

Application Agreement

This Application Agreement (the “Agreement”) for the Environmental Tech Lab (the “ETL”) is between the City of New York, acting by and through the New York City Department of Environmental Protection (“DEP,” “we,” or “us”), and the entity identified on the online ETL application form (“Applicant” or “you”).

THIS AGREEMENT IS AN ENFORCEABLE, LEGALLY BINDING CONTRACT SOLELY BETWEEN YOU AND DEP. PLEASE READ THIS AGREEMENT CAREFULLY. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU ARE NOT PERMITTED TO PARTICIPATE IN THE ETL.

The ETL is a virtual accelerator program for companies with cutting-edge technologies to test the viability of their services to improve the performance and customer experience of New York City’s water, wastewater, and environmental regulation systems. Selected applicants will have an opportunity to test their solutions with DEP. The issues that the ETL aims to solve (each, a “Challenge”) will be posted on <https://envirotechlab.nyc/> (the “Website”), along with a deadline for submitting solutions for each Challenge. DEP hosts multiple cycles of the ETL, with each cycle featuring new Challenges. Applicants may submit to multiple of the ETL cycles. Each of the ETL cycles will require new Submissions, including confirming acceptance of this Agreement in your application form for each Submission.

1. **Defined Terms.** Frequently used key words in this Agreement, such as the “Applicant,” the “ETL,” and “Submission,” have specific definitions. Capitalized terms not otherwise defined herein have the following meanings:

- 1.1. “Applicable Law” means laws, rules and regulations that govern the ETL, DEP’s sponsorship of the ETL, and Applicant’s participation in and activities concerning the ETL. “Applicable Law” includes federal, State, and local laws, as well as the laws of jurisdictions other than the U.S. to the extent Applicant is subject to those laws.
- 1.2. “Confidential Information” means information in any form that meets the following criteria: the information: (a) is not publicly available; (b) is marked or otherwise identified as “CONFIDENTIAL” or any other similar legend by the Disclosing Party, and (c) is obtained under circumstances such that the Receiving Party knew or reasonably should have known that the information should be treated confidentially. Subject to Section 7.2 (Exceptions), Confidential Information might include designs, specifications, software, and prototypes, as well as other technical, financial, business, and security-related information.

- 1.3. “DEP Data” means: (a) any information that DEP provides to you, or information belonging to DEP to which you otherwise have access to, in connection with the ETL; (b) any information, data, reports, studies, recommendations, or other information that you make or develop that uses any information described in (a) in connection with, or resulting from, the ETL; and (c) derivatives of (a) and (b) above.
- 1.4. “Effective Date” means the date you accept the terms and conditions of this Agreement in accordance with Section 2 below.
- 1.5. “Evaluators” means: (a) members of the project evaluation committee, comprised of subject matter experts; and/or (b) DEP personnel involved in evaluating a Submission for any Phase or final determination.
- 1.6. “Family Member” means: (a) the spouse, domestic partner, child, or sibling of the ineligible individual or the domestic partner’s child; or (b) a person who is a direct descendant (or the spouse of a direct descendant) of a grandparent of the ineligible individual, or a grandparent of the ineligible individual’s spouse or domestic partner.
- 1.7. “Intellectual Property” or “Intellectual Property Rights” means the following rights, under Applicable Law: (a) patents, patent disclosures and inventions, whether registered or unregistered and including all applications for, and all renewals, reissues, reexaminations, extensions, divisions, continuations, continuations in part and counterparts; (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, whether registered or unregistered, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; (e) any and all ideas and concepts; and (f) and all other intellectual property and proprietary rights in, to and associated with the foregoing.
- 1.8. “Party” means DEP or Applicant, and “Parties,” both DEP and Applicant.
- 1.9. “Submission” means the materials that you submit for our evaluation in response to one of the Challenges, in connection with and pursuant to Section 3 (The Environmental Tech Lab). The term “Submission” applies to the package of materials you provide to DEP prior to your acceptance and participation in the ETL, whether or not such Submission is selected by DEP for advancement in the ETL.
- 1.10. “Submitted Technology” means all products, processes, designs, ideas, and technologies disclosed in your Submission.

2. **Your Acceptance of this Agreement.** When you accept this Agreement, you confirm: (a) that you understand and agree to be legally bound by this agreement; (b) that you are eligible to participate in the ETL; and (c) that you have the authority to represent Applicant and to legally bind Applicant as a whole to this Agreement. You accept this Agreement by electronically acknowledging acceptance at the end of the application process by clicking “I accept.” Each ETL applicant is required to accept this Agreement or forfeit consideration of their Submission for the ETL.

3. **Eligibility.** All companies registered to do business with the State of New York with responsive solutions to one of the Challenges are eligible to participate in the ETL, so long as they meet the following requirements and exceptions:

3.1. Company Requirements.

3.1.1. Eligibility. Eligible companies must: (a) be a corporation, joint venture, partnership, or LLC as defined by Applicable Law and registered to do business in the State of New York (“NYS Registration”); and (b) have at least a beta version (i.e., working prototype with active users) of the solution you intend to propose as part of your application. Applicants’ solutions do not need to be designed for a water/wastewater utility or environmental regulator, but they need to address the Challenges. New York State-certified Minority- and Women-owned Business Enterprise (M/WBE) companies are especially encouraged to apply. US domestic companies are preferred. Public companies and subsidiaries of public companies are not eligible for participation. DEP will decide, in its sole discretion, which applicants meet the eligibility requirements of the ETL. Proof of completed NYS Registration, or application for NYS Registration, with the New York State Division of Corporations is required in order to advance to Phase 2. Any applicant with a pending NYS Registration at the time of submission must have a completed NYS Registration by the commencement of Phase 2.

