



**PROCUREMENT DEPARTMENT  
4 WORLD TRADE CENTER  
150 GREENWICH STREET, 21<sup>ST</sup> FLOOR  
NEW YORK, NEW YORK 10007**

**REQUEST FOR PROPOSALS**

**ISSUE DATE: OCTOBER 6, 2020**

**TITLE: REQUEST FOR PROPOSALS (RFP) FOR A SOCIAL MEDIA LISTENING, PUBLISHING, AND CUSTOMER ENGAGEMENT PLATFORM**

**RFP NUMBER: 6000000070**

**SUBMIT PROPOSALS TO THE ABOVE ADDRESS NO LATER THAN THE DUE DATE AND TIME INDICATED BELOW**

**QUESTIONS DUE DATE: OCTOBER 14, 2020 TIME: 5:00 PM**

**PROPOSAL DUE DATE: NOVEMBER 2, 2020 TIME: 2:00 PM**

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# 1. INFORMATION FOR PROPOSERS ON THIS REQUEST FOR PROPOSALS

## A. General Information: The Port Authority of New York and New Jersey

For background with respect to The Port Authority of New York and New Jersey (the “Port Authority” or “Authority”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Port Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

The Port Authority is hereby seeking proposals from qualified firms to provide a cloud based, Software as a Service (SaaS) Social Media Listening, Publishing, and Customer Engagement Platform and associated configuration, interfaces, training and ongoing support, herein in total defined as the Offering, with the SaaS software defined as the “Product” s more fully described herein.

## B. Context and Brief Summary of Scope of Work

The Port Authority keeps the region moving by air, land, rail, and sea. As the Port Authority nears its centennial, it is committed to providing a world-class customer experience, making changes big and small: from investing in new construction or major renovations of its facilities to optimizing every single touchpoint a customer may interact with in person and virtually. At the crux of this new approach is a commitment to bringing our customers a 21<sup>st</sup>-century experience that anticipates their needs, and when it does not, is able troubleshoot in real-time how we can better serve our customers. Social media is a lynchpin for us delivering on that experience through how we fix challenges in our facilities, how we communicate, and how we anticipate and design for the next customer experience.

We are building a 21<sup>st</sup>-century social media operation that creates dynamic content as well as engages customers, identifies feedback for communications and operational teams, and tracks, manages and reports on customer sentiment. To deliver against that objective, we need a social media tool that allows for multiple teams to collaborate, track all of the social listening from customers in a focused, easily visualized manner in real time, and allows for flexible reporting on customer sentiment and team productivity through ready-made reports.

### **Important note regarding proposed project timeline.**

In order to meet internal deadlines, and given business needs to have the solution live as soon as possible, the following timeline will need to be met:

- Project start – on or about December 1, 2020
- Go live with Offering such that the Port Authority’s current social listening application(s) can be decommissioned no later than February 28, 2021.
  - The Authority is open to phased approaches potentially extending past this date as long as the objectives with respect to current social listening application(s) are demonstrated.

### **C. Deadline for Receipt of Proposals**

The due date is November 2, 2020 specified on the cover page is the Proposal Due Date. Closing of due date is 2:00 PM, Eastern Time (ET)

### **D. Vendor Profile**

To ensure maximum opportunities, it is vitally important that Proposers keep their vendor profiles up to date with an appropriate e-mail address, as this will enable their firm to receive timely notice of advertisements, reminders, solicitations and addenda. Proposers may update their vendor profile or register as a Port Authority Vendor by accessing the online registration system at <https://www.paprocare.com>.

### **E. Submission of Proposals**

**The Port Authority has temporarily transitioned to an entirely digital submission process for the receipt of proposals in response to Requests for Proposals, as detailed below.**

Proposers are advised that their digital proposals must be in a readable format, either Microsoft Word or Adobe PDF.

Proposers shall be allowed to submit modifications to proposals or withdraw previously submitted proposals electronically up to, but not after, the time of the Proposal Due Date. If a Proposer wishes to withdraw or modify a previously submitted proposal prior to the Proposal Due Date, it must clearly identify such communication as either a “Modified Proposal” or “Request to Withdraw”.

