   %  
                    AND/OR  
WBE      15   % -   20   %  
DSBE           % -        %

These ranges represent the percentage of MBE, WBE and/or DSBE (collectively, "M/W/DSBE") participation that should be attained by M/W/DSBEs from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses and through applicant's exercise of Best and Good Faith Efforts. Best and Good Faith Efforts are those efforts, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/W/DSBEs. These ranges are derived from an analysis of factors such as the size and scope of the contract and the availability of certified M/W/DSBEs to perform various elements of the contract. The submission of a Solicitation For Participation and Commitment Form and any supporting documentation (more fully discussed below) is an element of responsiveness to the NOCO and failure to submit the required information will result in rejection of your proposal.

Applicant hereby verifies that all forms, information and documentation submitted to OEO are true and correct and is notified that the submission of false information by applicant is subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities which may include payment of a fine of at least \$1,000 and a term of imprisonment of not more than two years. Applicant also acknowledges that under 18 Pa.C.S. §4107.2 (a)(4) it is a felony in the third degree, punishable by a term of imprisonment of not more than seven years in addition to the payment of any fines or restitution, if, under any contract awarded pursuant to this NOCO, applicant fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

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<sup>1</sup> The term "Notice of Contracting Opportunity," shortened to the acronym "NOCO," refers to the City's contract solicitation documents and information posted on eContract Philly. Generally, these documents take the form of a Request for Proposals (RFP), Request for Qualifications (RFQ) or Request for Expression of Interest (RFI) and include any other document or information (for example, exhibits, appendices) related to the posting of the new contract opportunity.

## A. M/W/DSBE PARTICIPATION

1. Only firms that are certified by an approved certifying agency<sup>2</sup> and identified in the OEO Certification Registry by the time of contract award will be credited toward the participation ranges on City contracts. An OEO Certification Registry is maintained by the OEO and is available online at [www.phila.gov/OEO/directory](http://www.phila.gov/OEO/directory). Firms owned and controlled by minority persons, women or disabled persons, which are certified as MBE, WBE, DSBE or DBE by an approved certifying agency may apply to the OEO for listing in its OEO Certification Registry.

2. No applicant that seeks to meet the participation range(s) for participation by entering into a subcontract with any M/W/DSBE participant shall be considered to meet the range(s) if the M/W/DSBE participant does not perform a commercially useful function ("CUF"). An M/W/DSBE performs a Commercially Useful Function when it performs a distinct element of a City Contract (as required by the services to be performed in accordance with the NOCO) which is worthy of the dollar amount of the M/W/DSBE Subcontract and the M/W/DSBE carries out its responsibilities by managing and supervising the services involved and actually self-performing at least twenty percent (20%) of the services of the Subcontract with its own employees. For suppliers, an M/W/DSBE performs a Commercially Useful Function when it is responsible for sourcing the material, negotiating price, determining quality and quantity, ordering the material and paying for it from its own funds. Commercial usefulness will be evaluated and determined by the OEO on a proposal by proposal basis as informed by prevailing industry standards and the M/W/DSBE's NAIC codes. Participation that is not commercially useful will not be counted.

3. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Applicants will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

4. An MBE/WBE/DSBE submitting as the prime applicant is required, like all other applicants, to submit a proposal that is responsive to the Policy. The M/W/DSBE Applicant will receive credit towards the participation range for its certification category (e.g., MBE range or WBE range or DSBE range). In addition, the participation of an M/W/DSBE partner, as part of a joint venture created for this contract, may be credited towards the participation ranges only to the extent of the M/W/DSBE partner's ownership interest in the joint venture in accordance with the following criteria:

- The MBE, WBE or DSBE partner(s) must be identified in the OEO Registry prior to contract award;
- The M/W/DSBE partner(s) must derive substantial benefit from the arrangement;
- The M/W/DSBE partner(s) must be substantially involved in all phases of the contract including planning, staffing and daily management;
- The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interest, contributes working capital and other resources, etc).

5. M/W/DSBE Subcontractors must perform at least twenty percent (20%) of the total amount of work to be performed under the Subcontract with their own employees.

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<sup>2</sup> Approved certifying agencies are identified on the OEO webpage found at [www.phila.gov/OEO](http://www.phila.gov/OEO). Applicant is strongly encouraged to search the Pennsylvania Unified Certification Program ("PaUCP") Directory which offers a robust listing of DBEs; the PaUCP Directory is found at [www.paucp.com](http://www.paucp.com).

6. In listing participation commitments on the Solicitation for Participation and Commitment Form, applicants are required to list a detailed description of the services or supply effort, the dollar amount of the quotation, and percentage of the contract the participation represents. In calculating the percentage amount, applicants may apply the standard mathematical rules in rounding off numbers. The OEO reserves the right to request clarifying information from applicants in the event of an inconsistency or ambiguity in the Solicitation For Participation and Commitment Form.

## **B. RESPONSIVENESS**

1. A proposal responsive to the Policy is one which contains documentary evidence of the M/W/DSBEs that have been solicited and that will be used by the applicant on the contract, if awarded; where the proposal satisfies the M/W/DSBE participation ranges for that contract, the applicant is rebuttably presumed not to have discriminated in its selection of contract participants.

2. Applicants must submit documentary evidence of MBE, WBE and DSBES who have been solicited and with whom commitments have been made in response to each of the participation ranges included in this NOCO. Failure to submit the Solicitation For Participation and Commitment Form will result in the rejection of the proposal as nonresponsive, although the City, at its sole discretion, may allow applicants to submit or amend the Solicitation For Participation and Commitment Form at any time prior to award. The Solicitation For Participation and Commitment Form must contain the following information:

- Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made on the enclosed document entitled "Solicitation For Participation and Commitment Form". Applicants should only make actual solicitations of M/W/DSBEs whose services or materials are within the scope of this NOCO. Mass mailing of a general nature to M/W/DSBEs or similar methods will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes/subproposals. The applicant's listing of a commitment with an M/W/DSBE constitutes a representation that the applicant has made a legally binding commitment to contract with such firm, upon receipt of a contract award from the City ("Contract Commitment").

- If the applicant has entered into a joint venture with an MBE, WBE and/or DSBE partner, the applicant is also required to submit along with the Solicitation For Participation and Commitment Form, a document entitled "Joint Venture Eligibility Information Form," available at OEO, for the City's review and approval of the joint venture arrangement.

3. If Applicant does not fully meet each of the range(s) for participation established for this NOCO, applicant must demonstrate that it exercised Best and Good Faith Efforts to achieve the M/W/DSBE participation ranges along with a written request, on its letterhead, for the reduction of part or all of the M/W/DSBE participation ranges ("Request For Reduction/Waiver"). Applicant, through the submission of documentary evidence must show that applicant took all necessary steps and made reasonable efforts to achieve the M/W/DSBE participation ranges, even if these efforts were not fully successful. OEO will evaluate the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve M/W/DSBE participation commensurate with the ranges. Failure to submit the documentary evidence will result in rejection of the proposal as nonresponsive; the City, at its sole discretion, may allow applicants to submit or amend their submission at any time prior to award which may result in revision to Applicant's participation commitments. The submission shall contain and discuss, at a minimum, the following:

- Reasons for not committing with any MBE/WBE/DSBEs that submitted a quote/subproposal, regardless of whether the quote/subproposal was solicited by applicant.

- Any additional evidence pertinent to applicant's conduct relating to this NOCO including sufficient evidence which demonstrates to the OEO that applicant has not engaged in discriminatory practices in the solicitation of and commitment with contract participants. In describing applicant's efforts to achieve participation within the ranges, applicant may submit any corroborating documentation (e.g., copies of advertisements for participation).

