ENVIRONMENTAL TECH LAB
PROOF OF CONCEPT AGREEMENT

This Proof of Concept Agreement (this "Agreement") made _____________, 20____ (the "Effective Date"), between the City of New York (the "City"), by and through the New York City Department of Environmental Protection ("DEP" or the "Department"), a municipal corporation with offices located at 59-17 Junction Boulevard, Flushing, NY 11373, and [COMPANY], a [STATE] [corporation / limited liability company / etc.] authorized to do business in the State of New York, with offices located at [ADDRESS] ("Company"). DEP and [COMPANY] are each referred to as a "Party" and collectively referred to as the "Parties".

RECITALS

WHEREAS, DEP's mission is to enrich the environment and protect public health for all New Yorkers by providing high quality drinking water, managing wastewater and stormwater, and reducing air, noise, and hazardous materials pollution.

WHEREAS, the New York City Partnership Foundation, Inc. (the "Partnership") in collaboration with DEP established a program called the Environmental Tech Lab (the "ETL") to identify certain innovative solutions to problems facing DEP and the broader sustainability ecosystem in the New York metro region.

WHEREAS, Company has been selected to participate in the ETL and proposed, as a solution, [IDENTIFY RELEVANT CATEGORY AND SOLUTION TITLE].

WHEREAS, DEP and Company wish to further test [SOLUTION TITLE] (the "Solution") to assess its effectiveness and viability for DEP's use ("Proof of Concept Project" or "POC Project").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Agreement Term

The term of this Agreement shall commence on the Effective Date and shall continue for the period of time stated in Exhibit A attached hereto (the "Term"). The Parties may extend the Term by an additional three (3) months, which must be memorialized in a written amendment executed by the Parties.

2. Access to DEP Facilities, Personnel, and Consultation

DEP will make facilities, equipment, personnel, and certain data ("DEP Assets") available to Company during the Term to enable Company to test, evaluate, and improve the Solution for further commercialization. DEP will not charge a monetary fee to Company for such DEP Assets. DEP Assets shall not be used in such a way that they would be incorporated into the design of the Solution in whole or in part. The specific DEP Assets that DEP will make available during each phase, and the timetable for such access, are identified in the "Proof of Concept Plan," as jointly agreed to by the Parties, and attached as Exhibit A. DEP reserves the right, in its sole discretion, to make final determinations about which DEP Assets to make available to Company during each phase.

3. Intellectual Property Ownership

Company owns all Intellectual Property, and all modifications and derivations thereof, in and related to the Solution. For the purpose of this Agreement and the ETL, "Intellectual Property" means the following rights under applicable laws, whether foreign or domestic: (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 ("Patent Rights"); (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 ("Trademark Rights"); (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases ("Copyrights"); (d) trade secrets, know-how and other confidential information ("Trade Secret Rights"); and (e) any and all ideas and concepts ("Idea Rights").

DEP may make certain recommendations to Company about improvements to the Solution or provide certain Confidential Information to Company to facilitate development of the Solution ("DEP Contributions"). Should Company incorporate DEP Contributions into the Solution, excluding Confidential Information unless otherwise approved by DEP in writing, Company will continue to own all Intellectual Property in the Solution; provided, however, that any commercialization of the Solution shall not contain any DEP Confidential Information. By way of clarification and not limitation, any DEP Data Company utilizes as part of the Solution must be anonymized so as not to identify DEP. DEP Contributions are provided to the Company as-is and with all faults, and DEP extends no warranty of any kind, either express or implied, written or oral, with respect to DEP Contributions including, without limitation, warranties of merchantability, suitability, or fitness for a particular purpose.

4. Company's Limited License to DEP and Permitted Downstream Uses

Company hereby grants to DEP an irrevocable, royalty-free, worldwide, sublicensable license to Company's Intellectual Property during the Term solely for purposes of evaluating, testing, prototyping, and validating the Solution (in laboratory, beta, real-time, in-the-field, and other similar environments) for the ETL (the "POC License"), and thereafter for future archival purposes provided that any Company Intellectual Property remains confidential, subject to public records laws.