The Port Authority shall accept only those proposals in electronic format for which the submission or modification is completed by the time of the Proposal Due Date. All Proposals must be emailed to the Port Authority email: [bidrfpsubmittal@panynj.gov](mailto:bidrfpsubmittal@panynj.gov) by the Proposal Due Date to be considered. The subject line of the email should include the RFP # and title of the solicitation. The body of the email should include contact information of the sender, as well as a description of the contents of the email. This email address is solely for submission of Proposals, and as such, it should not be used for any other sort of communication. Any questions or other communication shall be through the designated solicitation manager, buyer or contract specialist and in the manner indicated on the subject solicitation.

Your Proposal should be forwarded via email to [bidrfpsubmittal@panynj.gov](mailto:bidrfpsubmittal@panynj.gov) in sufficient time so that the Authority receives it no later than 2:00 PM ET on the Proposal Due Date. Proposers should anticipate that some emails may take a period of time to be delivered, and as such, should send them as early as possible so as to ensure it is received no later than 2:00 PM ET in the designated Port Authority’s email box. The Port Authority is not responsible for delays in transmission or technical issues related to the submission of a Proposal.

Proposers should note that there is a limit to the total size of attachments per email that can be received by the Port Authority designated email account. That limit is 100MB.

Proposers' internal networks may have limits on the size of emails they can send. Therefore, it is incumbent upon the Proposers to determine ahead of time that the file(s) being submitted can both be transmitted by their systems and accepted by the Port Authority's systems. If transmissions exceed these limits, the Port Authority will accept Proposals in multiple emails, provided they are all received by the specified Proposal Due Date/time and all emails must include the RFP # and title. Under this circumstance, Proposers should note in the description of the email that the Proposal will be arriving in multiple parts and include in the subject line the total number of components and which component, of the total, the particular transmission represents.

#### **F. Communications Regarding this RFP**

All communications concerning this RFP should be directed to the Buyers listed on the cover page. All questions regarding this RFP should be submitted in writing to the Buyers at the address or facsimile number listed on the cover page no later than 5:00 PM (ET) on October 14, 2020.

The Buyers are authorized only to direct the attention of prospective Proposers to various portions of this RFP so that they may read and interpret such portions themselves.

Neither the Buyers nor any other employee of the Port Authority is authorized to interpret the provisions of this RFP or give additional information as to its requirements. If interpretation or other information is required, it will be communicated to Proposers by written addenda and such writing shall form a part of this RFP.

#### **G. Proposal Acceptance or Rejection**

Acceptance shall be only by mailing to or delivering at the office designated by the Proposer in its proposal, a notice in writing signed by an authorized representative on behalf of the Port Authority specifically stating that the proposal is accepted or by execution of an agreement covering the subject matter of this RFP signed by authorized representatives of the Port Authority and the Proposer. No other act of the Port Authority, its Commissioners, officers, agents, representatives, or employees shall constitute acceptance of a proposal. Rejection of a proposal shall be only by either (a) a notice in writing specifically stating that the proposal is not accepted, signed by an authorized representative of the Port Authority and mailed to or delivered to the Proposer at the office designated in the Proposal, or (b) omission of the Port Authority to accept the proposal within 180 days after the Proposal Due Date. No other act of the Port Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a proposal.

#### **H. Union Jurisdiction**

Proposers are advised to ascertain whether any union now represented or not represented at the facility will claim jurisdiction over any aspect of the operations to be

performed hereunder and their attention is directed to the Section of this RFP entitled “Harmony” included in the “General Contract Provisions” hereunder.

## **I. City Payroll Tax**

Proposers should be aware of the payroll tax imposed by the:

- a. City of Newark, New Jersey for services performed in Newark, New Jersey;
- b. City of New York, New York for services performed in New York, New York;  
and
- c. City of Yonkers, New York for services performed in Yonkers, New York.

These taxes, if applicable, are the sole responsibility of the Contractor. Proposers should consult their tax advisors as to the effect, if any, of these taxes. The Port authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph entitled “Tax Exemptions”, in the “General Contract Provisions” included herein, does not apply to these taxes.

## **J. Additional Proposer Information**

Prospective Proposers are advised that additional vendor information, including, but not limited to forms, documents and other information, including MBE/WBE Participation Plan Submission Forms and protest procedures, may be found on the Port Authority website at: <http://www.panynj.gov/business-opportunities/become-vendor.html>

## **K. Personnel Assurance Program and Contractor Staff Background Screening**

The Contractor awarded this Contract may be required to have its staff, and any subcontractor’s staff working under this Contract, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Contractor and any subcontractors may also be required to use an organization designated by the Authority to perform the background checks. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Contractor and its subcontractors as an out-of-pocket expense. Costs for staff that are rejected for a credential for any reason are not reimbursable.