The applicant's documentary evidence will be reviewed by the OEO to determine whether applicant exercised Best and Good Faith Efforts in response to the participation ranges. Applicant's expressed desire to self-perform services with its own employees will not excuse applicant from exercising Best and Good Faith Efforts to include M/W/DSBEs in its proposal and cannot be used as a basis for requesting a reduction or waiver of the participation ranges. OEO's review will include consideration of the following:

- Applicant's contracting activities and business practices on similar public and private sector contracts. For example, if applicant rejects any M/W/DSBE based on price, applicant must fully document its reasons for the rejection and also demonstrate that applicant subjects non-M/W/DSBEs to the same pricing standards. OEO will investigate whether there was any attempt at good faith negotiation of price.

- Whether M/W/DSBEs were treated as equally as other businesses in the solicitation and commitment process. For example, the OEO will investigate whether M/W/DSBEs are given the same information, access to the plans and requirements of the contract and given adequate amount of time to prepare a quote/subproposal as others who were solicited by applicant. The OEO will also investigate whether M/W/DSBEs were accorded the same level of outreach as non-M/W/DSBEs, for example whether applicant short listed M/W/DSBEs for participation or solicited M/W/DSBEs at any pre-proposal meetings.

- Whether the applicant's contracting decisions were based upon policies which disparately affect M/W/DSBEs. OEO will ascertain whether applicant selected portions of work or material needs consistent with the capacity of available M/W/DSBE subcontractors and suppliers. OEO will consider whether applicant employed policies which facilitate the participation of M/W/DSBEs on City contracts such as segmentation of the contract or prompt payment practices.

4. After review of the applicant's submission and other information the OEO deems relevant to its evaluation, the OEO will make a written determination that will be forwarded to the awarding City Department.

- If the proposal is determined nonresponsive by the OEO, the applicant will be notified and may file a written appeal with the Executive Director of OEO within forty-eight (48) hours of the date of notification; the decision of the Executive Director of OEO shall be final.

## **C. RESPONSIBILITY**

1. Upon award, the completed Solicitation For Participation and Commitment Form and accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs become part of the contract and the successful applicant is required to enter into legally binding agreement(s) ("M/W/DSBE Subcontract(s)") with its M/W/DSBE participants for the services and in the dollar amount(s) and percentage(s) as so committed (the "Contract Commitment(s)"). M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including amendments). Any change in commitment, including but not limited to, substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the OEO.

2. Unless otherwise specified in the M/W/DSBE Subcontract, the successful applicant shall, within five (5) business days after receipt of a payment from the City for services performed under the contract, deliver to its M/W/DSBE participants, their proportionate share of such payment for services performed (including the supply of materials). In connection with the payment of its M/W/DSBE participants, the successful applicant agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

3. No privity of contract exists between the City and any M/W/DSBE participant identified in any contract resulting from this NOCO. The City does not intend to give or confer upon any such M/W/DSBE participant(s) any legal rights or remedies in connection with the subcontracted services pursuant to Executive Order 03-12 or by reason of any contract resulting from the NOCO except such rights or

remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

4. If the OEO determines that the applicant has discriminated against a M/W/DSBE at any time during the term of the contract, the OEO may recommend to the Director of Finance the imposition of sanctions on the applicant including debarment of the applicant from submitting and/or participating in future City contracts for a period of up to three (3) years.

#### **D. ACCESS TO INFORMATION**

1. The OEO shall have the right to make site visits to the applicant's place of business and/or job site and obtain documents and information from any applicant, subcontractor, supplier, manufacturer or contract participant that may be required in order to ascertain applicant's responsiveness and responsibility.

2. Failure to cooperate with the OEO in its review may result in a recommendation to terminate the contract.

#### **E. RECORDS AND REPORTS**

1. The successful applicant shall maintain all books and records relating to its M/W/DSBE commitments (e.g. copies of quotations, subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) for a period of at least three (3) years following acceptance of final payment from the City. These records shall be made available for inspection by the OEO and/or other appropriate City officials. The successful applicant agrees to submit reports and other documentation to the OEO as deemed necessary by the OEO to ascertain the successful applicant's fulfillment of its M/W/DSBE commitments.

#### **F. REMEDIES**

1. The successful applicant's compliance with the requirements of Executive Order 03-12 is material to the contract. In the event the City determines that the successful applicant has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract which includes termination of the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

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

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

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this NOCO nor shall it give rise to actions by any third parties including identified M/W/DSBE participants.



**ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM**  
**Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises<sup>1</sup>**

<b>DEPARTMENT OF COMMERCE</b> <b>OFFICE OF ECONOMIC OPPORTUNITY (OEO)</b>									
<b>Bid Number or Proposal Title:</b>				<b>Name of Bidder/Proposer:</b>				<b>Bid/RFP Opening Date:</b>	
<b>A Web Based Information System Serving Philadelphia's Out-of-School Time (OST) Program</b>									
List below ALL MBE/WBE/DBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.									
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		<b>Work or Supply Effort to be Performed</b>		<b>Date Solicited</b>		<b>Commitment Made</b>		<b>Give Reason(s) If No Commitment</b>	
<b>Company Name</b>				<b>By Phone</b>	<b>By Mail</b>	<b>Yes ( If Yes, give date)</b>	<b>NO</b>		
<b>Address</b>									
<b>Contact Person</b>				<b>Quote Received</b>		<b>Amount Committed To</b>			
<b>Telephone Number</b> <b>Fax Number</b>				<b>YES<sup>2</sup></b>	<b>NO</b>	<b>Dollar Amount</b>			
<b>Email Address</b>						<b>\$</b>			
<b>OEO REGISTRY #</b>	<b>CERTIFYING AGENCY</b>					<b>Percent of Total Bid/RFP</b>			
						<b>%</b>			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		<b>Work or Supply Effort to be Performed</b>		<b>Date Solicited</b>		<b>Commitment Made</b>		<b>Give Reason(s) If No Commitment</b>	
<b>Company Name</b>				<b>By Phone</b>	<b>By Mail</b>	<b>Yes ( If Yes, give date)</b>	<b>NO</b>		
<b>Address</b>									
<b>Contact Person</b>				<b>Quote Received</b>		<b>Amount Committed To</b>			
<b>Telephone Number</b> <b>Fax Number</b>				<b>YES<sup>2</sup></b>	<b>NO</b>	<b>Dollar Amount</b>			
<b>Email Address</b>						<b>\$</b>			
<b>OEO REGISTRY #</b>	<b>CERTIFYING AGENCY</b>					<b>Percent of Total Bid/RFP</b>			
						<b>%</b>			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		<b>Work or Supply Effort to be Performed</b>		<b>Date Solicited</b>		<b>Commitment Made</b>		<b>Give Reason(s) If No Commitment</b>	
<b>Company Name</b>				<b>By Phone</b>	<b>By Mail</b>	<b>Yes ( If Yes, give date)</b>	<b>NO</b>		
<b>Address</b>									
<b>Contact Person</b>				<b>Quote Received</b>		<b>Amount Committed To</b>			
<b>Telephone Number</b> <b>Fax Number</b>				<b>YES<sup>2</sup></b>	<b>NO</b>	<b>Dollar Amount</b>			
<b>Email Address</b>						<b>\$</b>			
<b>OEO REGISTRY #</b>	<b>CERTIFYING AGENCY</b>					<b>Percent of Total Bid/RFP</b>			
						<b>%</b>			

1. If Bidder/Proposer makes solicitation(s) and commitment(s) with a DBE, Bidder/Proposer shall indicate which class type, M-DBE or W-DBE, is submitted for credit.  
 2. Attach all quotations to this form.