Notwithstanding the foregoing, DEP reserves the right, free and unfettered, and in its sole and absolute discretion, to, at any time, alone or in conjunction with other entities, develop, commission, use, and otherwise exploit products, services, and solutions similar (or even identical) to, or competitive with, the Solution; provided DEP does not infringe Company's valid Intellectual Property rights, with the exception of any licenses granted by this Agreement (collectively, "Permitted Downstream Uses"). In the event DEP pursues such Permitted Downstream Uses, Company waives any claim in connection with Permitted Downstream Uses and will not be entitled to any compensation based on Permitted Downstream Uses, including in connection with any subsequent procurements, regardless of whether or not they involve the Solution, so long as they do not include unlicensed uses of the Solution or Company Intellectual Property.

5. Access to Updates and other Support

Company will provide DEP with all updates, patches, and fixes that Company may make generally available to Company's other customers during the Term, including any unique code updates or new versions created by Company as a customization for a single customer but not made generally available to the market. Prior to commencing the POC Project, Company shall identify all open-source code used in or used to create the source code.

6. DEP Right to Sublicense and Restrictions

As granted in Section 4 above, DEP's rights to certain of Company's Intellectual Property includes the right to sublicense. DEP may provide access to third party independent contractors so that DEP can obtain the benefit of the POC License and/or to implement and maintain the Solution as part of the POC

License. Such access may be for purposes, including but not limited to, implementing and maintaining the Solution by ensuring that the Solution is compatible with and integrated into any DEP systems. DEP has full discretion in selecting the independent contractors to whom DOB may sublicense the above.

7. Confidentiality and Access to DEP Data

7.1 **Confidentiality**. Each Party hereby acknowledges and agrees that the materials and information supplied or revealed by a Party (the "Disclosing Party") to the other Party ("Receiving Party") in the course of or in connection with the performance of their obligations under this Agreement contain valuable confidential business information, trade secrets, security sensitive and/or personal identifying information relating to Disclosing Party's business that are the sole and exclusive property of the Disclosing Party, and the Receiving Party agrees to maintain confidentiality with respect thereto.

a. **Confidential Information**

1. For purposes of this Agreement, each of the "Disclosing Party" and the "Receiving Party" shall be deemed to include its principals, members, directors, officers, officials, and employees, and shall also be deemed to include its agents, contractors, subcontractors, suppliers, sub-suppliers and consultants. The Receiving Party shall keep confidential all information furnished to it by a Disclosing Party or otherwise learned or derived by it about or in connection with this Agreement, or any other project or contract of such Disclosing Party, including policies, procedures, operations, or infrastructure of such Disclosing Party ("Confidential Information").

2. By way of example and not limitation, Confidential Information includes, but is not limited to, Identifying Information [defined in Section 7.1(b)], Security-Sensitive Information [defined in Section 7.1(c)], all non-public information concerning the programs, processes, statistics, research, development, strategic plans, or the like with respect to the operations and activities of the City; all information concerning the City's computer systems and technology, including, but not limited to, information concerning current and future hardware, software, configurations, operations, networks, computing facilities and locations, processes, research, projects, designs, and specifications; all computer programs (including, but not limited to, code, software output, screen displays, file hierarchies, algorithms, graphics, and user interfaces), data, databases, and data compilations that may be used with such computer programs, and related designs, documentation, technical data, research, formulas, techniques, processes and technology; all non-public information concerning current and/or former City employees, contractors and/or vendors, and members of the public; any other confidential or proprietary information and/or materials relating to the City's business or operations (including, but not limited to, trade secrets, processes, and/or financial information); and technical specifications, drawings, plans, diagrams, sketches, renderings, software, and other technical data and information, as well as all designs, maps, surveys, design calculations, shop drawings, charts, photographs (including "progress photographs"), and CADD materials and media, that are prepared, developed, and/or disclosed by the Disclosing Party in connection with this Agreement. In addition, Confidential Information shall mean any other Disclosing Party information disclosed pursuant to this Agreement in which information is marked with "Confidential", "Proprietary", or any other similar legend. Except for Security-Sensitive Information and Identifying Information, for which there shall be no exception, Confidential Information does not include any information which: a) is known by the Receiving Party at the time of its disclosure; b) becomes publicly known through no wrongful act of the Receiving Party; c) is received by the Receiving Party from a third party without a restriction on its disclosure; d) is independently developed by the Receiving Party; e) is approved for release by the prior written consent of the Disclosing Party; or f) is 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.