Such background checks shall be performed through the Authority’s personnel assurance program provider. The Secure Worker Access Consortium (“S.W.A.C.”) is the only Port Authority approved provider to be used to conduct background screening, except as otherwise required by federal law and/or regulation. Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922.

## **L. Automated Clearing House Enrollment**

The Port Authority of New York and New Jersey has transitioned to an electronic method of paying its vendors, contractors and consultants via an Automated Clearing House (“ACH”) funds transfer. It is the Port Authority’s expectation that all vendors, contractors and consultants will be paid via an ACH funds transfer. To avoid delays in payment, vendors, contractors, and consultants should enroll in ACH and complete the Port Authority’s “Authorization Agreement For Direct Deposits And Direct Payments (ACH Credits)” form, which is available at <https://www.panynj.gov/business-opportunities/pdf/Vendor-ACH-auth-form.pdf>. The Authorization Agreement shall remain in full force and effect until the Port Authority has received written notification from the vendor, contractor or consultant of its termination in such time and in such manner as to afford the Port Authority and the depository financial institution(s) a reasonable opportunity to act on it. Any questions on this process may be directed to the Comptrollers Department ACH Enrollments contact line at 201 216-6002 or emailed to [ACHENROLLMENT@PANYNJ.GOV](mailto:ACHENROLLMENT@PANYNJ.GOV).

## **2. SCOPE OF WORK**

The full Scope of Work is set forth in detail in Attachment B.

## **3. PROPOSER PREREQUISITES**

Only Proposers who can demonstrate that they comply with the following should submit proposals and only proposals from such Proposers will be considered:

- A. At the time of proposal submission, the version of the Product being proposed shall be cloud-based or otherwise offered as Software as a Service (SaaS). For the purpose of this prerequisite, this means that the Product is both (1) accessible via the internet and (2) does not require any hardware in client data center. Proposer shall certify this by providing a letter representing such signed by an individual authorized to bind the company.
- B. At the time of proposal submission, the version of the Product being proposed shall have, a mobile app that allows the Product to operate in near full capacity from a smartphone, tablet or other mobile device. Proposer shall certify this by providing a letter representing such signed by an individual authorized to bind the company.
- C. At the time of proposal submission, the Product is being used in a productive capacity (defined as the system of record for such client as of the date of proposal submission) by a minimum of two (2) government clients. For the purposes of this prerequisite government client shall be defined as any state, local or federal entity. Proposer shall certify this by providing contract details and contact information for two such clients.
- D. At the time of proposal submission, the Offering shall have historical uninterrupted up time performance of a minimum of 99.9% per month for the past two years. Proposer shall certify this by providing actual up times for the subject period (two years back from date of proposal submission) in a letter representing such, signed by

an individual authorized to bind the company.

- E. At the time of proposal submission, and without additional configuration, download, or other modification having to do any additional work, the Product shall have access to a minimum of two years' worth of historical social data (including Twitter). Proposer shall certify this by providing a letter representing such signed by an individual authorized to bind the company.
- F. At the time of proposal submission, the version of the Product being proposed shall be in productive use by a minimum of two clients defined as rapid response clients. For the purpose of this prerequisite, a rapid response client shall be defined as a client whose customer service needs and operations are 24/7, requiring rapid response to customers, as well as in-the-moment monitoring and measurement to address critical public-facing events and highly sensitive complaints. Rapid response clients can include, but are not limited to the airline industry, major rapid transit systems, and ride-share services. Proposer shall certify this by providing contract details and contact information for two such rapid response clients.

***Important – If the Proposer is not the Product manufacturer, all representations related to Product must be signed by Product manufacturer.***

In the event a proposal is submitted by a joint venture the foregoing prerequisites will be considered with respect to such Proposal as follows:

The foregoing prerequisites will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements.

If the proposal is submitted by a common law joint venture, a joint venture that has not been established as a distinct legal entity, each participant of the joint venture shall be held jointly and severally liable and must individually execute and perform all acts required by this proposal. Documents signed by a common law joint venture, in connection with this proposal, shall include the names of all participants of the joint venture followed by the words “acting jointly and severally”. All joint venture proposers must provide documentation of their legal status.

All Proposers must include documentation that they meet the above prerequisites. By furnishing this solicitation document to Proposers, the Port Authority has not made a determination that the Proposers have met the prerequisites or have otherwise been deemed qualified to perform the services. In addition, a determination that a Proposer has met the prerequisites is no assurance that they will be deemed qualified in connection with other proposal requirements included herein.