**THE CITY OF PHILADELPHIA**  
**PROFESSIONAL SERVICES CONTRACT**  
**GENERAL PROVISIONS**  
**FOR**  
**COMPUTER AND INFORMATION SERVICES**

**TABLE OF CONTENTS**

	Page(s)
<b>Article I: Definitions .....</b>	<b>1</b>
1.1 ADA.....	1
1.2 Additional Services and Materials.....	1
1.3 Additional Term, Additional Terms .....	1
1.4 Amendment.....	1
1.5 Applicable Law.....	1
1.6 Applicant.....	1
1.7 Appropriated Fiscal Year.....	1
1.8 Certification of Restrictions of Lobbying.....	1
1.9 Charter.....	1
1.10 City .....	2
1.11 City Council.....	2
1.12 Code.....	2
1.13 Consultant.....	2
1.14 Contract.....	2
1.15 Contract Cost Principles .....	2
1.16 Contract Documents .....	2
1.17 Contributions .....	2
1.18 Deliverables .....	2
1.19 Department .....	2
1.20 Event of Default.....	3
1.21 Event of Insolvency .....	3
1.22 Fiscal Year .....	3
1.23 General Provisions.....	3
1.24 Initial Term .....	3
1.25 Interpretation; Number; Gender .....	3
1.26 Materials .....	3
1.27 Non-Competitively Bid Contract.....	3
1.28 Party; Parties.....	4
1.29 Person .....	4
1.30 Provider.....	4
1.31 Provider Agreement.....	4
1.32 Responsible Official .....	4
1.33 Scope of Services.....	4
1.34 Services.....	4

1.35	Software .....	4
1.36	Subcontract .....	4
1.37	Subcontractor .....	4
1.38	Suspension Notice .....	4
1.39	Suspension Period.....	4
1.40	Term.....	5
1.41	Termination Notice.....	5
<b>Article II: Term .....</b>		<b>5</b>
2.1	Initial Term .....	5
2.2	Additional Terms; Term of License .....	5
<b>Article III: Provider's Duties and Covenants.....</b>		<b>5</b>
3.1	Performance Requirements.....	5
3.2	Compliance with Applicable Law .....	5
3.3	Additional Services and Deliverables.....	6
3.4	Subcontracts.....	6
3.5	Relationship with the City .....	8
3.6	Time Frame for Submissions.....	8
3.7	Prompt Payment by Provider.....	8
3.8	Sales and Use Tax.....	8
<b>Article IV: Provider's Representations and Covenants .....</b>		<b>8</b>
(a)	Good Standing.....	9
(b)	Authority to Act .....	9
(c)	Legal Obligation .....	9
(d)	No Litigation Preventing Performance .....	9
(e)	Requisite Licensure and Qualifications .....	9
(f)	No Adverse Interests.....	10
(g)	No Indebtedness to the City .....	10
(h)	Commercial Activity License .....	10
(i)	Subcontractor Licensure; No Indebtedness to the City.....	10
(j)	Non-Suspension; Debarment .....	10
<b>Article V: Compensation .....</b>		<b>11</b>
5.1	Certification of Available Funds .....	11
5.2	Unavailability of Funds .....	11
5.3	Crossing Fiscal Years .....	11
5.4	Allowability of Cost Items .....	12
<b>Article VI: Audits; Inspection Rights; Records .....</b>		<b>12</b>
6.1	City Audit .....	12

6.2	Inspection.....	12
6.3	Availability of Records.....	12
6.4	Retention of Records .....	12
6.5	Audits Pursuant to Section 6-400 of the Home Rule Charter.....	13
<b>Article VII: Assignment.....</b>		<b>13</b>
7.1	Assignment by Provider .....	13
7.2	Applicability in Case of Bankruptcy or Insolvency .....	13
7.3	Personal Services .....	13
<b>Article VIII: Independent Contractor; Indemnification; Litigation Cooperation .....</b>		<b>13</b>
8.1	Independent Contractor .....	13
8.2	Indemnification.....	14
8.3	Litigation Cooperation.....	14
8.4	Notice of Claims .....	14
<b>Article IX: Confidentiality .....</b>		<b>14</b>
<b>Article X: Disputes .....</b>		<b>14</b>
<b>Article XI: Events of Default .....</b>		<b>15</b>
11.1	Events of Default .....	15
11.2	Notice and Cure .....	16
<b>Article XII: Remedies .....</b>		<b>16</b>
12.1	The City’s Remedies.....	16
12.2	Concurrent Pursuit of Remedies; No Waiver .....	17
<b>Article XIII: Termination and Suspension .....</b>		<b>17</b>
13.1	Termination or Suspension for Convenience .....	17
13.2	Provider Responsibilities upon Termination or Suspension.....	18
13.3	Payment of Provider upon Termination or Suspension.....	18
13.4	Suspension .....	19
<b>Article XIV: Additional Representations and Covenants of Provider Relating to Certain Applicable Laws .....</b>		<b>19</b>
14.1	Non-Discrimination; Fair Practices .....	20
14.2	Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations	20
14.3	Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation .....	20

14.4	Federal Laws.....	23
14.5	Americans with Disabilities Act.....	23
14.6	Northern Ireland .....	23
14.7	Business, Corporate and Slavery Era Insurance Disclosure .....	24
14.8	Limited English Proficiency .....	24
14.9	Protected Health Information .....	25
14.10	Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard .....	25
14.11	Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures.....	27
14.12	Executive Order 03-11: Gifts.....	30
14.13	Chapter 17-1900 of the Philadelphia Code: Equal Benefits Ordinance.....	30
<b>Article XV:</b>	<b>Miscellaneous .....</b>	<b>31</b>
15.1	Governing Law .....	31
15.2	Amendments; Waiver .....	31
15.3	Integration.....	31
15.4	No Joint Venture.....	32
15.5	No Third Party Beneficiaries.....	32
15.6	Counterparts.....	32
15.7	Severability and Partial Invalidity .....	32
15.8	Survival.....	32
15.9	Interpretation; Order of Precedence.....	32
15.10	Headings .....	32
15.11	Statutes and Other Citations .....	33
15.12	Days .....	33
15.13	Forum Selection Clause; Consent to Jurisdiction.....	33
15.14	Waiver of Jury Trial.....	33
15.15	Notices .....	33

## **GENERAL PROVISIONS**

### **ARTICLE I: DEFINITIONS**

The following terms shall have the meanings set forth herein, except to the extent (if any) that Article II (Definitions) of the Provider Agreement expressly provides a different meaning.

- 1.1. **ADA**. “ADA” shall have the meaning set forth in Section 14.5 (Americans with Disabilities Act) below.
- 1.2. **Additional Services and Materials**. “Additional Services and Materials” shall have the meaning set forth in Section 3.3 (Additional Services and Materials) below.
- 1.3. **Additional Term, Additional Terms**. “Additional Term” and “Additional Terms” shall have the meanings set forth in Section 2.2 (Additional Terms) below.
- 1.4. **Amendment**. “Amendment” means a written modification or change to any Contract Document signed by both Parties.
- 1.5. **Applicable Law**. “Applicable Law” means all applicable present and future federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth and the United States of America. Applicable Law includes, without limitation, the Charter (as defined below), the Code (as defined below), and the specific laws set forth in Article XIV (Additional Representations and Covenants of Provider Relating to Certain Applicable Laws) below hereof, each as amended from time to time.
- 1.6. **Applicant**. “Applicant” means a Person who has filed an application to be awarded a Non-Competitively Bid Contract.
- 1.7. **Appropriated Fiscal Year**. “Appropriated Fiscal Year” shall have the meaning set forth in Section 5.3 (Crossing Fiscal Years) below.
- 1.8. **Certification of Restrictions on Lobbying**. “Certification of Restrictions on Lobbying,” if required in the Provider Agreement, means a certificate in the form attached to the Provider Agreement.
- 1.9. **Charter**. The “Charter” means the Philadelphia Home Rule Charter, as it may be amended from time to time.

1.10. **City.** The “City” means The City of Philadelphia, a corporation and body politic organized and existing under the laws of the Commonwealth of Pennsylvania, and includes its various executive and administrative departments, agencies, boards and commissions, including the Department, and its legislature, City Council. The City is a City of the First Class under the laws of the Commonwealth of Pennsylvania.