3. Confidential Information may only be accessed and utilized in connection with this Agreement and by individuals who have a "need to know" the contents of such Confidential Information. Confidential Information must be appropriately safeguarded by the Receiving Party from disclosure to anyone who is not authorized by the Disclosing Party to have access thereto.

4. The Receiving Party shall not disclose, provide, transfer, or otherwise make Confidential Information available to any third party, or use such Confidential Information except in a way authorized under this Agreement or as necessary for the performance hereof, without the prior written consent of the Disclosing Party. The Receiving Party shall maintain the confidentiality of the Disclosing Party's Confidential Information by using a reasonable degree of care and using at least the same degree of care that the Receiving Party uses to preserve the confidentiality of its own Confidential Information. The Receiving Party's obligations and the Disclosing Party's rights under this Section 7 shall survive the expiration or termination of this Agreement for any reason whatsoever (including, without limitation, a material breach by Receiving Party of its obligations hereunder).

5. Whether through self-representation or via a third party, the Receiving Party represents and warrants that it, unless agreed to in writing by the Disclosing Party, neither shall nor will: (i) send, ship, mail, deliver, email, or otherwise transmit in or by any fashion whatsoever (whether manually, by machine, by facsimile or other electronic or digital technology, or by other technology or method), or (ii) enter into or issue an agreement, subcontract, or other instrument to send, ship, mail, deliver, email, or otherwise transmit in or by any fashion whatsoever (whether manually, by machine, by facsimile or other electronic or digital technology, or by other technology or method), any Disclosing Party Confidential Information in any form or by any means (and if in electronic form, for any such Confidential Information to be transmitted to or reside in a computer or electronic device located) outside of the United States.

6. The Receiving Party shall advise each of its principals, members, directors, officers, officials, employees, agents, contractors, subcontractors, suppliers, sub-suppliers, and consultants who may be exposed to Disclosing Party Confidential Information of their obligation to maintain the confidentiality thereof. In addition, the Receiving Party agrees to reasonably cooperate and provide assistance necessary to ensure the confidentiality of such Confidential Information.

7. At any time during the Term, the Receiving Party shall forthwith return to the Disclosing Party any and all media, in all format(s), containing any Confidential Information as the Disclosing Party shall request except the licensed Confidential Information as provided in Section 4 or Section 7.2. The special confidentiality obligations set forth in this Section 7 shall continue until specifically released by the Disclosing Party in writing, except where release thereof has been finally ordered by a court of competent jurisdiction.

8. The Receiving Party represents and warrants that, upon the expiration or termination of this Agreement, any Confidential Information that is to be retained by it for archival/audit/legal purposes, or as permitted in Section 4 or Section 7.2, shall be certified as such and shall be maintained as described in Section 7.1(a)(4).

9. Except as provided in Section 7.1(a)(8) above, at the expiration or termination of this Agreement, unless otherwise instructed in writing by the Disclosing Party, the Receiving Party shall destroy their copies of any and all media, including hardcopy documents, containing all Disclosing Party Confidential Information such that recognition or reconstruction of such Confidential Information is precluded. Unless otherwise permitted by the Disclosing Party, cross-cut shredding of hardcopy items; physical destruction of diskettes, floppies, CDs, DVDs, and any other recordable media; and deleting of electronic items by permanent deletion or non-retrievable/irreversible placement in delete-overwrite status

are the only Disclosing Party authorized methods of such destruction with respect to documents or materials containing Confidential Information.

10. In the event the Receiving Party learns or believes that Disclosing Party Confidential Information has been released or believes that such Confidential Information is about to be released, the Disclosing Party shall be notified immediately.

11. Company understands that DEP may require Company to execute a separate non-disclosure agreement for certain types of DEP Data [defined in Section 7.2(a)]. Additionally, for the avoidance of doubt, no separate Company non-disclosure agreements or like documentation will be reviewed or executed by DEP as part of the ETL.

12. Company agrees to hold confidential, both during and after the completion or termination of this Agreement, in any form whatsoever, electronic, or otherwise, all data that is generated by Company during its work under this contract, including but not limited to data that is generated by or in connection with algorithms that are used by Company during its work under this Contract.

13. Outside of any publicly available report that the Partnership will release (after being reviewed by DEP and Company), Company agrees to hold confidential, both during and after the completion or termination of this Agreement, all reports, other documents, findings and conclusions created by or reached by Company during its work under this Contract.