3.1.2. Insurance. Applicant agrees to procure and maintain insurance for such work of the kind and at least in the minimum amount set forth in the insurance specifications in Exhibit A, unless otherwise agreed with DEP. Applicant will submit proof of insurance before Phase 2 begins (as defined below). The City of New York (the “City”), together with its officials and employees, shall be named as an additional insured on the required commercial general liability insurance policies as set forth in Appendix A. If Applicant already maintains an insurance policy or policies providing any of the coverages required by this Section, Applicant will obtain an appropriate endorsement satisfying the requirement of

Exhibit A and naming the City, together with its officials and employees, as additional insured parties.

- 3.2. Applicable Parties. In fairness to other applicants, we cannot accept Submissions from:
- (a) Evaluators, the companies (if any) that they majority own, fund, or are employed by;
 - (b) Family Members of Evaluators; (c) applicants who are subject to, or reside in, jurisdictions that are subject to trade restrictions or sanctions under Applicable Law;
 - (d) employees or officials of the City; and (e) individuals (or Family Members of such individuals) who have provided or will provide advice related to the ETL to DEP or the New York City Partnership Foundation, Inc. (the “Partnership”), or who participated in the creation of the ETL, the ETL guidelines, or this Agreement. DEP reserves the right to:
 - (x) review, and if applicable, waive this Section in its sole discretion; and (y) ask for additional information from applicants that fall into any of the above categories.
- 3.3. Conflicts of Interest.
- 3.3.1. Applicant represents and warrants that neither it nor any of its directors, officers, members, partners, or employees has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. Applicant further represents and warrants that no person having such interest or possible interest shall be employed by or connected with Applicant in the performance of this Agreement.
- 3.3.2. Consistent with Charter § 2604 and other related provisions of the City Charter (“Charter”), the City Administrative Code, and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership or other entity in which they are, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 5.3.b shall not prevent directors, officers, members, partners, or employees of Applicant from participating in decisions relating to this Agreement where their sole personal interest is in Applicant.
- 3.3.3. Applicant shall not employ a person or permit a person to serve as a member of the board of directors or as an officer of Applicant if such employment or service would violate Chapter 68 of the Charter.

4. **How to Apply.** You must submit your application in accordance with the requirements of this Section to be considered for participation in the ETL.

4.1. Multiple Submissions. You are entitled to enter multiple Submissions, and to make Submissions to one or multiple Challenges. If you plan to enter Submissions responsive to more than one of the Challenges, do not consolidate or “mix” different Challenges within a single Submission.

4.2. Application Procedure and Deadline for Submissions. To apply, visit the Website, review the information we have provided there, and complete the application process. If you qualify, you will then have until 11:59 PM New York time (Eastern Time) on the submission deadline date to provide your Submission. Your Submission will be date-and-time stamped via automated means on the Website, and you will not be able to submit a Submission after the deadline. You bear the risk of any delays caused by outages, latency, or downtime; only global Website latency errors or delays will permit acceptance of late Submissions.

5. **Participation in the ETL: Application Phase.** This is the initial stage of the ETL, spanning approximately six months, in which DEP will review each applicant’s Submission to determine whether an applicant will participate in the ETL. DEP will holistically review each Submission based on relevant criteria, including but not limited to the viability, efficacy, and responsiveness of each applicant’s Submission to the selected Challenge. DEP has sole discretion for selection of the advancing applicants.

5.1. Selection for the ETL. We will promptly notify you if your Submission is selected to participate in the ETL Application Phase. During the Application Phase, DEP will inform you whether you have been selected to participate in the Proof-of-Concept Phase.

5.2. Participation Requirements. If selected to participate in the ETL, you and DEP shall enter into a proof-of-concept agreement (the “POC Agreement”). POC Agreements are negotiated in accordance with Section 6.1 (POC Phase) of this Agreement and may have additional insurance and security requirements.

6. **Operating the ETL: Proof-of-Concept Phase.** If chosen to advance past the Application Phase, you will participate in the second stage of the ETL, which is a tech validation period called the Proof-of-Concept Phase (“Proof of Concept Phase” or “Phase 2”) spanning approximately three months with an option to extend an additional three months. In this Phase, you will conduct a minimally viable technology test to assess the feasibility and performance of your technology. You will work in close collaboration with DEP during this Phase. If you are selected to participate in the Proof-of-Concept Phase, you are not automatically accepted for

participation in the extended three-month period. Continuation in the extended period of the Proof-of-Concept is contingent upon further selection by DEP following the standard Proof-of-Concept Phase.

6.1. Proof-of-Concept Agreement Process. This Section 6.1 (POC Agreement Process) provides applicants with access to the ETL POC Agreement template and details the process required to finalize the POC Agreement between you and DEP. Supplemental to the POC Agreement template are baseline DEP IT security requirements, which will be made available for you to review if you are chosen to participate in the ETL, to allow you to make an informed decision about whether you can accept the terms of the POC Agreement prior to participating in the ETL. Adherence to the POC Agreement Process outlined in this Section is required. By submitting an application to the ETL, you acknowledge and agree that you have read, understood, and agreed to comply with the POC Agreement Process.