1.11. **City Council.** “City Council” means the Council of The City of Philadelphia, as described in Article II of the Charter. City Council is the legislature of the City.

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

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

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

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

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

1.17. **Contributions.** “Contributions” shall have the meaning set forth in the Pennsylvania Election Code, 25 P.S. Section 3241.

1.18. **Deliverables.** “Deliverables” means, collectively, the tangible items of work, as described in Exhibit PA-1 to the Provider Agreement and elsewhere in the Provider Agreement, that Provider is required to furnish as part of its performance of the Contract, including, without limitation, all Software, Documentation, designs, reports, documents, and Materials required under the Contract.

1.19. **Department.** The “Department” means the department, board, commission or agency of the City of Philadelphia defined as the Department in the heading of the Provider Agreement.



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

1.21. **Event of Insolvency.** “Event of Insolvency” means (a) the filing of a voluntary petition by Provider under the Federal Bankruptcy Code or any similar state or federal law; or (b) the filing of an involuntary petition against Provider under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days; or (c) Provider’s making of an assignment for the benefit of creditors; or (d) the appointment of a receiver for Provider or for the property or assets of Provider, if such appointment is not vacated within forty-five (45) days thereafter; or (e) any other proceeding under any bankruptcy or insolvency law or liquidation law, voluntary or otherwise; or (f) Provider proves unable to pay its obligations as they mature; or (g) Provider is insolvent as otherwise defined under any Applicable Law.

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

1.23. **General Provisions.** “General Provisions” means these “The City of Philadelphia Professional Services Contract General Provisions for Computer and Information Services”, which contains the standard provisions required by the City in its professional services contracts for computer and information services, and any exhibits identified in these General Provisions.

1.24. **Initial Term.** “Initial Term” shall have the meaning set forth in Section 2.1 (Initial Term) below.

1.25. **Interpretation; Number, Gender.** The words “herein” “hereof” and “hereunder” and other words of similar import refer to this Contract as a whole, including all of the Contract Documents and not to any particular article, section, subsection or clause contained in the Contract Documents. Whenever the context requires, words used in the singular shall be construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include the masculine, feminine and neuter genders.

1.26. **Materials.** “Materials” means, collectively, any and all materials and work products, tangible and intangible, prepared or developed by Provider in connection with the performance of the Contract, or for Provider by a Subcontractor in connection with the performance of the Contract, including but not limited to reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, data, computer tapes, and computer software.

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

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

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

1.30. **Provider.** “Provider” means the Person providing Services and Deliverables to the City, as defined in the heading of the Provider Agreement.

1.31. **Provider Agreement.** The “Provider Agreement” means the instrument, part of the Contract Documents, which sets forth the terms, covenants and conditions specific to the Provider's engagement.

1.32. **Responsible Official.** The “Responsible Official” means the director, commissioner or other head of the Department.

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

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

1.35. **Software.** “Software” means the computer software, if any, to be furnished by Provider under the Contract, as set forth in Exhibit PA-1 to the Provider Agreement and elsewhere in the Provider Agreement.

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

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

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

1.39. **Suspension Period.** “Suspension Period” means the period designated by the City in a Suspension Notice during which the City has suspended Provider’s performance under this Contract.

1.40. **Term.** “Term” means the period of time comprised of the Initial Term and any Additional Terms.

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

## **ARTICLE II: TERM**

2.1 **Initial Term.** The initial term (“Initial Term”) of this Contract shall be as stated in the Provider Agreement. In no event shall the Initial Term exceed one (1) year, except as expressly set forth otherwise in the Provider Agreement.

2.2 **Additional Terms; Term of License.**

(a) Notwithstanding Section 2.1, above, each license to Software (as defined in the Provider Agreement) and to other Services and Deliverables licensed to the City under the Contract shall be for the term set forth for the license in the Provider Agreement.

(b) The City may, at its sole option, amend this Contract to add on an annual basis up to three (3) successive one (1) year terms (“Additional Terms”), unless any shorter term (or terms) is specified in the Provider Agreement. Unless otherwise stated in the Provider Agreement, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). The City shall give Provider thirty (30) days written notice of its intent to amend this Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term shall be subject to appropriation of funds by City Council for such Additional Term. There shall be no liability or penalty to the City for electing not to amend the term of this Contract to add Additional Terms. Each Additional Term of this Contract shall be deemed to constitute a separate contract, whose term shall not exceed one (1) year.

## **ARTICLE III: PROVIDER’S DUTIES AND COVENANTS**

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

3.2 **Compliance with Applicable Law.** Provider shall comply with the requirements of all Applicable Law with respect to Provider’s activities, Services, Deliverables, and facilities used in connection with any aspect of this Contract. Provider shall inform the Responsible Official, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of Provider’s receipt thereof, and shall correct any violations within the time prescribed by law, or immediately in the case of any emergency.

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

3.4 **Subcontracts.**

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

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

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

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

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

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

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

(6) upon request by the City (at the City's sole option) and upon receipt of written notice from the City stating that this Contract between the City and Provider has been terminated, Subcontractor agrees that it will continue to perform its obligations under the Subcontract for the benefit of the City in accordance with the terms and conditions of this Contract, provided the City pays Subcontractor for the Services rendered and Deliverables provided by Subcontractor from and after the date of the termination of this Contract between the City and Provider at the same rate or in the same amount as set forth in the Subcontract for those Services and Deliverables provided by Subcontractor after such date of termination;

(7) Subcontractor shall be bound by the same terms, covenants, and conditions as Provider under this Contract; including, without limitation, confidentiality,

maintenance and preservation of records, and audit by government representatives, under this Contract;

(8) Subcontractor shall, effective on the date of the Subcontract, presently, fully and unconditionally assign, transfer and set over to the City all of Subcontractor's right, title and interest in and to any sales and use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or this Contract, and Subcontractor shall covenant and agree that, (i) other than as directed by the City, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (ii) the City, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by this assignment;

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

(10) Subcontractor shall comply with Chapter 17-400 of the Code (to satisfy this requirement, Provider shall include Subsection 14.2 (a), "Chapter 17-400 of the Code," below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract); and

(11) Subcontractor shall comply with Section 17-104 of the Code (to satisfy this requirement, Provider shall include Subsection 14.6 (b), "Section 17-104 of the Code," below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract).

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

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

(d) Any purported Subcontract made in violation of this Section or of any other Section in this Contract shall be null and void.

(e) City-Related Agencies.

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

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

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

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

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

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

#### **ARTICLE IV: PROVIDER'S REPRESENTATIONS AND COVENANTS**

Provider makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract. The representations, warranties, and covenants stated below shall continue throughout the Term of this Contract. In the event any representation, warranty, or covenant is or becomes untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which the representation, warranty, or covenant is untrue or inaccurate.

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

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

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

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

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

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

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

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

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

(j) **Non-Suspension; Debarment.** Provider and all of the individuals acting on Provider's behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or the federal government, or any department, agency or political subdivision of any of the foregoing. If Provider cannot so warrant, then Provider shall submit to the Responsible Official a full, complete written explanation as to why Provider cannot so warrant. Provider shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of



Pennsylvania Office of Inspector General for investigation of Provider's compliance with the terms of this or any other contract between Provider and the City which results in the suspension or debarment of Provider. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Provider shall not be responsible for costs of investigations which do not result in Provider's suspension or debarment.