14. This Section shall survive the expiration or termination of this Agreement.

b. **Identifying Information**

1. For the purposes of this Agreement, "Identifying Information" shall have the meaning set forth in the New York City Identifying Information Law (Local Laws 245 and 247 of 2017).

2. The relevant provisions of the New York City Identifying Information Law shall apply to the Agreement as if Company were a contractor of the City. If, in connection with Company's performance under the Agreement, Company receives or otherwise has possession, control of, or access to Identifying Information, then Company shall receive, maintain, and use such Identifying Information solely for the purpose of performing its obligations under the Agreement and for no other purpose. If Company receives a request for the disclosure of Identifying Information to any person or entity not expressly authorized under the Agreement to receive the same, then Company shall not comply with the request and shall instead promptly notify DEP. If Company is required by law to comply with the request, to the extent lawful, then Company shall delay complying with the request until Company notifies DEP in the most expeditious manner possible and affords DEP with an opportunity to lawfully oppose such request. Notwithstanding anything to the contrary, Company further agrees to comply with all applicable federal, state, local, and foreign data protection laws, and all other applicable regulations and directives in connection with its collection, access, use, storage, disposal, and disclosure of Identifying Information.

c. **Security-Sensitive Information**

1. For the purposes of this Agreement, "Security-Sensitive Information" means Confidential Information that DEP designates as security sensitive either orally or by marking the Confidential Information as "security-sensitive information" or with a similar legend denoting its status.

Security-Sensitive Information may include, without limitation, technical information, infrastructure information, maps, drawings, research and development activities, and operating procedures.

2. Company shall password protect all Security-Sensitive Information that is stored by Company in electronic format, and will secure such Security-Sensitive Information in a manner agreed to by the DEP Chief Information Officer and any other required DEP personnel. Company will notify DEP in writing in the most expeditious manner possible in case of any misuse or misappropriation of such Security-Sensitive Information that may come to Company's attention. Notwithstanding anything to the contrary, Company further agrees to comply with all applicable federal, state, local, and foreign data protection laws, and all other applicable regulations and directives in connection with its collection, access, use, storage, disposal, and disclosure of Security-Sensitive Information.

3. Company shall advise each of its employees, agents, consultants, contractors, subcontractors, suppliers, and sub-suppliers who may be exposed to Security-Sensitive Information of their obligation to maintain the confidentiality thereof in perpetuity starting from the date of execution of this Agreement or until DEP allows the disclosure of such Security-Sensitive Information in writing. In addition, Company agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of such Security-Sensitive Information.

d. **No Transmission Outside of the United States**

In no event shall Company transmit, transfer, or otherwise store Confidential Information (including Security-Sensitive Information and Identifying Information) outside of the United States without DEP's prior written approval, which can be withheld, conditioned or withdrawn for any reason.

e. **No Publicity**

To the fullest extent permitted by law, Company shall not publicize, issue, or disclose any release, statement, or other information relating to the ETL or DEP in any manner, including in advertisements, publications, press releases, articles, websites, social media, or speeches, without DEP's prior written approval, which may be withheld or withdrawn for any reason. Company acknowledges its understanding that DEP reserves the absolute right to refuse approval of a press release or other promotional or marketing statement.

f. **Violations of this Section**

Breach of any of the foregoing provisions may be deemed by the Disclosing Party to be a material breach of this Agreement. It is understood and agreed that in the event of any such breach by the Receiving Party of these provisions, damages may not be an adequate remedy, and the Disclosing Party shall be entitled to injunctive relief to restrain any such breach or threatened breach.

7.2 DEP Data. DEP may grant Company access to DEP Data that includes financial, technical, asset (e.g., location, material, and construction method), laboratory, staffing information, and customer complaint (e.g., 311 complaints) data, and which may include Confidential Information, during the Term, subject to the limitations described below. Company shall be entitled to use DEP Data to aid in its development of the Solution.

a. DEP Data Definition

For the purposes of this Agreement, "DEP Data" means, collectively: (i) any information that DEP provides to Company, or information belonging to DEP to which Company otherwise has access to, in connection with the POC Project and this Agreement; (ii) any information, data, reports, studies, recommendations, or other information that Company makes or develops that uses any information described in (i) in connection with, or resulting from, the POC Project and this Agreement; and (iii) derivatives of (i) and (ii) above.