6.1.1. Applicant Review of the POC Agreement. The POC Agreement review process is iterative and may involve several bureaus and groups at DEP. You should carefully review all of the POC Agreement requirements and provide a comprehensive set of comments for DEP's review. If you fail to make a comment on your initial mark-up of the POC Agreement, then that comment as a new insertion into the negotiation will not be allowed at a later date and will be rejected; however, you may provide follow-up comments to any provision that is being actively negotiated between you and DEP. You should ensure that your comprehensive comments include comments on all of the POC Agreement documents. Applicants are strongly encouraged to limit their redlines and comments.

[DOWNLOAD POC AGREEMENT TEMPLATE](#)

6.2. Final Presentation. At the conclusion of the Proof-of-Concept Phase, companies will present their findings to DEP leadership. DEP will review each applicant's presentation and determine whether an applicant will be offered an optional three-month extension.

6.3. Evaluation Criteria. Submissions will be evaluated by DEP based upon considerations such as, but not limited to, the potential for positive impact on DEP operations, market fit and workability of the technology, and the qualifications and compatibility of company teams. All evaluations are in DEP's sole discretion.

6.4. Extension. If DEP determines in its sole discretion that the proof of concept would benefit from a time extension, you will be offered an optional three-month extension of

the Proof-of-Concept Phase. We will promptly notify you if your Submission is selected for this extension period.

- 6.5. DEP's Determination of Next Steps. DEP will make the final determination as to what happens after Proof-of-Concepts end. DEP is the sole judge of which solutions are in its best interests, and DEP's decision in this regard shall be final. Please note that DEP reserves the right not to select any Submissions in one or more Challenges; DEP has no obligation to implement any solution.

7. **Confidentiality**. A Party (the "Disclosing Party") may provide Confidential Information to the other Party (the "Receiving Party") in connection with the ETL. DEP anticipates releasing Confidential Information during Phase 2. For the avoidance of doubt, no separate Applicant non-disclosure agreements or like documentation will be reviewed or executed by DEP as part of the ETL. However, Applicant understands that DEP may require Applicant to execute a separate non-disclosure agreement for certain types of DEP Data.

- 7.1. Confidential Treatment. The Receiving Party shall not disclose or use the Disclosing Party's Confidential Information except as expressly permitted under this Agreement and shall, at all times, exercise reasonable care to safeguard such Confidential Information, using at least the same degree of care that the Receiving Party uses to preserve the confidentiality of its own confidential information.

- 7.2. Exceptions. Confidential Information does not include any information which is: (a) known by the Receiving Party at the time of its disclosure; (b) becomes publicly known through no wrongful act of the Receiving Party; (c) received by the Receiving Party from a third party without a restriction on its disclosure; (d) independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information; (e) approved for release by the prior written consent of the Disclosing Party; or (f) required to be disclosed by the New York State Freedom of Information Law, other Applicable Law, court order, or governmental agency, provided that advance notice of such requirement, if legally permissible, is given.

- 7.3. Compelled Disclosure. The Receiving Party is entitled to disclose Confidential Information as necessary pursuant to any court order, or lawful requirement of a governmental agency or arbitrator (collectively, a "Disclosure Order"), or when disclosure is required by operation of law, including disclosures pursuant to any applicable securities laws and regulations. The Receiving Party shall notify the Disclosing Party of a Disclosure Order, if legally permissible, and reasonably cooperate with the Disclosing Party, in protecting against or minimizing disclosure under the Disclosure Order, or in obtaining a protective order.

- 7.4. Freedom of Information Requests. The New York State Freedom of Information Law (N.Y. Public Officers Law Section 84 et seq.) (“FOIL”) applies to the ETL and to your Submission. Although we will protect the confidentiality of your Submission as set out in this Section 9 (Confidentiality), FOIL may be interpreted to override these protections. You understand and agree that, under FOIL, your Submission might be made public.
- 7.5. Duration of Your Confidentiality Obligations. You agree to protect the confidentiality of DEP’s Confidential Information for as long as the information remains outside of the exceptions listed in Section 9.2 (Exceptions), and you acknowledge that this may require you to maintain confidentiality both during and after completion of the ETL.
- 7.6. Duration of Our Confidentiality Obligations. To avoid giving one applicant an unfair advantage over another during the ETL, we will protect each applicant’s Submission as such applicant’s Confidential Information, up to and including the date we announce the winners. After that date, we will be entitled to publicly use and disclose the Submissions (and associated Confidential Information) in connection with our exercise of rights under Section 8 (Intellectual Property Rights).
- 7.7. Internal Disclosures for Evaluation and Processing Purposes. We may disclose your Submission (and other elements of your application) to Evaluators, officials and employees of DEP and the Partnership, and our consultants, as needed, for purposes of evaluating your Submission, processing your application, monitoring compliance with this Agreement, and addressing other issues in connection with the ETL. We will instruct each of these recipients to maintain the confidentiality of your Submission (and any associated Confidential Information) in the manner set out in this Section 7 (Confidentiality).
8. **Intellectual Property Rights.** We respect your Intellectual Property Rights, and balance both of our interests in these rights via this Section 8 (Intellectual Property Rights). By entering your Submission in the ETL, you agree as follows:
- 8.1. Your Retention of Ownership. Although you grant us certain limited licenses (detailed below), you retain ownership of all Intellectual Property Rights that you hold in your Submitted Technology. You remain free to commercialize your Submission (and your associated Intellectual Property) and you have no obligation to share with us any compensation, fees, royalties, or other benefits that you receive from commercializing these assets.