## **ARTICLE V: COMPENSATION**

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

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

(a) Terminate or suspend this Contract effective upon a date specified in a Termination Notice or Suspension Notice; or

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

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

5.3 **Crossing Fiscal Years.** If any portion of the compensation set forth in this Contract is to be paid in any City Fiscal Year following the Fiscal Year in which the Initial Term or any Additional Term of this Contract commences (in either case, "Appropriated Fiscal Year"), Provider understands and agrees that the portion of the compensation under this Contract payable with City funds for any period following the Appropriated Fiscal Year is subject to the discretion of City Council as to future appropriations. If, for any reason, funds for any such portion of the compensation are not appropriated by City Council in any Fiscal Year following the

Appropriated Fiscal Year, this Contract and the City's liability under this Contract shall automatically terminate at the end of the then current Appropriated Fiscal Year; provided, however, that Provider shall be compensated in accordance with the terms of this Contract for Services and Deliverables, satisfactorily performed and delivered prior to the end of the then current Appropriated Fiscal Year.

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

## **ARTICLE VI: AUDITS; INSPECTION RIGHTS; RECORDS**

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

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

6.3 **Availability of Records.** Provider shall make available, in the City at reasonable times during the Term of this Contract and for the period set forth in Section 6.4 (Retention of Records) below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any authorized representative of the City (including without limitation any authorized agent or contractor of the City), the City Controller, the Commonwealth of Pennsylvania Auditor General, or any other federal and state auditors as may be applicable.

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

or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period.

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

## **ARTICLE VII: ASSIGNMENT**

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

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

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

## **ARTICLE VIII: INDEPENDENT CONTRACTOR; INDEMNIFICATION; LITIGATION COOPERATION**

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

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

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

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

## **ARTICLE IX: CONFIDENTIALITY**

Provider shall comply with the confidentiality provisions set forth in Article IX (Confidentiality) of the Provider Agreement.

## **ARTICLE X: DISPUTES**

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

Office of Innovation and Technology  
1234 Market Street  
18th Floor  
Philadelphia, PA 19107

If the Responsible Official under the Contract is the CIO, then the written appeal is to be addressed to the Procurement Commissioner as follows:

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

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

#### **ARTICLE XI: EVENTS OF DEFAULT**

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

- (a) Failure by Provider to comply with any provision of this Contract;
- (b) Occurrence of an Event of Insolvency with respect to Provider;
- (c) Falseness or inaccuracy of any warranty or representation of Provider contained in this Contract or in any other document submitted to the City by Provider;
- (d) Any act, omission, or misrepresentation which renders the Provider ineligible for a City contract or renders the contract voidable under Chapter 17-1400 of the Code;
- (e) Misappropriation by Provider of any funds provided under this Contract or failure by Provider to notify the City upon discovery of any misappropriation;
- (f) A violation of law which results in a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Provider, its directors, employees, or agents (1) directly or indirectly relating to this Contract or the Services or Deliverables provided under this Contract, whether or not such offense is ultimately adjudged to have occurred; or (2) which adversely affects the performance of this Contract;

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

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

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

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

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

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

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

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

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

## **ARTICLE XII: REMEDIES**

### **12.1 The City's Remedies.**

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

(1) perform (or cause a third party to perform) this Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the City. Provider shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or a third party) pursuant to this Section

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

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

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

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

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

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

12.2 **Concurrent Pursuit of Remedies; No Waiver.** The City may exercise any or all of the remedies set forth in this Article XII (Remedies), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Article XII (Remedies) and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

### **ARTICLE XIII: TERMINATION AND SUSPENSION**

13.1 **Termination or Suspension for Convenience.** In addition to its rights under Articles V (Compensation) and XII (Remedies) above, the City shall have the right to terminate this Contract or suspend Provider's performance under this Contract at any time during the Term of

this Contract, for any reason, including, without limitation, the convenience of the City. If this Contract is terminated solely for the City's convenience, the City shall issue a written Termination Notice, which shall set forth the effective date of the termination. If this Contract is suspended solely for the City's convenience, the City shall issue a written Suspension Notice, which shall set forth the effective date of the suspension.

### **13.2 Provider Responsibilities Upon Termination or Suspension.**

(a) Upon the City's transmission of a Termination Notice or a Suspension Notice under any provision of this Contract, Provider and its agents, employees and Subcontractors, shall

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

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

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

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

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

(a) Upon termination or suspension of this Contract by the City for an Event of Default, Provider shall be entitled to payment of such an amount, to be determined by the City and subject to audit, as shall compensate it for the work satisfactorily performed prior to the termination date; provided, however, that:

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

(2) the City shall deduct from any amount due and payable to Provider prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Services and Deliverables required to be performed by Provider under this Contract, including the expense of engaging



another provider for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for an Event of Default.

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

#### **13.4 Suspension.**

(a) No Waiver. Suspension of Provider's performance under this Contract after an Event of Default shall not constitute a waiver or release of any liability of Provider for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy.

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

(c) Suspension Period. In the event that the City issues a Suspension Notice to Provider, such suspension shall continue from the effective date specified in the Suspension Notice until a date specified in the Suspension Notice which shall be not more than one hundred and eighty (180) days after the effective date (such period, the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a Termination Notice pursuant to Section 13.1 (Termination or Suspension for Convenience) above, or by notice to Provider, instruct Provider to resume the delivery of Services and Deliverables pursuant to this Contract upon the expiration of the Suspension Period.

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

In addition to the representations, warranties and covenants made by Provider in Article IV, Provider further represents, warrants and covenants that, to the extent of their applicability to Provider, Provider is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Provider thereby certifies to such compliance. Provider further certifies that the representations, warranties, and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. In the event said representations, warranties, and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other

provisions of this Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

**14.1 Non-Discrimination; Fair Practices.** This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry or national origin, gender identity, sexual orientation, age or disability. Nor shall Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 14.1 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

**14.2 Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.**

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

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

**14.3 Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation.** In accordance with Executive Order 03-12 (the "Antidiscrimination Policy"), the City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and participation of Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE"), and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") in City contracts. The purpose of this

Antidiscrimination Policy is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City's procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City Contracts and City Related Special Projects. Provider agrees to comply with the requirements of the Antidiscrimination Policy by exercising its Best and Good Faith Efforts to include M/W/DSBEs in its contract, and where participation ranges are established by OEO, Provider agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

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

(1) Provider, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) ("M/W/DSBE Subcontract(s)") with M/W/DSBEs as participants under this Contract for the services and in the dollar amount(s) and percentage(s) as specified in the M/W/DSBE Participation Exhibit to this Contract (the "Contract Commitment(s)").

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

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

(4) Provider shall, in the event of an increase in units of work and/or compensation under the Contract, increase its Contract Commitment(s) with its M/W/DSBE participants proportionately, which increase shall be reflected in the M/W/DSBE Subcontract(s) described in (a) (1) above. OEO may from time to time request documentation from Provider evidencing compliance with this provision.

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

(6) Provider agrees that the City may, in its sole discretion, conduct periodic reviews to monitor Provider's compliance with the terms of this Antidiscrimination Policy.

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

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

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

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

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

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

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

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

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

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

14.5 **Americans With Disabilities Act.** Provider understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing Services or Deliverables under this Contract. By executing and delivering this Contract, Provider covenants to comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§ 12101 - 12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Provider; (b) to the benefits, Services, Materials, activities, facilities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Provider shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

14.6 **Northern Ireland.**

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

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

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

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

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

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

C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

#### **14.9 Protected Health Information.**

(a) The City of Philadelphia is a “Covered Entity” as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The City’s business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City as health care components that must comply with HIPAA (“Covered Components”). The Covered Components of the City as of August 1, 2013 include: Ambulatory Health Services, a unit of the Philadelphia Department of Public Health (“PDPH”); the Office of Behavioral Health and Intellectual disAbility Services; the Philadelphia Nursing Home (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Philadelphia Public Health Laboratory (a unit of PDPH). This list is subject to change, and any department or unit of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 14.9.

(b) To the extent (1) this Contract is entered into by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used by a Covered Component (whether or not the City department or unit through which the City entered the Contract is a Covered Component), and (2) Provider is a “Business Associate” of the City, as defined in 45 CFR §160.103, Provider shall comply with the City’s Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link). The City PHI Terms are hereby incorporated in this Section 14.9 as if fully set forth herein. (A printed version of the City PHI Terms, in the City’s sole discretion, also may be attached to this Contract.)