b. Grant of Rights in DEP Data to Company

DEP hereby grants to Company, solely during the Term, a limited, non-exclusive, non-transferrable, non-sublicensable license to copy, modify, display, adapt, use, and modify DEP Data, but solely for the purpose of fulfilling Company's obligations to DEP under this Agreement, in furtherance of the POC Project, and for no other purpose. Company hereby acknowledges and agrees that the rights granted to it pursuant to this Section 7.2(b) shall immediately terminate upon the expiration or termination of this Agreement. After the expiration, but not termination, of this Agreement, Company may continue to use DEP Data that is not Confidential Information, but only to the extent that the DEP Data can be stored in an anonymous and "aggregated" form. For the purposes of this Agreement, "aggregated" means a summarization of the DEP Data that is sufficiently combined to prevent the identification (directly, indirectly, reverse engineering, or by any manner whatsoever) of DEP Data.

c. Ownership of DEP Data

DEP owns all right, title, and interest to the DEP Data, and in and to all associated Intellectual Property Rights.

d. Open Standards Requirements

The Solution shall be developed and implemented by Company during the POC Project using an Open Standards approach including, but not limited to, use of common data formats and standardized APIs, if any.

1. Definition of Open Standards

For the purposes of this Agreement, "Open Standards" shall mean a system that leverages industry standards that define data formats and protocols for communications and security rather than proprietary formats and protocols.

2. No Proprietary Formats for DEP Data

DEP Data shall be stored in the Solution in an industry-standard format that is not proprietary to Company, and that meets the requirements for Open Standards.

3. Access to DEP Data

DEP reserves the right, at any time, to request access in and to DEP Data. Company shall provide to DEP either (i) direct access to or (ii) a digital file of all DEP Data or DEP-based data that is created, used, processed, or otherwise generated by Company or the Solution; and such DEP Data or DEP-based data must be accessible and/or provided in a structured, machine-readable, non-proprietary, Open Standards format within twenty-four (24) hours of DEP request for access.

7.3 Company Designation as Data Controller or Data Processor. Company shall be designated as a Data Controller or a Data Processor, as those terms are defined by the European Union General Data Protection Regulation 2016/679, and any subsequent updates and implementing regulations thereto.

8. Representations and Warranties

Company represents and warrants that:

(a) it is a [corporation / limited liability company / etc.] duly organized, validly existing, and in good standing under the laws of the State of [STATE];

(a) It is in good standing and qualified to do business in the State of New York;

(a) this Agreement has been duly executed and delivered by Company and constitutes the legal, valid, and binding obligation of Company, enforceable in accordance with its terms;

(a) the delivery and performance of this Agreement does not and will not (i) conflict with, result in the breach of, constitute a default of, result in being declared void or voidable any provision of, or result in any right to terminate or cancel any contract, lease or agreement to which Company is bound, or (ii) constitute a violation of any statute, judgment, order, decree, or regulation or rule of any court, governmental authority or arbitrator applicable or relating to Company, or (iii) or result in the acceleration of any debt or other obligation of Company;

(a) Company owns, or will own prior to beginning the POC Project, the rights and interests in, or to, the Company Intellectual Property necessary to enter into this Agreement and to be developed pursuant to this Agreement, and to grant the licenses and assignments of such property described in this Agreement;

(a) Company Intellectual Property does not, and will not, infringe any statutory or common law copyright, privacy, trade secret or other intellectual property right of any third party regarding all uses contemplated under this Agreement;

(a) Company has not previously assigned, pledged, licensed or otherwise encumbered any rights or interest in, or to, any component of Company 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;

(a) the Solution does not contain any malware, worms, viruses, spyware, or similar malicious software;

(a) the Solution does not contain any open source software that would prevent DEP from using the Solution or any product ancillary to the Solution that Company intends to use as part of this Agreement to the full extent contemplated under this Agreement;

(a) the Solution does not include open source software licensed under a “reciprocal” or “copyleft” open source license (such as GPL or MPL) in a manner that would require software embodied in DEP IT systems to be licensed or otherwise made available in source code form to any third party;

(a) the Solution does not, to the extent such third party rights are known or should be known to Company, (i) defame the reputation or other interests of a third party, (ii) constitute the misappropriation of a third party’s publicity rights, or (iii) violate a third party’s legally protected privacy rights;

(a) Company shall perform work under this Agreement in compliance with all applicable laws, rules, regulations, ordinances, and orders of any governmental authority with jurisdiction; and

(a) There are no outstanding or pending investigations, actions, suits, or proceedings against Company or involving Company at law or in equity or before any federal, state, municipal or other governmental department or agency, domestic or foreign, that would materially affect the Company’s performance of its obligations under this Agreement.