- 8.2. Limited License to Your Intellectual Property. Although you retain ownership in your Intellectual Property, you hereby grant to us an irrevocable, royalty-free, worldwide, sublicensable license to your Intellectual Property to exercise any Intellectual Property that you hold in the Submitted Technology which is restricted to uses: (a) for purposes of evaluating, testing, prototyping, and validating the Submitted Technology (in laboratory, beta, real-time, in-the-field, and other similar environments); and (b) for purposes of the Challenge for which you submitted the Submitted Technology as a solution.
- 8.2.1. Restricted in Term. Our right to use your Submitted Technology is restricted in term, as follows from the time submitted in the ETL up to the end of this Agreement, whether or not this Agreement has been terminated (for cause or otherwise).
- 8.2.2. Non-Exclusive. You can grant others a similar (or different) license to this Intellectual Property.
- 8.2.3. Paid-Up and Royalty-Free. We do not and will not owe you compensation or further benefits when we use your Submitted Technology under this Agreement. If we hold a public procurement to which you receive an award, and we request your assistance, post-award, in connection with our evaluating, testing, prototyping, and validating the Submitted Technology (in laboratory, beta, real-time, in-the-field, and other similar environments), you agree to provide us with your assistance on commercially reasonable terms that shall be subject to the agreement of the Parties.
- 8.2.4. Sublicenseable. We are entitled to permit our contractors, consultants, and other interested parties to exercise the licensed rights on our behalf, subject to their agreement to observe confidentiality requirements consistent with Section 9 (Confidentiality).
- 8.3. Freedom of Action. DEP remains free and unfettered, in its discretion and at any time, to develop, commission, use, and otherwise exploit products, services, and solutions similar (or even identical) to, or competitive with, your Submitted Technology; provided DEP does not infringe valid Intellectual Property Rights owned by you (unless you have granted us these rights under this Section 10 (Intellectual Property Rights) (collectively, “Permitted Downstream Uses”). You will not be entitled to any compensation based on Permitted Downstream Uses, including in connection with any subsequent procurements (whether or not they involve Submitted Technology).

8.4. No License to Patent Rights for Full Service Use; FRAND Obligations. Although we hold a limited license to your Intellectual Property, we emphasize that we have not asked for, and you have not provided, the right to exercise your patents for full-service use. We may in the future seek such rights to your patents. If we do so, you hereby irrevocably agree to grant us, at a minimum, a non-exclusive, irrevocable, sublicenseable, full-service use license on terms that are fair, reasonable, and non-discriminatory (so-called “FRAND” licensing terms). Such pricing shall be competitive with (or more favorable to us than) comparable third-party solutions available on the market.

9. **No Guarantee of Procurement.** Participation in the ETL in any capacity, including winning a Challenge or participating in the extended proof-of-concept period, in no way indicates that the City will procure your technology or engage in a future procurement with you. Any subsequent procurement with the City will be subject to ordinary procurement procedures and is not the result of participation in the ETL.

10. **DEP Data.**

10.1. Grant of Rights in DEP Data. In the event DEP shares any DEP Data with you, such DEP Data is subject to the terms and conditions of this Agreement, including those set out in Section 9 (Confidentiality) and Section 12 (Privacy). DEP, under its Intellectual Property Rights, hereby grants to you during the term of this Agreement a limited, non-exclusive, non-transferrable, non-sublicensable license to copy, modify, display, adapt, and use DEP Data, solely for the purpose of fulfilling your obligations to DEP under this Agreement and for no other purpose. You further acknowledge that the rights granted to you pursuant to this Section 10.1 (Grant of Rights in DEP Data) shall immediately terminate upon termination or expiration of this Agreement.

10.2. Ownership of DEP Data. DEP owns all right, title and interest to the DEP Data, and in and to all associated Intellectual Property Rights. By way of clarification and not limitation, no applicant or Proof-of-Concept Finalist can resell, re-package, or otherwise monetize any part of DEP Data to which they gain access as part of the ETL.

10.3. DEP Data and Open Standards. In the event you participate in the ETL, your Submitted Technology must rely on a data exchange and data format based on “Open Standards”, or industry standards that define data formats and protocols rather than proprietary formats and protocols. By way of clarification, all DEP Data shall be stored in the Submitted Technology in an industry-standard format that is not proprietary to you and that meets the requirements for Open Standards. All applicants must provide to DEP, either: (a) direct access to, or (b) a digital file of, all DEP Data created, processed or otherwise generated by your Submitted Technology as part of the ETL; and such DEP Data must be

accessible and/or provided in a structured, machine-readable, non-proprietary format within twenty-four (24) hours of DEP's request for such.