#### **4. FINANCIAL INFORMATION**

The Proposer will be required to demonstrate that it is financially capable of performing the contract resulting from this RFP (“Contract”). The determination of the Proposer’s financial qualifications and ability to perform this Contract will be in the sole discretion of the Port Authority. The Proposer shall submit, with its proposal, the following:

- A. (1) Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent year or the Proposer's most recent fiscal year.

(2) Where the certified financial statements in (1) above are not available, then reviewed statements from an independent accountant setting forth the aforementioned information shall be provided.

Where the statements submitted pursuant to subparagraphs (1) and (2) aforementioned do not cover a period which includes a date not more than forty-five days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.

- B. A statement of work which the Proposer has on hand, including any work on which a bid and/or proposal has been submitted, containing a description of the work, the annual dollar value, the location by City and State, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Proposer's work on these jobs.
- C. The name and address of the Proposer's banking institution, chief banking representative handling the Proposer's account, the Proposer's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Proposer's Dun and Bradstreet number, if any, the name of any credit service to which the Proposer furnished information and the number, if any, assigned by such service to the Proposer's account.

## **5. EVALUATION CRITERIA AND RANKING**

All proposals will be reviewed by the Port Authority to determine if they adhere to the format required in this RFP, if they contain all required submissions and if the Proposer meets the prerequisites required for submission of a Proposal.

For Proposals meeting such requirements, a two-phase evaluation process will be employed.

**PHASE 1** – The following criteria, set forth in order of importance, with criteria B and C having equal weights, will be utilized.

### **A. PRODUCT AND OFFERING CAPABILITIES**

The Proposer should demonstrate: (1) The ability of the Product and Offering to satisfy or exceed the requirements described in Attachment B, "Scope of Work" out of the box, focusing on marketing, analytics and engagement functionality and (2) The degree to which the Product includes a high-quality, intuitive mobile app and user interface and demonstrates an effective AI and natural language processing engine inclusive of an effective sentiment management function. The Proposer should also demonstrate the degree to which the proposed onboarding plan and timeline meets Authority needs and that



the proposed personnel assigned have relevant skills and experience. Finally, the Proposer should demonstrate the ease of secure integration to Salesforce platform, proven ability to ingest new social media sources in a timely and secure fashion and degree of effective role-based security, workflow engines, reporting tools and degree of easy to use administrator requirements.

## **B. FINANCIAL PROPOSAL**

The degree and extent to which the proposed fee structure (inclusive of both one time and ongoing fees) as well as the total cost of ownership to the Authority to incorporate the Offering is effective and allows for cost effective sizing and growth. The firm's financial capacity and stability to ensure long term viability.

## **C. FIRM EXPERTISE**

The Proposer should demonstrate: (1) that it has relevant and successful experience in providing the services specified in this RFP to others, including but not limited to, the depth and breadth of their client base especially with firms that require fast and accurate turnaround on a 24 by 7 basis and (2) the degree to which Proposer provides value add customer success assistance and ongoing system optimization services as well as proven ability to react quickly to changes shaping the marketplace. This also includes the Proposer's internal diversity programs and the extent to which MBEs and WBEs selected for participation will be used in ways that result in them receiving core and meaningful work as well as the degree of business risk the overall company and/or Offering represents. Consideration will be given to the Proposer's ability to accept our terms with minimal exceptions and ability to efficiently and effectively negotiate any Proposer provided license agreements.

**PHASE 2** – The Authority will review the security and technology infrastructure of the highest ranked Proposal(s) from PHASE 1. Such review will generally consist of the robustness of the Offering's physical and logical technical architecture and the degree of security the Offering provides including adherence to uptime availability, independent certifications and standards, ease of ingestion and integration and proven ability to handle confidential data.

## **6. MBE/WBE SUBCONTRACTING PROVISIONS**

The Authority has a long-standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs), and most recently Service-disabled Veteran-owned Businesses (SDVOB) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or,

in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens. "Service-disabled Veteran-owned Business Enterprise" or SDVOB means a business entity which is at least fifty-one percent (51%) owned and controlled by one or more service-disabled veteran with a service connected disability, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more service-disabled veteran with a service connected disability, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Minority group" means any of the following racial or ethnic groups:

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race.
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

"Service-disabled Veteran, with a service-connected disability" means:

- A. The term "service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.;
- B. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable

The Authority has set a goal of twenty percent (20%) participation by qualified and Authority certified MBEs and ten percent (10%) for qualified and Authority certified WBEs on technical service projects for a total combined MWBE goal of thirty percent (30%), and three percent (3%) of the total Contract price for Port Authority certified SDVOBs.