The express warranties in this Agreement shall be in lieu of all implied warranties, including the implied warranty of merchantability.

9. Indemnification; Actions By or Against Third Parties

9.1 To the fullest extent permitted by law, Company shall defend, indemnify, and hold harmless the City, including its officials and employees, and the City's contractors and consultants from and against any and all claims (even if the allegations of the claim are without merit), demands, judgements for damages, causes of action, losses, damages, costs, and expenses (including reasonable attorneys' fees) allegedly arising out of or relating to: (i) Company's breach of any of the terms, representations, warranties, or covenants of this Agreement; (ii) any allegation that the Solution infringes or violates the intellectual property rights of a third party; (iii) Company'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 by Company, or any of its officers, directors, employees, agents, representatives or subcontractors; (vi) bodily injury, including death, or damage to property caused by Company; or (vii) Company's failure to comply with applicable law.

When the City has notice of a claim or action, it will notify Company in writing. The City may, at its option, elect to control the defense of such claim or action with counsel of its choosing, at Company's expense. The Party controlling the defense may elect to enter into a settlement agreement which will be indemnified by Company, provided that no such settlement or defense shall include any admission or implication of wrongdoing on the part of Company or the City without such Party's prior written consent. In addition, in the event that Company controls the defense of the City, the City shall have the right to pre-approve the settlement of any claim subject to indemnification under this Agreement that affects its rights, imposes any obligations on it, admits any fault or wrongdoing, or affects it in any way. In the event that Company controls the defense of a claim, Company agrees to keep the City fully advised with respect to such claims and the progress of any suits.

Company's obligation to indemnify, defend, and hold harmless the City and its officials and employees shall neither be (i) limited in any way by Company's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

9.2 If any claim is made or any action brought in any way relating to Agreement other than an action between the City and Company, Company shall diligently render to the City without compensation all assistance that the City may reasonably require of Company.

9.3 Company shall report to DEP in writing within five (5) business days of the initiation by or against Company of any legal action or proceeding relating to this Agreement.

9.4 This Section 9 shall survive the expiration or termination of this Agreement.

10. Termination and Transition Services

10.1 Termination Rights and Procedure. DEP may terminate this Agreement for convenience upon fifteen (15) days' notice to Company. DEP may terminate this Agreement for cause if DEP believes Company has breached any term of this Agreement, including any obligation, representation, or warranty, upon five (5) days' notice to Company. In the event that DEP terminates this Agreement for convenience, the license provisions of Sections 4, 5, and 6 shall extend only to Company's Intellectual Property, including source code, revealed or provided by Company as of the date of termination.

10.2 Transition Services. Company shall provide all transition assistance that DEP requests in connection with transitioning the Solution implemented as a result of this POC Project from Company to a DEP designee (the "Transition Services") including, but not limited to, a successor vendor. Transition Services include, for example, the continued maintenance and support of the Solution, personnel support, materials, information, and services necessary or desirable to (i) maintain the Solution during a DEP or New York City Water Board ("Water Board") procurement process for similar or related solutions; and (ii) facilitate transitioning from Company to a DEP designee. Company shall be obligated to provide the Transition Services for no more than twelve (12) months following termination or expiration of this Agreement, and costs for such Transition Services shall be negotiated and mutually agreed upon by the Parties; provided, however, that such fees shall not exceed Company's then-standard rates. Company understands that payment for Transition Costs shall be under a separate agreement negotiated by the Parties and/or Water Board. The Parties agree that the period of performance for Transition Services shall serve as an extension of the POC Project and this Agreement, and as such, all terms and conditions of this Agreement shall apply to the Transition Services including, without limitation, the Company's grant of a Limited License to DEP pursuant to Section 4 above. This Section 10.2 survives the expiration or termination of the Agreement.