11. Privacy.

- 11.1. Personal Information. We will collect personal information from you in connection with the ETL. This information will be used only for evaluation and processing purposes (except as provided in Section 11.2 (Permitted Use of Name and Likeness) and will otherwise be subject to the New York City Identifying Information Law (Local Laws 245 and 247 of 2017) and any other Applicable Laws.
- 11.2. Permitted Use of Name and Likeness. If you become a Proof-of-Concept Finalist, you agree to permit DEP to use for publicity, advertising and promotional purposes: (a) your name and likeness, (b) your town or city and state, (c) Submission information, and (d) statements you make about the ETL, all without additional permission or any compensation.
- 11.3. Responsibility Reviews and Background Checks. In connection with our review of a Phase 2 Submission, we reserve the right to require individuals to undergo a background check and/or contractor responsibility review via the City's Procurement and Sourcing Solutions Portal (PASSPort). If an individual declines to submit to this background check and/or contractor responsibility review, or if warranted by the results of the background check and/or contractor responsibility review, we may disqualify the applicant affiliated with that individual from, or impose conditions on, their continued participation in the ETL. In DEP's sole discretion, DEP may conduct responsibility reviews and/or background checks as to Applicant's principals, officers, directors, employees, and entities that (directly, or indirectly through one or more intermediaries) control, are controlled by, or are under common control with Applicant.

12. Representations, Warranties, and Disclaimers.

- 12.1. Your Representations and Warranties. In connection with your Submission and participation in the ETL, you represent and warrant that:
- 12.1.1. The information you provided in your Submission is true and accurate to the best of your knowledge and ability;
- 12.1.2. Your Submission does not and will not infringe a third party's Intellectual Property Rights;

12.1.3. Applicant has not previously assigned, pledged, licensed or otherwise encumbered any rights or interest in, or to, any component of its Intellectual Property in any way that would interfere with or prevent the grant of the licenses and assignments of such property described in this Agreement;

12.1.4. Applicant, in its actions in connection with this Agreement, shall comply with all Applicable Laws; and

12.1.5. The signatory has the ability to execute all documents on behalf of Applicant.

12.2. Disclaimer of Warranties; Release. DEP MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE QUALITY, ACCURACY, OR COMPLETENESS OF ANY DEP DATA. YOU HEREBY RELEASE THE CITY, ITS OFFICIALS, EMPLOYEES, CONTRACTORS, AND CONSULTANTS, EVALUATORS, AND ADVISORS TO THE ETL (COLLECTIVELY, THE “RELEASED PARTIES”) FROM ANY AND ALL LIABILITY FOR LOSS, HARM, DAMAGE, INJURY, COST, OR EXPENSE WHATSOEVER WHICH MAY OCCUR IN CONNECTION WITH OR PARTICIPATION IN THE ETL OR THE ACCEPTANCE, USE, MISUSE, OR NON-USE OF ANY SUBMISSION.

13. **Limitation of Liability.**

13.1. All-Inclusive Liability Limitation; Limited and Sole Exception for DEP License Violations. TO THE FULLEST EXTENT PERMITTED BY LAW, THE RELEASED PARTIES SHALL NOT BE LIABLE FOR DAMAGES OR LOSSES OF ANY KIND, INCLUDING DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF THE ETL INCLUDING, BUT NOT LIMITED TO, THE AWARD, SUBMISSIONS, OR ANY ACTIVITIES IN CONNECTION WITH THE ETL, WITH THE SOLE AND EXCLUSIVE EXCEPTION THAT DEP SHALL BE RESPONSIBLE FOR DAMAGES CAUSED BY ITS EXCEEDING THE SCOPE OF THE LICENSES GRANTED TO IT IN SECTION 10 (INTELLECTUAL PROPERTY RIGHTS) (A “DEP LICENSE VIOLATION”), ALL AS SPECIFIED AND EXPRESSLY LIMITED IN SECTION 14.2 (DEP LICENSE VIOLATIONS). IN NO EVENT SHALL THE RELEASED PARTIES’ TOTAL AGGREGATE LIABILITY FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION EXCEED FIVE USD (\$5.00), WITH THE EXCEPTION THAT THE LIMIT OF LIABILITY OF DEP FOR DEP LICENSE VIOLATIONS SHALL BE AS SET FORTH IN SECTION 13.2 (DEP LICENSE VIOLATIONS).

13.2. DEP License Violations. IN NO EVENT SHALL DEP’S TOTAL AGGREGATE LIABILITY FOR ALL DAMAGES, LOSSES, JUDGEMENTS, OR CAUSES OF

ACTION ARISING FROM DEP LICENSE VIOLATIONS EXCEED TEN THOUSAND USD (\$10,000.00).