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

(a) Provider is a “Service Contractor” in that by virtue of entering into this Contract, Provider has entered into a “Service Contract,” as those terms are defined in Chapter 17-1300 of the Code. Any Subcontract between Provider and a Subcontractor to perform Services under this Contract is a “Service Contract” and such Subcontractors are also “Service Contractors” for purposes of Chapter 17-1300 as are any subcontract and subcontractor at any tier providing Services under this Contract. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml>.) If such Service Contractor (Provider or any subcontractor at any tier) is also an “Employer,” as that term is defined in Section 17-1302 (more than 5 employees), and further described in Section 17-1303 of the Code, then absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal requirements, Provider shall provide, and shall enter into Subcontracts and otherwise

cause any subcontractors at any tier that are also Service Contractors to provide, their respective covered Employees (persons who perform work for a covered Employer that arises directly out of a Service Contract), with at least the minimum wage standard and minimum benefits standard, and required notice thereof, stated in federal and state law and in Chapter 17-1300 of the Code. A summary of the current requirements is as follows:

(1) Minimum Wage.

(a) for the period through December 31, 2014, provide covered Employees with an hourly wage, excluding benefits, that is no less than \$10.88/hour;

(b) as of January 1, 2015, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$12/hour;

(c) commencing as of January 1, 2016, for wages to be provided on and after January 1 of each year during which the Initial Term and any Additional Term is in effect, provide their covered Employees with an hourly wage, excluding benefits, that is no less than the result of multiplying \$12 by the then current CPI Multiplier as annually adjusted. For purposes of determining the minimum hourly wage required, the CPI Multiplier is calculated annually by the City's Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) as of each January 1 by the CPI-U most recently published as of January 1, 2015. The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's web site.

(2) Minimum Benefits.

(a) to the extent an Employer provides health benefits to any of its employees, provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer; and

(b) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

(3) Generally. Notwithstanding the above requirements, to the extent a change in law would require an increase in wages or benefits under Chapter 17-1300 (for example, an increase in the federal minimum wage to \$9.00/hour, which would increase the required City minimum wage to \$13.50 due to the Chapter's requirement of 150% of the federal minimum wage), such new requirement will take effect only at the start of an Additional Term, if any, commencing on or after the date of the new legal requirement.

(b) If covered, absent a waiver, Provider shall promptly provide to the City all documents and information as the City may require verifying its compliance, and that of all Service Contractors providing Services under the Contract, with the requirements of Chapter 17-



1300. Each covered Service Contractor shall notify each affected Employee what wages and benefits are required to be paid pursuant to Chapter 17-1300.

(c) Absent a waiver, a Provider subject to Chapter 17-1300 shall comply with all of its requirements as they exist on the date when the Provider entered into this Contract with the City or into an amendment thereto. Provider shall take such steps as are necessary to notify its Subcontractors of these requirements, and to cause such Subcontractors to notify lower-tier subcontractors that are Service Contractors of these requirements, including, without limitation, by incorporating this Section 14.10, with appropriate adjustments for the identity of the parties, in its Subcontracts with such Subcontractors. A Provider or subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract.

(d) Without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, Provider's failure to comply, or the failure of subcontractors at any tier to comply, with the requirements of Chapter 17-1300 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

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

(f) The Office of Labor Standards may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and subcontractors by Chapter 17-1300 of the Code is available on the City's website at <https://secure.phila.gov/eContract/> under the "About" link; see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors."

#### **14.11 Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures.**

(a) Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Contract, and any Additional Term, by Provider, any Subcontractor, or any party from which a contribution can be attributed to the Provider or Subcontractor, that would render the Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid

Contract under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions made by or attributable to Provider, shall make the Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 14.11, each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 14.11 and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

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

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

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

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

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

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

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

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

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

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

(e) The disclosures required by Sections 14.11(b), (c) and (d) shall be made utilizing the online disclosure update process through Provider's eContract Philly account which can be accessed on the City's website at [www.phila.gov/contracts](http://www.phila.gov/contracts) by clicking on eContract Philly. Such disclosures shall be made within five (5) business days of the action or event requiring Provider to update its disclosures. In the case of updates to political contributions made by Provider required by Section 14.11(b), the attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Provider or of a Consultant. Provider is advised that any individual who submits an update on eContract Philly must be an authorized signatory of the Provider, authorized to make the required updated disclosures.

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

#### **14.12 Executive Order 03-11: Gifts.**

(a) Pursuant to Executive Order 03-11, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment, invitation, food, drink or loan, unless consideration of equal or greater value is conveyed in return, from any of the following sources:

- (1) A person seeking to obtain business from, or who has financial relations with the City;
- (2) A person whose operations or activities are regulated or inspected by any City agency;
- (3) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;
- (4) A person seeking legislative or administrative action by the City; or
- (5) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

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

#### **14.13 Chapter 17-1900 of the Philadelphia Code: Equal Benefits Ordinance.**

(a) Unless Provider is a government agency, this is a "Service Contract" as that term is defined in Section 17-1901(4) of the Code. If the Service Contract is in an amount in excess of \$250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits the Provider extends to spouses of its employees to life partners of such employees. Provider certifies that (i) it is in compliance with the requirements of Chapter 17-1900, (ii) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900, and (iii) such employment benefits are currently, or will be made available within the time required by Section 17-1902(2), or that the Provider does not provide employment benefits to the spouses of married employees.

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

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

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

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

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

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

## **ARTICLE XV: MISCELLANEOUS**

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

15.2 **Amendments; Waiver.** This Contract may not be amended or modified in whole or in part, except by a written Amendment signed by all Parties. Except to the extent that the Parties may have otherwise agreed in writing, in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract. Any forbearance by a Party in seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

15.3 **Integration.** The Contract Documents forming this Contract, including the Provider Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.

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

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

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

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

15.8 **Survival.** Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, along with the following: Provider's representations, warranties and covenants set forth in Article IV (Provider's Representations, Warranties and Covenants) above and in Article VII (Title) of the Provider Agreement; Provider's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.2 (Indemnification) above and in Article X (Indemnification for Infringement of Proprietary Rights) of the Provider Agreement; the Parties' rights and obligations set forth in Article IX (Confidentiality) above and in Article IX (Confidentiality) of the Provider Agreement; and the Parties' rights and obligations set forth in Article VII (Title) of the Provider Agreement.

15.9 **Interpretation; Order of Precedence.** In the event of a conflict or inconsistency between the terms of these General Provisions and the terms of the Provider Agreement, the terms of these General Provisions shall control, except to the extent (if any) that the Provider Agreement expressly provides that a term or condition set forth in the Provider Agreement has precedence over these General Provisions.

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

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

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

15.13 **Forum Selection Clause; Consent to Jurisdiction.** The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.1 (Notice ) of the Provider Agreement.

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

15.15 **Notices.** All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (*e.g.*, Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case notices shall be sent to the addresses set forth in the Notice section of the Provider Agreement, or to such other address as either Party may specify to the other by a notice complying with the terms of this Section 15.15 (Notices).

## **APPENDIX F-2**

### **SPECIAL ANTIDISCRIMINATION CONTRACT PROVISIONS, INSTRUCTIONS AND FORMS FOR APPLICANTS THAT ARE NONPROFIT ORGANIZATIONS**

In response to the objectives of Executive Order 03-12, Applicants that are nonprofit organizations will be required to submit the following information to the Office of Economic Opportunity (OEO):

1. identification of the race, gender, disability status, and ethnic composition of the nonprofit Applicant's workforce;
2. identification of the race, gender, disability status, and ethnic composition of the nonprofit Applicant's board of directors or trustees;
3. a list of the nonprofit Applicant's five highest dollar value M/W/DSBE suppliers of products and services; and
4. the nonprofit Applicant's statement explaining its efforts to maintain a diverse workforce, a diverse board of directors and operate a fair and effective supplier diversity program.