10.3 Future Procurements. Company understands that DEP has no obligation to procure the Solution at the end of the Term. However, if DEP or the Water Board procure the Solution, or any future versions of the Solution, at any time during or after the Term, then the Parties shall enter into good faith negotiations for a discount(s) to any fees and prices. This Section 10.3 survives the expiration or termination of the Agreement.

11. Choice of Law and Jurisdiction

This Agreement shall be governed by and enforced in accordance with the laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the laws of the United States of America, where applicable. 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.

12. No Personal Liability

No official, employee, or agent of the City shall be liable personally by reason hereof. No claim whatsoever shall be made by Company 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.

13. Notices

Notices to either Party must be in writing addressed to such Party at the address set forth below, and sufficient service shall be deemed made thereof as of five (5) business days after mailing or, if delivery to the Party is by hand or electronic transmission, as of the date of such delivery.

<u>If to DEP</u>: New York City Department of Environmental Protection
59-17 Junction Boulevard, 20th floor
Flushing, NY 1373

Attn: Kim Cipriano, Deputy Chief Operating Officer

New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th floor
Flushing, NY 1373
Attn: General Counsel

If to Company: [Insert information]

14. Insurance

16.1 Company shall procure and maintain in force for the Term insurance in such forms and such amounts as DEP may require and in accordance with this Agreement, including the Cloud Services Rider. Company shall furnish to DEP evidence of all insurance policies before any work is started. Insurance policies shall comply with the insurance requirements in Exhibits A and B.

16.2 If, at any time during the Term, insurance as required is not in effect, or proof thereof is not provided to DEP, DEP shall have the option to: (i) direct Company to suspend work with no additional cost or extension of time on account thereof; or (ii) terminate this Agreement for cause.

15. Limitation of Liability

Notwithstanding anything to the contrary, neither Party shall be liable to the other for consequential, incidental, indirect, special, or punitive damages arising out of this Agreement, in particular, loss of profits, revenue, or contracts.

16. Force Majeure

Neither Party shall be liable to the other Party for delays in the execution of its obligations due to causes beyond its reasonable control and that are not caused or attributable to the fault or negligence of the Party delayed including, but not limited to, acts of God, fires, strikes, labor disturbances, floods, epidemics, quarantine restrictions, terrorism, war, insurrection or riot, acts of a civil or military authority, legislation, compliance with priority orders, executive orders, or preference ratings issued by any government, acts of government authorities with respect to revocation of export or re-export permits/licenses, freight embargoes, or unusually severe weather (each, a "Force Majeure Event"). In the event of any such delay, the delayed Party must notify the other Party as promptly as is commercially reasonable and take all commercially reasonable steps to mitigate the effect of the Force Majeure Event. Any deliverable or milestone dates contemplated by this Agreement will be extended for a minimum of time equal to the period of the delay. For clarification purposes, a Force Majeure Event does not affect DEP's termination rights under Section 10.1.

17. Relationship of the Parties

Nothing in this Agreement shall be deemed to establish a relationship of principal and agent between DEP and Company or any of their respective agents, officials or employees. Additionally, Company is not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City.

18. Subcontracting

Company shall perform all work contemplated by this Agreement itself, and Company shall not 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 Company desires to subcontract any portion of the work, then Company shall submit a request to DEP at least twenty (20) days prior to the proposed commencement date of the subcontractor's performance. Such request shall include: (i) a description of the work to be subcontracted; (ii) the commencement and completion dates for the work; (iii) the amount to be paid to the subcontractor; (iv) the subcontractor's name, resume of similar work performed by the subcontractor, and relevant client contacts and telephone numbers; (v) the proposed agreement between Company and the subcontractor for the work; (vi) any DEP Data and Confidential Information that the subcontractor will or may have access to; and (vii) any other information that DEP requests, including any and all required affirmations, certifications, and other forms. 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. DEP's approval of a subcontractor shall not operate as a waiver of any right against Company or other third parties, nor shall it relieve Company of any of its obligations to perform the work as set forth in the Agreement, including those portions of the work that were subcontracted. DEP shall have no liability for any subcontractor-performed work.

19. Changes to this Agreement

This Agreement may only be modified or amended by the written, mutual agreement of the Parties.

20. Conflicts of Interest

20.1 Company 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. Company further represents and warrants that no person having such interest or possible interest shall be employed by or connected with Company in the performance of this Agreement.