14. Limitations and Controls.

- 14.1. The ETL Coordinators; Permitted Communication Channels. Please communicate any questions or requests for assistance directly to the Partnership using the process specified on the Website. Do not communicate with the Evaluators or DEP or ask questions about the ETL (or otherwise communicate about the ETL) with the Evaluators or DEP, or their officers, officials, employees, consultants, or contractors, unless a coordinator of the ETL is present. This prohibition is designed to prevent the appearance (or occurrence) of favoritism, unfair access, or other conflicts of interest. Any applicants that fail to comply with these requirements may be disqualified from the ETL.
- 14.2. Consent to Electronic Transactions. During the ETL, we plan to communicate with you electronically – and conduct transactions related to the ETL with you electronically – using email, notices on the Website, and other electronic means. You agree to receive, exchange, and engage in these types of electronic communications with us.
- 14.3. Acceptable Use Policy. You are prohibited from using the Website or other resources or functions associated with the ETL: (a) in a way prohibited by Applicable Law; (b) to violate the legal rights of others, to cheat, to plagiarize, or to engage in other unfair or deceptive activities; (c) to gain or attempt to gain unauthorized access to or disrupt any device, data, account, service, or network associated with the ETL; (d) to distribute spam or malware; or (e) in a way that could harm the operations or functionality of the Website or interfere with the ETL.
- 14.4. Change in Circumstances. We reserve the right to terminate, modify, extend, or suspend the ETL if we determine, in our sole discretion, that a change in circumstances makes such termination, modification, extension, or suspension in the best interests of the City. In such case, we may select Proof-of-Concept Finalists from eligible Submissions received prior to and/or after (if appropriate) such change in circumstances.

15. Indemnification. Applicant agrees to indemnify, defend, and hold harmless the City, including its officials and employees, and the City's contractors, consultants, Evaluators and advisors to the ETL, from and against any and all claims (even if the allegations of the claim are without merit), demands, judgments for damages, causes of action, losses, damages, costs and expenses (including reasonable attorneys' fees) allegedly arising out of or relating to:

(i) Applicant's breach of any of the terms, representations, warranties or covenants of this Agreement; (ii) any allegation that the Submission and/or Submitted Technology infringes or

violates the Intellectual Property Rights of a third party; (iii) Applicant's unauthorized use of any Intellectual Property Rights of a third party; (iv) any unauthorized possession, security breach, use or knowledge of DEP Confidential Information, or any attempted unauthorized possession or use or knowledge thereof (or any system on which DEP Confidential Information may be stored or maintained) by any person or entity; (v) acts or omissions of Applicant, or any of its officers, directors, employees, agents or representatives; (vi) bodily injury, including death, or damage to tangible property caused by Applicant; or (vii) Applicant's failure to comply with Applicable Law.

16. **Term.** This Agreement shall begin on the Effective Date and remain in full force and effect until the earlier of: (i) termination in accordance with Section 17 (Termination); (ii) the announcement of one or more Proof-of-Concept Finalists; or (iii) two (2) years. Any applicants who are selected to participate in the ETL must execute the POC Agreement, and all terms and conditions of the POC Agreement shall supersede this Agreement.

17. **Termination.** You have the right to withdraw from the ETL at any point by contacting us at hello@envirotechlab.nyc. We have the right: (i) to disqualify you from the ETL, for failure to comply with any of the Terms and Conditions for participation in the ETL specified herein; and/or (ii) to terminate this Agreement (for reasons other than your disqualification). At all times, DEP retains the right to terminate this Agreement for any reason, regardless of your compliance with the Agreement terms specified herein.

17.1. Effect of Termination. Upon termination of this Agreement for whatever reason, you will return to DEP, or certify that you have destroyed, DEP Confidential Information and any derivatives thereof.

17.2. Survival. The following Sections shall survive expiration or termination of this Agreement for any reason or cause: Section 9.5 (Duration of Your Confidentiality Obligations); Section 10 (Intellectual Property Rights); Section 13 (Representations, Warranties, and Disclaimers); Section 14 (Limitation of Liability); Section 16 (Indemnification); Section 18.2 (Survival); and Section 18 (Dispute Resolution).

18. **Dispute Resolution.** In the event of a dispute related to the terms of this Agreement or performance of any work under this Agreement, or issues related thereto, DEP and Applicant shall attempt to resolve such dispute. If resolution cannot be reached, this Agreement may be terminated. Nothing in this dispute resolution provision shall prohibit either Party from seeking judicial relief as allowed by Applicable Law.

19. **Governing Law.** This Agreement, and the rights and obligations of the Parties hereto, shall be construed and enforced in all respects in accordance with the laws of the State of New

York, without regard to any jurisdiction's choice of law or conflict of law rules, laws, or doctrines. The Parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. Each Party waives objection to the personal jurisdiction of such court, and the laying of venue in such judicial district.

20. **Accessibility.** We are committed to making the ETL accessible to all innovators. If you require assistive technology or other accommodation in order to complete the application process, please contact us using the Website.

21. **Funding Disclaimer.** DEP disclaims any endorsement of any source of funding for the ETL.

22. **Subcontracting.** You must perform all work contemplated by this Agreement itself and cannot permit any third parties to perform any portion of the work without DEP's prior written approval, which may be withheld or conditioned in DEP's sole discretion. If you desire to subcontract any portion of the work, then you shall submit a request to DEP at least twenty (20) days prior to the proposed commencement date of the subcontractor's performance, including: (i) a description of the work to be subcontracted; (ii) the commencement and completion dates for the work; (iii) the subcontractor's name, resume of similar work performed by the subcontractor, and relevant client contacts and telephone numbers; (iv) the proposed agreement between you and the subcontractor for the work; (v) any DEP Data and Confidential Information that the subcontractor will or may have access to; and (vi) any other information that DEP requests. If DEP approves of the request to subcontract work, then the terms and conditions of this Agreement shall apply to such approved subcontractor including confidentiality obligations and insurance obligations. DEP's approval of a subcontractor will not operate as a waiver of any right against you or other third parties, nor shall it relieve you of any of your obligations to perform the work as set forth in the Agreement. DEP shall have no liability for any subcontractor-performed work.