Please use the attached form, "Diversity Report of Nonprofit Organizations," to submit this information, attaching additional pages as needed. This information should be submitted with the Applicant's proposal, but the City, at its sole discretion, may allow Applicants to submit or amend this form at any time prior to award.

If a nonprofit organization is responding to a contract opportunity where ranges have been established for M/W/DSBE participation, in addition to the "Diversity Report of Nonprofit Organizations" form, a nonprofit Applicant must also complete and submit with its proposal the "Solicitation for Participation and Commitment" form included in this Appendix.



**City of Philadelphia - Office of Economic Opportunity  
Diversity Report of Nonprofit Organizations**

<b>1 DEMOGRAPHIC BREAKDOWN OF WORKFORCE</b>								
Please provide the following demographic breakdown of your workforce by race/ethnicity/gender/disability:  <div style="text-align: right; padding-right: 10px;">                     African American                      Asian/Pacific Islander                      Caucasian                      Disabled                      Hispanic                      Native American                      Other                      Total Number of Employees                 </div>				#	%		%	%
							Males	
						Females		
<b>2 DEMOGRAPHIC BREAKDOWN OF BOARD COMPOSITION</b>								
Please provide the following demographic breakdown of your Board of Directors or Trustees by race/ethnicity/gender/disability:  <div style="text-align: right; padding-right: 10px;">                     African American                      Asian/Pacific Islander                      Caucasian                      Disabled                      Hispanic                      Native American                      Other                      Total Number of Directors or Trustees                 </div>				#	%		#	%
							Males	
						Females		
<b>3 SUPPLIER DIVERSITY</b>								
Please check the appropriate box to indicate if you have a supplier diversity policy. If "no," please explain on your letterhead.						Yes	No	
If you maintain a supplier diversity policy, please attach a copy of your supplier diversity policy.   Please identify below, your agency's five (5) highest minority, woman, and/or disabled owned business suppliers of products or services, indicating your estimated annual expenditure(s) with the firm:								
	Company Name	Company Address	Company Telephone	Minority	Woman	Disabled	Annual Expenditures	
1								
2								
3								
4								
5								
Signature:		Date:		Non-Profit Name				

## APPENDIX G

### PROVISIONS REQUIRED BY CHAPTER 17-1400 OF THE PHILADELPHIA CODE

**1. DEFINITIONS** - The terms below shall have the following meaning within this Exhibit.

1.1 **Applicant.** “Applicant” has the meaning as set forth in Subsection 17-1401(1) of The Philadelphia Code, as it may be amended from time to time. As of August 2007, that definition was “[a]pplicant means a Person who has filed an application to be awarded a Non-Competitively Bid Contract.”

1.2 **City Agency.** “City Agency” has the meaning as set forth in Subsection 17-1401(5) of The Philadelphia Code, as it may be amended from time to time. As of August 2007, that definition was “[a]ny office, department, board, commission or other agency of the City of Philadelphia.”

1.3 **City-Related Agency.** “City-Related Agency” has the meaning set forth in Section 17-1401(9) of The Philadelphia Code, as it may be amended from time to time. As of August 2007, that definition was “[a]ll authorities and quasi-public corporations which either: receive appropriations from the City, have entered into continuing contractual or cooperative relationships with the City, or operate under legal authority granted to them by City ordinance.”

1.4 **Consultant.** “Consultant” has the meaning set forth in Subsection 17-1401(6) of The Philadelphia Code, as it may be amended from time to time. As of August 2007, that definition provided that “[c]onsultant” means any Person used by Contractor to assist in obtaining a Non-Competitively Bid Contract through direct or indirect communication by such Person with any City Agency or any City officer or employee, if the communication is undertaken by such Person in exchange for, or with the understanding of receiving payment from Contractor or any other Person; provided, however, that “Consultant” shall not include a full-time employee of Contractor.”

1.5 **Contributions.** “Contributions” has the meaning set forth in the Pennsylvania Election Code, 25 P.S. Section 3241.

1.6 **Financial Assistance.** “Financial Assistance” has the meaning set forth in Section 17-1401(16) of The Philadelphia Code, as it may be amended from time to time. As of August 2007, that definition was “[a]ny grant, loan, tax incentive, bond financing subsidy for land purchase or otherwise, or other form of assistance that is realized by or provided to a Person in the amount of fifty thousand dollars (\$50,000) or more through the authority or approval of the City, including, but not limited to, Tax Increment Financing (TIF) aid, industrial development bonds, use of the power of eminent domain, Community Development Block Grant (CDBG) aid or loans, airport revenue bonds, and Enterprise Zone or similar economic development zone designations (such as Keystone Opportunity Zones, Keystone Opportunity Expansion Zones, Keystone Opportunity

Improvement Zones, and Economic Development District Zones), but not including any assistance to which a Person is entitled under a law enacted before the Person applied for or requested such assistance.”

1.7 **Non-Competitively Bid Contract.** “Non-Competitively Bid Contract” has the meaning set forth in Section 17-1401(12) of The Philadelphia Code, as it may be amended from time to time. As of August 2007, that definition was “[a] contract for the purchase of goods or services to which the City or a City Agency is a party that is not subject to the lowest responsible bidder requirements of Section 8-200 of The Philadelphia Home Rule Charter, including, but not limited to, a Professional Services Contract, and any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).

1.8 **Professional Services Contract.** “Professional Services Contract” has the meaning set forth in Section 17-1401(15) of The Philadelphia Code, as it may be amended from time to time. As of August 2007, that definition was “[a] contract to which the City or a City Agency is a party that is not subject to the lowest competitive bidding requirements of Section 8-200 of the Charter because it involves the rendition of professional services, including any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).

2. **REPRESENTATIONS** Contractor makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract:

2.1 In accordance with Section 17-1402 of The Philadelphia Code, Contractor represents that contribution(s) will not be made during the term of the Contract by Contractor or any party from which a contribution can be attributed to Contractor, that would render Contractor ineligible to apply for or enter into a Non-Competitively Bid Contract or to receive Financial Assistance under the provisions of Philadelphia Code Sections 17-1404(1) and 17-1405 and, further, that disclosures required by Subsection 17-1402(1)(b) made as part of its application to receive a Non-Competitively Bid Contract or Financial Assistance contain no material misstatements or omissions.

2.2 Contractor will not use any Subcontractor(s) that is ineligible to enter into a Non-Competitively Bid Contract with the City. To that end, Contractor will enter into a written Subcontract with each Subcontractor which requires said Subcontractor to represent that contributions will not be made that would render the Subcontractor ineligible to enter into a Subcontract pursuant to Chapter 17-1400 of The Philadelphia Code. It shall not be a violation of this Subarticle 2(2) if Contractor fails to disclose a contribution made by a Subcontractor because the Contractor was unable to obtain such information from the Subcontractor, provided that the Contractor demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

- (a) Entering into a written agreement with the Subcontractor for such Subcontractor’s services before Contractor filed its application for the Contract;

- (b) Including in such Subcontract a provision requiring Subcontractor to provide the Contractor in a timely manner with all information required to be disclosed under the provisions of Code Chapter 17-1400 and providing that the Subcontract will be terminated by the Contractor if Subcontractor fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to Subcontractor, by or on behalf of the Contractor, as of the date of such termination;
- (c) Communicating regularly with the Subcontractor concerning the Subcontractor's obligations to provide timely information to permit the Contractor to comply with all provisions of Code Chapter 17-1400; and
- (d) Invoking the termination provisions of the Subcontract in a timely and full manner.

Contractor will promptly report any such disclosures required hereunder, or lack of apparently required disclosures, to the City. The same terms and conditions of this Subarticle 2(2) shall apply to excuse the obligations of Contractor and Consultant under Subarticle 2(4) below, with appropriate adjustments to the identity of the parties.