MBE/WBE participation goals may be subject to change during the duration of this Agreement and any options or extensions thereof. Any new participation goals determined by the Authority shall be applicable to and considered a part of this Agreement. The current participation goals will be posted on the Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html> as PA Form 4250, "MBE/WBE Participation-Professional Services Call-In". You must consult PA 4250 prior to proposing on any Task Orders issued under this Agreement.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

In order to facilitate the meeting of this goal, the Contractor shall use every good-faith effort to utilize subcontractors who are Authority certified MBE/WBE/SDVOBS to the maximum extent feasible.

Good faith efforts to include and facilitate participation by MBE/WBE/SDVOBs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into smaller portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBE/SDVOBs as may be appropriate.
- C. Soliciting services and materials from Authority certified MBE/WBE/SDVOB firms. To access the Authority's Directory of MBE/WBE/SDVOB certified firms, go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html>.
- D. Ensuring that provision is made to provide progress payments to MBE/WBE/SDVOBs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

The Authority has a list of certified MBE/WBE/SDVOB service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Contractor will be required to submit to the Authority's OBDCR for certification the names of MBE/WBE/SDVOB firms it proposes to use who are not on the list of certified MBE/WBE/SDVOB firms.

The Contractor shall include their MBE/WBE Participation Plans (Form PA 3760C) with their task order proposals, to be reviewed and approved by the Authority's OBDCR. Concerning SDVOB participation, the Contractor shall include their SDVOB Participation Plans (Form PA 3760SDV1) with their task order proposals, to be reviewed and approved by the Authority's OBDCR.

The Contractor must submit an MBE/WBE/SDVOB Participation Plan for each MBE/WBE/SDVOB subcontractor. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE/SDVOB: Provide the name and address of the MBE/WBE/SDVOB. If no MBE/WBE/SDVOB s are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Agreement.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE/SDVOB participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBE/SDVOB s will perform.

The MBE/WBE/SDVOB subcontractor listed on each of the MBE/WBE/SDVOB Participation Plans must be certified by the Authority in order for the Contractor to receive credit toward the MBE/WBE/SDVOB goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html> to search for

MBE/WBE/SDVOBs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE/SDVOB Participation Plans must be submitted via a Modified MBE/WBE/SDVOB Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Contractors are directed to use form PA3760D, and for modifications to the SVOB Plan Contractors are directed to use form PA3760SDV2. The Contractor shall not make changes to any of its approved MBE/WBE/SDVOB Participation Plans or substitute MBE/WBE/SDVOB subcontractors or suppliers for those named in their approved plans without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE/SDVOB participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Contractor shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE/SDVOB subcontractor and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor/subconsultant or supplier, the date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Contractor's compliance with the foregoing provisions.

### **MBE/WBE/SDVOB Conditions of Participation**

MBE/WBE/SDVOB participation will be counted toward meeting the MBE/WBE/SDVOB agreement goal, subject to all of the following conditions:

1. **Commercially Useful Function:** An MBE/WBE/SDVOB is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Contractor and the MBE/WBE/SDVOB represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE/SDVOB or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE/SDVOB goal is met and shall not be included in MBE/WBE/SDVOB reports. If this occurs with respect to a firm identified as an MBE/WBE/SDVOB, the Contractor shall receive no credit toward the MBE/WBE/SDVOB goal and may be required to backfill the participation. An MBE/WBE/SDVOB does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE/SDVOB participation. An MBE/WBE/SDVOB may rebut a determination by the Authority that the MBE/WBE/SDVOB is not performing a commercially useful function to the Authority.

2. **Work Force:** The MBE/WBE/SDVOB must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other subcontractors/subconsultants on the Agreement, or their affiliates. This does not preclude the employment by the MBE/WBE/SDVOB of an individual that has been previously employed by another firm involved in the Agreement, provided that the individual was independently recruited by the MBE/WBE/SDVOB in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE/SDVOB shall not be allowed.
3. **Supervision:** All work performed by the MBE/WBE/SDVOB must be controlled and supervised by the MBE/WBE/SDVOB without duplication of supervisory personnel from the Contractor, other subcontractors on the Agreement, or their affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE/SDVOB and other supervisors necessary to coordinate the work.