23. **List of Attachments.** The following attachments are included as part of this Agreement and can be accessed via the hyperlinks.

- [Exhibit A. General Insurance Provisions](#)
- [Exhibit B. Investigations Clause](#)
- [Exhibit C. NYC Earned Safe and Sick Time Act Contract Rider](#)
- [Exhibit D. Security Forms](#)

24. **General Provisions.** If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. Each and every provision required by Applicable Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not. Headings are for reference purposes only and in no way define or limit the section they introduce. Waiver by either Party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement. This Agreement, including Exhibits A through D, sets forth the entire understanding and agreement between the Parties with respect to the ETL, and supersedes any prior or contemporaneous understanding, whether written or oral. For the avoidance of doubt, the terms and conditions of this Agreement shall solely govern the ETL process leading up to the execution of a POC Agreement, if applicable; no Applicant-submitted terms and conditions shall be accepted, including any non-disclosure and confidentiality terms. No official, employee, or agent of the City shall be liable personally by reason hereof. No claim whatsoever shall be made by Applicant against any official, agent, or employee of the City in their individual capacities for, or on account of, anything done or omitted to be done in connection with this Agreement. The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against Applicant or the City or their respective officials and employees. Although we expect and encourage the translation of this Agreement into languages other than English, for legal purposes the English-language version of this Agreement will govern our relationship.

EXHIBIT A. GENERAL INSURANCE PROVISIONS

Section 1.01 Company's Obligation to Insure

A. All uses of "Company" in this Exhibit A refer to Applicant.

B. From the Effective Date and for the duration of the Proof of Concept Agreement term, Company shall ensure that the types of insurance required by DEP for participation in the ETL are obtained and remain in force, and that such insurance adheres to all requirements of the Agreement including this Exhibit A. For the avoidance of doubt, if a type of insurance is not required by DEP, then Company is not obligated to obtain or maintain it.

C. Company is authorized to undertake or maintain operations under this Agreement only during the effective period of all required coverage.

D. Minimum insurance requirements. These requirements may change depending on the Proof of Concept Program Plan (which will be finalized in the Proof of Concept Agreement).

Insurance	
Types of Insurance (per Exhibit A to the ETL Application Agreement in its entirety, including listed paragraph)	Minimum Limits and Special Conditions

■ Workers' Compensation §1.04 ■ Disability Benefits Insurance §1.04 ■ Employers' Liability §1.04	Statutory amounts.
■ Commercial General Liability §1.02	\$1,000,000 per occurrence \$2,000,000 aggregate Additional Insureds: 1. City of New York, including its officials and employees, and 2. _____ 3. _____
■ Commercial Auto Liability §1.04	\$1,000,000 per accident combined single limit (if vendor is coming on site) If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90
☐ Professional Liability/Errors & Omissions §1.05	\$_____ per occurrence/claim \$_____ aggregate
■ Cyber Liability Insurance §1.07 1. Data Breach and Privacy Cyber Liability 2. Technology Errors and Omissions	1. \$1,000,000 per occurrence \$2,000,000 aggregate 2. \$1,000,000 per occurrence \$2,000,000 aggregate

Section 1.02 Workers' Compensation, Disability Benefits Insurance, and Employers' Liability

Company shall maintain, and shall cause its contractors to maintain, Workers' Compensation insurance, Disability Benefits insurance, and Employers' Liability insurance on behalf of, or with

regard to, all employees involved in Company's operations under this Agreement, and such insurance shall comply with the laws of the State of New York.

Section 1.03 Commercial General Liability Insurance

A. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Agreement.

Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner of DEP, and shall be "occurrence" based rather than "claims-made." The City, including its officials and employees, shall be named as Additional Insured.

B. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 10 or CG 20 26. In the event that Company undertakes construction activities on the premises, Company shall also provide or cause its contractor to provide completed operations naming the City, together with its officials and employees, as an Additional Insured with coverage that is at least as broad as the latest edition of ISO Form CG 20 37. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 20 10 or CG 20 26, and CG 20 37 as applicable.

Section 1.04 Commercial Automobile Liability Insurance

With regard to all operations under this Agreement, Company shall maintain and cause to be maintained Commercial Automobile Liability insurance in the amount required by DEP for liability arising out of the ownership, maintenance or use of any owned, non owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 1.05 Professional Liability (Errors and Omissions) Insurance

A. If appropriate (in DEP's discretion) to the type of services provided, Company shall maintain and submit evidence of professional liability insurance or errors and omissions insurance a. The policy or policies shall cover the liability assumed by Company under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of Company or anyone employed by Company.

B. All subcontractors of Company providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount required by DEP. At the time of the request for subcontractor approval, Company shall provide to DEP evidence of such professional liability insurance on a form acceptable to DEP.

C. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, Company shall purchase extended reporting period coverage

effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 1.06 Cyber Liability Insurance

Company shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts required by DEP. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under Company's cyber liability insurance, the insurance shall cover the City, including its officials and employees, as additional insured.