20.2 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 23.2 shall not prevent directors, officers, members, partners, or employees of Company from participating in decisions relating to this Agreement where their sole personal interest is in Company.

20.3 Company shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of Company if such employment or service would violate Chapter 68 of the Charter.

21. Miscellaneous.

21.1 Each and every provision required by law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

21.2 If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either

Party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

21.3 The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against Company or the City or their respective officials, officers, and employees.

21.4 Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

21.5 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 unless and until the same shall be agreed to in writing by the Parties as set forth in Section 21 above.

22. Funding Disclaimer

DEP disclaims any endorsement of any source of funding for the ETL.

23. Entire Agreement; Attachments; and Conflict of Terms

This Agreement contains all the terms and conditions agreed upon by the Parties, and no other agreement, oral or otherwise, except amendments executed by both Parties, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties or to vary any of the terms contained in this Agreement. This Agreement contains the following attachments:

- Exhibit A. Proof of Concept Plan
- Exhibit B. Additional Insurance Provisions
- Exhibit C. Investigations Clause
- Exhibit D. Earned Safe and Sick Time Rider
- Exhibit E. Cloud Services Rider
- Exhibit F. AI Rider
- Exhibit G. Security Forms

For purposes of clarification and not limitation, in the event of a conflict between a term in this Agreement and a term in the ETL Application Agreement, this Agreement shall govern.

24. Execution of Agreement

The undersigned signatory for Company personally warrants and represents that they have the full power and authority to enter into this Agreement on behalf of Company and to bind Company to its terms. This Agreement may be executed in counterparts. Signatures exchanged by facsimiles are effective for all purposes hereunder to the same extent as original signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties cause this Agreement to be executed by their duly authorized representatives.

New York City Department of Environmental Protection

BY: ______________________________

NAME (Print): ______________________________

TITLE: ______________________________

DATE: ______________________________

[COMPANY]

BY: ______________________________

NAME (Print): ______________________________

TITLE: ______________________________

DATE: ______________________________

ACKNOWLEDGEMENT OF [COMPANY]

STATE OF)
) SS:
COUNTY OF)

On the _______ day of _________________ 20____, before me, the undersigned, personally appeared __________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
Notary Public

EXHIBIT A. PROOF OF CONCEPT PLAN

EXHIBIT B. ADDITIONAL INSURANCE PROVISIONS

Minimum insurance requirements (may be modified based on proof of concept plan details shared in Exhibit A)

Types of Insurance	Minimum Limits and Special Conditions
■ Workers' Compensation ■ Disability Benefits Insurance ■ Employers' Liability	Statutory amounts.
■Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
■ Commercial Auto Liability (if Applicant is coming onto DEP site)	$1,000,000 per accident combined single limit
■ Cyber Liability Insurance 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 1.01 Company's Obligation to Insure

A. From the date this Agreement is executed through the date of its expiration or termination, Company shall ensure that the types of insurance indicated in Exhibit A of this Agreement are obtained and remain in force, and that such insurance adheres to all requirements of the Agreement including this Exhibit B. For the avoidance of doubt, if a type of insurance is not required in Exhibit A then Company is not obligated to obtain or maintain it.

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

Section 1.04 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 1.02 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 1.03 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 stated in Exhibit A 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 Insurance

A. Company shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. 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 specified in Exhibit A. 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 1.07 Cyber Liability Insurance

Company shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Exhibit A. 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 1.08 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, Employers Liability insurance and Disability Benefits insurance, 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 (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, Employers Liability and Disability Benefits, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

Section 1.09 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, Employers Liability Insurance and Disability Benefits insurance 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, Employers Liability and Disability Benefits insurance, 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 1.10 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 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, Employers Liability Insurance, Disability Benefits 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 C. INVESTIGATIONS CLAUSE

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.

1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, 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;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly 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.

1. 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.

2. 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 C 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 C 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 C 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 C 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 C 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 D. EARNED SAFE AND SICK TIME RIDER

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.[1] Employers with one hundred or more employees are required to provide 56 hours of safe and sick time

[1] 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.

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.

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 Polices 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 E. CLOUD SERVICES RIDER

EXHIBIT F. AI RIDER

EXHIBIT G. SECURITY FORMS