### **Counting MBE/WBE/SDVOB Participation**

The value of the work performed by an MBE/WBE/SDVOB, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE/SDVOB prime contractor/consultant shall still provide opportunities for participation by other MBE/WBE/SDVOBs. Work performed by MBE/WBE/SDVOBs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBE/SDVOBs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

**Subcontractors:** One hundred percent (100%) of the value of the work to be performed by an MBE/WBE/SDVOB subcontractor will be counted toward the MBE/WBE/SDVOB goal. The value of such work includes the cost of materials and supplies purchased by the MBE/WBE/SDVOB, except the cost of supplies or equipment leased from the Contractor, other subcontractors or their affiliates will not be counted. When an MBE/WBE/SDVOB subcontracts part of the work of its contract to another firm, the value of the subcontractor work may be counted toward MBE/WBE/SDVOB goals only if the MBE/WBE/SDVOB subcontractor is itself an MBE/WBE/SDVOB. Work that an MBE/WBE/SDVOB sub consults to a non-MBE/WBE/SDVOB firm does not count toward MBE/WBE/SDVOB goals.

**Material Suppliers:** Sixty percent (60%) of the expenditure to an MBE/WBE/SDVOB material supplier will be counted toward the MBE/WBE/SDVOB goal. Packers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

**Broker's/Manufacturer's Representatives:** One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE/SDVOB broker/manufacturer's representative will be counted toward the MBE/WBE/SDVOB goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE/SDVOB for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the work will be counted toward the MBE/WBE/SDVOB goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

Joint Venture: Joint ventures between MBE/WBE/SDVOBs and non-MBE/WBE/SDVOBs may be counted toward the MBE/WBE/SDVOB goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the Agreement that the MBE/WBE/SDVOB performs with its own forces. Contact OBDCR at (201) 395-3117 for more information about requirements for such joint ventures.

## **7. PROPOSAL SUBMISSION REQUIREMENTS**

In order to expedite the evaluation of proposals, the Proposer's response to this RFP shall follow the format and order of items, using the same paragraph identifiers, as set forth below.

### **A. Letter of Transmittal**

The Proposer shall submit a letter on its letterhead, signed by an authorized representative, stating its experience and qualifications in meeting the requirements of this RFP. This letter shall include a statement on whether the Proposer is submitting a proposal as a single entity, a joint venture, or is partnering with another firm in a prime/subcontracting relationship. In all cases, information required for a single entity is required for each participant in a joint venture.

The Letter of Transmittal shall contain:

- (1) Name and address of the Proposer and an original signature on the Letter of Transmittal by an authorized representative on behalf of the Proposer;
- (2) Name(s), title(s) and telephone number(s) of the individual(s) who are authorize to negotiate and execute the Contract;
- (3) Name, title and telephone number of a contact person to which the Port Authority can address questions or issues related to this RFP;
- (4) Name and address of proposed subcontractors, if any;
- (5) If a corporation: (a) a statement of the names and residences of its officers, and (b) a copy of its Certificate of Incorporation, with a written declaration signed by the secretary of the corporation, with the corporate seal affixed thereto, that the copy furnished is a true copy of the Certificate of Incorporation as of the date of the opening of the Proposals;

If a partnership: a statement of the names and residences of its principal officers, indicating which are general and which are special partners;

If an individual: a statement of residence;

If a joint venture: information on each of the parties consistent with the information requested above; if the Contract is awarded to a common law joint venture (a partnership of business entities) each member will be jointly and severally liable under the Contract.

## **B. Executive Summary**

The Proposer shall submit a summary presenting the major features of its proposal and how the proposal satisfies the requirements contained in this RFP, as well as the special competencies and expertise of the Proposer to meet the requirements of this RFP.

**Important – Within this statement, all parties involved in delivering the Proposal shall be disclosed. – whether it be the Product Manufacturer, Hosting Provider, Reseller, Integrator, Trainer, Subcontractor etc. and what role they will play.**

## **C. Agreement on Terms of Discussion**

The Proposer shall submit a copy of the “Agreement on Terms of Discussion,” signed by an authorized representative of the Proposer. The Agreement format is included as Attachment A and shall be submitted by the Proposer without any alterations or deviations. Any Proposer who fails to sign the Port Authority’s “Agreement on Terms of Discussion” will not have its proposal reviewed. If the Proposer is a joint venture, an authorized representative of each party must sign the Agreement.