Section 1.07 General Requirements for Insurance Coverage and Policies

A. Policies of insurance shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Commissioner of DEP.

B. Policies of insurance shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

C. Wherever this Agreement requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that Company can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

D. There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Agreement unless approved in writing by the Commissioner of DEP. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, Company shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Agreement, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Agreement shall be the greater of (i) the minimum limits set forth in this Agreement or (ii) the limits provided to Company under all primary, excess and umbrella policies covering operations under this Agreement.

F. All required policies, except for Workers' Compensation insurance, Disability Benefits insurance, and Employers' Liability, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner of DEP, 59-17 Junction Boulevard, 19th floor, Flushing, NY 11373, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY 10007. Such notice is to be sent at least thirty (30) days before the expiration, cancellation, or termination date, except in cases of non-payment, where at least ten (10) days' written notice would be provided.

G. All required policies, except Workers' Compensation, Disability Benefits, and Employers' Liability, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

Section 1.08 Proof of Insurance

A. Certificates of Insurance for all insurance required in this Agreement must be submitted to and accepted by the Commissioner of DEP prior to or upon execution of this Agreement.

B. For Workers' Compensation, Disability Benefits insurance, and Employers' Liability policies, Company shall submit one of the following: C-105.2 Certificate of Worker's Compensation Insurance; U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

C. For all insurance required under this Agreement other than Workers Compensation, Disability Benefits insurance, and Employers' Liability, Company shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner of DEP. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in Company's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required under the Agreement. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Commissioner of DEP or certified copies of all policies referenced in such Certificate of Insurance.

D. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner of DEP prior to the expiration date of coverage of all policies required under this Agreement. Such Certificates of Insurance shall comply with subsections (B) and (C) directly above.

E. Acceptance or approval by the Commissioner of DEP of a Certificate of Insurance or any other matter does not waive Company's obligation to ensure that insurance fully consistent with the requirements of this Agreement is secured and maintained, nor does it waive Company's liability for its failure to do so.

F. Company shall provide the City with a copy of any policy of insurance required under this Agreement upon request by the Commissioner of DEP or the New York City Corporation Counsel.

Section 1.09 Miscellaneous

A. Company may satisfy its insurance obligations under this Agreement through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required under this Agreement.

B. Company shall be solely responsible for the payment of all premiums for all policies and all deductibles to which they are subject, whether or not the City is an insured under the policy.

C. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Agreement, Company shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability insurance carriers for events relating to Company's own employees) no later than twenty (20) days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Company shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007.

D. Company's failure to secure and maintain insurance in complete conformity with this Agreement, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Agreement shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

E. Insurance coverage in the minimum amounts provided for in this Agreement shall not relieve Company of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or the law.

F. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Agreement, Company shall at all times fully cooperate with the City with regard to such potential or actual claim.

G. Apart from damages or losses covered by Workers' Compensation Insurance, Disability Benefits Insurance, Employers' Liability Insurance, or Commercial Automobile Insurance, Company waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Company and/or its employees, agents, or servants of its contractors or subcontractors.

H. In the event Company requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Agreement and requires such entity to name Company as an Additional Insured under such insurance, Company shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured with coverage at least as broad as the most recent version of ISO form CG 20 26.

I. In the event Company receives notice, from an insurance company or other person, that any insurance policy required under this Agreement shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, Company shall immediately forward a copy of such notice to both the Commissioner of DEP, 59-17 Junction Boulevard, 19th floor,

Flushing, NY 11373, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, NY 10007. Notwithstanding the foregoing, Company shall ensure that there is no interruption in any of the insurance coverage required under this Agreement.

EXHIBIT B. INVESTIGATIONS CLAUSE

All uses of "Company" in this Exhibit B refer to Applicant.

A. Company agrees to cooperate fully and faithfully with any investigation, audit, or inquiry conducted by a State or City agency or authority that is empowered, directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

1. The disqualification for a period not to exceed five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

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

F. Definitions

1. The term "Commissioner" or "Agency Head" as used in this Exhibit B means the head of DEP or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.

2. The term “license” or “permit” as used in this Exhibit B shall be defined as a license, permit, franchise, or concession not granted as a matter of right.
3. The term “person” as used in this Exhibit B shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
4. The term “entity” as used in this Exhibit B shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.
5. The term “member” as used in this Exhibit B shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event Company fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by Company, or affecting the performance of this Agreement.

EXHIBIT C. NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

All uses of “Contractor” in this Exhibit C refer to Applicant.

A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 et seq. (“DCWP Rules”).
2. The Contractor agrees to comply in all respects with the ESSTA and the DCWP Rules, and as amended, if applicable, in the performance of this agreement. The Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the ESSTA in performance of this agreement may result in its termination.
3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s

guidance and must comply with DCWP's subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City's administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.

1. An employee who works within the City must be provided paid safe and sick time.*

Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken.

Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

*Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused

paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a Family Member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a Family Member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's Family Members from future family offense matters, sexual offenses, stalking, or human trafficking;

3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

4. to file a complaint or domestic incident report with law enforcement;

5. to meet with a district attorney's office;

6. to enroll children in a new school; or

7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's Family Member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is

foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the safe and sick time was used.

C. Exemptions and Exceptions. Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

F. *Records.* An employer must retain records documenting its compliance with the ESSTA for a period of at least three years, and must allow DCWP to access such records in furtherance of an investigation related to an alleged violation of the ESSTA.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a

complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT D. SECURITY FORMS