2.3 In addition to remedies set forth the Agreement, breach of any of these representations shall constitute an event of default and render the Contract voidable at the City's option, and shall make Contractor liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to Contractor allowed under the Contract, regardless whether actually paid.

2.4 Subject to Subsection 17-1402(2)(b) (Failure to Disclose Consultant's Contributions) of The Philadelphia Code, Contractor shall, during the term of the Contract and for one (1) year thereafter, disclose any contribution of money or in-kind assistance Contractor or any Consultant has made during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution. Such disclosure shall be made on a form provided by the Department awarding the Contract, and the form shall be signed and filed with such Department within five (5) business days of the contribution. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Philadelphia Code Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of Contractor or of a Consultant.

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

the amount requested, and the date and amount of any payment made in response to such request. Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five (5) business days after a request was made or a payment in response to a request was made, as the case may be. The Department receiving the disclosure form will forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

2.6 In accordance with Subsection 17-1402 (1)(e)(iv) of The Philadelphia Code, Contractor shall, during the term of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised Contractor, any officer, director or management employee of Contractor, or any Person representing Contractor that a particular Person could be used by Contractor to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. Contractor shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five (5) business days after Contractor was so advised. The Department receiving the disclosure form will forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

2.7 Survival. The above representations, warranties and covenants shall continue throughout the Term of this Contract and shall survive for one (1) year thereafter; provided, however, that if Contractor is a recipient of financial assistance, Contractor shall be subject to such representations, warranties and covenants for a period of five (5) years after receiving such assistance. In the event said representations, warranties and covenants are, or become, untrue or inaccurate, Contractor shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate.

2.8 Pursuant to Section 17-1406(6) of The Philadelphia Code, the requirements of this subsection 2 do not apply to Contractor if Contractor is a governmental agency or not-for-profit corporation established by the City.

### **3. APPLICABILITY TO CITY RELATED AGENCIES**

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

3.2 Unless approved by the City to the contrary, any approvals required by Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed on behalf of a City-Related Agency by its General Counsel; any approvals required to be performed by the Director of Finance shall be performed on behalf of the City-Related Agency by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed on behalf of the City-

Related Agency by its Executive Director. Any notices required to be sent under Chapter 17-1400 to designated City officials, shall be sent in electronic form to those designated City officials.

#### **4. REMEDIES**

In addition to and not in lieu of the remedies set forth in the Agreement and elsewhere herein, the following remedies provided in Chapter 17-1400 of The Philadelphia Code shall apply:

Pursuant to Section 17-1407, Prohibited Conduct; Penalties; Remedies: No Applicant shall make a material misstatement or omission in the disclosures required by Section 17-1402(1)(b); and no Contractor shall make a material misstatement or omission in the disclosures required by Section 17-1402(1)(e); and no Person seeking Financial Assistance shall make a material misstatement or omission in the disclosures required by Section 17-1404(3)(a). If an Applicant makes material misstatements or omissions in the disclosures required by Section 17-1402(1)(b), or if a Contractor makes material misstatements or omissions in the disclosures required by Section 17-1402(1)(e), such Applicant or Contractor shall be prohibited from entering into any Non-Competitively Bid Contract for a period of from one (1) to three (3) years, and such act shall be subject to a fine of the Maximum Fine Amount, as defined herein. If a Person seeking Financial Assistance makes material misstatements or omissions in the disclosures required by Section 17-1404(3)(a), such act shall be subject to a fine of the Maximum Fine Amount, as defined herein. For purposes of this subsection, the "Maximum Fine Amount" shall be seven hundred dollars (\$700) for violations committed during calendar year 2005; eleven hundred dollars (\$1,100) for violations committed during calendar year 2006; fifteen hundred dollars (\$1,500) for violations committed during calendar year 2007; nineteen hundred dollars (\$1,900) for violations committed during calendar year 2008; and two thousand dollars (\$2,000) for violations committed thereafter.

## APPENDIX H

### CITY OF PHILADELPHIA TAX AND REGULATORY STATUS AND CLEARANCE STATEMENT FOR APPLICANTS

#### THIS IS A CONFIDENTIAL TAX DOCUMENT NOT FOR PUBLIC DISCLOSURE

This form must be completed and returned with Applicant's proposal in order for Applicant to be eligible for award of a contract with the City. Failure to return this form will disqualify Applicant's proposal from further consideration by the contracting department. Please provide the information requested in the table, check the appropriate certification option and sign below:

Applicant Name		
Contact Name and Title		
Street Address		
City, State, Zip Code		
Phone Number		
Federal Employer Identification Number or Social Security Number:		
Philadelphia Business Income and Receipts Tax Account Number (f/k/a Business Privilege Tax) (if none, state "none")*		
Commercial Activity License Number (f/k/a Business Privilege License) (if none, state "none")*		

\_\_\_\_ I certify that the Applicant named above has all required licenses and permits and is current, or has made satisfactory arrangements with the City to become current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), and is not in violation, or has made satisfactory arrangements to cure any violation, or other regulatory provisions applicable to Applicant contained in The Philadelphia Code.

\_\_\_\_ I certify that the Applicant named above does not currently do business, or otherwise have an economic presence in Philadelphia. If Applicant is awarded a contract with the City, it promptly will take all steps necessary to bring it into compliance with the City's tax and other regulatory requirements.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
\* You can apply for a City of Philadelphia Business Income and Receipts Tax Account Number or a Commercial Activity License on line after you have registered your business on the City's Business Services website located at <http://business.phila.gov/Pages/Home.aspx>. Click on "Register" or "Register Now" to register your business.

## APPENDIX I

### LOCAL BUSINESS ENTITY OR LOCAL IMPACT CERTIFICATION

Instructions: Applicants who seek as a positive factor in the City's consideration of their application that they meet the Local Business Entity or Local Impact criteria as provided in Mayoral Executive Order No. 04-12 should complete this Certification and return it with their application. Applicants providing this Certification should also include in a separate section of their application labeled "Local Business Entity or Local Impact Certification," a statement that the Applicant believes it has met the Local Business Entity or Local Impact criteria "as set forth in the attached Local Business Entity or Local Impact Certification." Check all appropriate certification options that are applicable to Applicant and sign below:

**Applicant Name:** \_\_\_\_\_

#### **Local Business Entity Certification**

\_\_\_ I certify that the Applicant named above is a Local Business Entity because Applicant complies with the following criteria set forth in Section 17-109(3)(b) of The Philadelphia Code:

I. During the preceding 12 months, Applicant has filed a Commercial Activity or Business Privilege tax return with the City establishing that Applicant conducted business within the City within the calendar year preceding the filing of the return; and

II. During the preceding 18 months, Applicant:

A. Has continuously maintained a valid Commercial Activity or Business Privilege License and all other licenses and permits necessary to conduct business with the City;

B. Has continuously occupied an office within the City, where business is conducted; and

C. Satisfies at least one of the following requirements (*Check those applicable to Applicant*):

\_\_\_ (1) More than half of Applicant's full-time employees work in the City at least 60% of the time;

\_\_\_ (2) More than 50 of Applicant's full-time employees work in the City at least 60% of the time; or

\_\_\_ (3) Applicant's principal place of business is located in the City.

#### **Local Impact Certification**

\_\_\_ I certify that in the performance of a contract resulting from this RFP, the Applicant named above will employ City residents.

\_\_\_ I certify that in the performance of a contract resulting from this RFP, the Applicant will perform the work in the City.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title



**APPENDIX I**  
**THE CITY OF PHILADELPHIA PROFESSIONAL SERVICES CONTRACT**  
**GENERAL PROVISIONS FOR A WEB BASED INFORMATION SYSTEM SERVING**  
**PHILADELPHIA'S CITYWIDE OUT-OF-SCHOOL TIME (OST) SYSTEM**