## **D. Certifications With Respect to the Contractor’s Integrity Provisions**

The Proposer, by signing the Letter of Transmittal, makes the certifications in the “Contractor’s Integrity Provisions,” included in Attachment C of the General Contract Provisions. If the Proposer cannot make any such certifications, it shall enclose an explanation of that inability.

## **E. Code of Ethics for Port Authority Vendors**

Proposer’s attention is directed to the Port Authority’s “Code of Ethics for Port Authority Vendors” (the “Code”). The Code of Ethics can be found on the Port Authority’s website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

## **F. Documentation of Proposer Prerequisites**

The Proposer shall submit documentation to demonstrate that it meets the prerequisites included herein. Reference Section 3– Proposer Prerequisites.

## G. PRODUCT AND OFFERING CAPABILITIES

Proposers are asked to provide details about their proposed solution detailing the methodologies and processes that make their solution accurate and customer focused. At a minimum, the response shall cover the following areas:

1. General Offering description: Describe the Product(s) and Offering that the Proposer will use to satisfy the scope of work as attached. Specific focus shall be on how the following functionality is accomplished:
  - a. Engagement
  - b. Marketing.
  - c. Analytics
2. Discuss the differentiators and how the Product and Offering handle the following:
  - a. How sentiment analysis is his is accomplished and how misidentification is minimized.
  - b. How multiple language analysis is accomplished? In native language? Converted to English? Etc.
  - c. How the Product learns and evolves over time.
  - d. Discuss the listening devices; rule-based learning: real time routing.
  - e. Discuss how real time alerts are handled.
  - f. Discuss your product roadmap.
  - g. Discuss if your product has integration with Snapchat
3. Initial Onboarding & Set up Processes (Transition In)
  - a. Project plan - provide detailed process for your onboarding and set up including proposed project plan and timelines that address activities including, but not limited to, if required, historical data loads, master data loads, training, connectivity requirements etc.
  - b. Interfaces – provide how interfaces to Authority’s Salesforce instance will be accomplished. Detail what data will be transferred, via what methods and at what frequency.
  - c. Demonstrate how you will meet the Authority’s timeline.
4. Transition Out – Discuss the processes and timing to ensure all Authority data is removed, and such removal is validated, upon contract conclusion/termination. Discuss how you will assist in the transition to a third-party or assist the Authority in bringing this function in-house.
5. Workflow & Escalations: Discuss process workflows, identifying all stakeholders in the process- employee or third-party interaction with vendor, interventions and escalations in case of any additional info/support needs, etc.
6. Reporting / Dashboards – Provide sample reports and dashboards . Discuss if reports are automated or curated. Discuss how new reports or changes to reports or dashboards are accomplished.
7. Service levels – Provide all applicable service levels; service objectives and any service level credits offered for non-adherence.



8. Asset Management- Does your Product provide a Digital Asset Management solution for storage and publishing of the following types of content in:
- Jpegs
  - Photo albums
  - Gifs
  - Graphics
  - Video

## **H. FINANCIAL PROPOSAL**

1. Unit Fee Structure / Pricing Metrics - Proposer shall prepare a price sheet clearly detailing all proposed compensation, both one shot (i.e. initial set-up) as well as ongoing (subscription fees) , with the associated unit costs
  - i. Included with this shall be a description of when these fees are to be invoiced.
  - ii. The Authority is seeking a full turnkey operation. Clearly delineate if the Offering requires any third-party products, services, internet connections etc. The cost and name of the vendor shall be disclosed.
  - iii. The Authority is seeking Disaster Recovery, non-production environments as well point to point encryption. To the degree that any of these services are add ons, their pricing shall be delineated. Additional options that are available to the Authority shall be provided for Authority consideration.
  - iv. If there are tiered levels of ongoing support in the cost structure, the vendor shall specify the options available to the Authority
2. The metrics used to size the engagement such as but not limited to number of users and/or roles, number of handles, number of searches etc., shall be clearly delineated.
3. Describe any quantity discount thresholds,
4. If changes are required after the system goes live or additional reports are required, advise if any fees, and/or hourly rates that might be applicable.
5. Any escalations during the proposed term shall be clearly delineated.
6. The Port Authority is able to take advantage of government cooperative pricing such as, but not limited to GSA schedule 70, NYS OGS, etc. Please disclose if any such agreements are available to the Authority for pricing purposes.

## **I. FIRM EXPERTISE**

1. Provide a statement, no more than one page, that describes the number of clients, average length of engagement with clients, key verticals or industries supported, etc.
  - i. Provide information about any client surveys or other third-party assessment of client satisfaction you have.
  - ii. Discuss vendor's penetration and usage in the government market
  - iii. Provide information about clients, regardless of vertical, that can be considered rapid fire or deal with potential "public crises" or public facing social media attacks requiring quick and targeted social media response on a regular basis.

2. Discuss Proposers vision and understanding of the role social media management plays in American Corporate culture and how the Product Offering supports and changes with it.
3. Proposed team organization and escalation chart- who will be assigned their roles, any relevant certifications and percent of time devoted to this effort
  - i. Describe who the Authority's ongoing point of contact will be as well as an organizational chart for onboarding activities. Provide resumes as applicable.
4. Non-Disclosure and Confidentiality Agreement and Acknowledgments (NDA)  
If awarded the agreement, an NDA will be required prior to being provided any Port Authority Protected Information. Please confirm awareness of this requirement and confirm ability to execute without changes.
5. Risk Statement – Please describe key business, marketplace, technical and or timing risks identified with the set up and ongoing provisioning of these services and how you will mitigate them. Provide any protocol/processes in place when a data security defect is found or in the event of a data breach.
6. Proposer's General References –Provide a minimum of two (2) reference clients that demonstrate Proposer's capacity to perform the required tasks. Please provide the following information -
  - i. Name of client and a brief description of the services provided such client
  - ii. Name, telephone number and email of two (2) client contacts – a primary and an alternate - that would be in the best position to speak about the efforts (Note selected individuals must be employees of the client).
7. M/WBE participation plan –
  - i. Proposer should complete PA Form 3760C, a copy of which can be found: <https://www.panynj.gov/port-authority/en/business-opportunities/Vendor-Resources.html>.
  - ii. Provide a statement that discusses the Proposer's internal diversity practices highlighting any programs or mentorships in place to encourage M/WBE enterprises in Proposer's contracting opportunities.

**J. SECURITY AND TECHNOLOGY INFRASTRUCTURE (Used in PHASE 2 Evaluation)**

***IMPORTANT – Information to satisfy this section shall be separated and put in a sealed envelope clearly identified as such. Only information from the highest ranked Proposal(s), as per PHASE 1 will be opened and reviewed.***

Please provide a general understanding of your technical and security architecture that allows for effective use of the system with appropriate and evolving protections for cybersecurity concerns. The response at a minimum shall address the following:

- a) Provide a list of all vendors, data centers, aggregators etc. that are part of your cloud infrastructure and ecosystem.
- b) Describe your data classification tools used to classify sensitive data.
- c) Discuss your security awareness training
- d) Discuss how you perform background checks
- e) Provide copies of your privacy policies.
- f) Discuss how you operationally and administratively ensure the protections covered under HIPAA and PII (state and federal) regulations are followed.
- g) How do you ensure compliance with the applicable standards?
- h) Discuss the industry risk management and security management framework (NIST, CSA, etc.) that your solution adheres to. Has an independent corporation assessed security practices and controls effectiveness?
- i) What cloud services are utilized?
- j) Discuss if your proposed solution utilizes encryption for data in transit and at rest. If your firm is awarded an agreement, would the Port Authority get its own encryption key? Please discuss.
- k) Discuss in detail how your firm ensures segmentation of client's data.
- l) Does your solution have independent audits conducted (ex. SSAE 18 SOC 2 Type II)? If so, what are they and how often are they conducted? Please provide a listing of all standards (i.e. SSAE18 , FEDRAMP and NIST 800), certifications (HIPAA, etc.) or industry accreditations or independent audits that the firm and/or individuals maintain. Please provide the SOC 2 Type II and the PCI compliant and self-attestation documentation if available.
- m) Discuss your firm's data retention policy. What data is maintained and how long is data retained?
- n) Please provide information about your data centers. In particular, identify the location or locations where Port Authority data would be stored if you are awarded a contract.
- o) Third -party tools - Identify any third-party tools to be used during this engagement. For example, as they may be incorporated in the Product or Offering.
- p) Open Source Code – Provide a list of all open source code used as part of the Offering.
- q) Disaster Recovery Plan- Provide all relevant information pertaining to an adequate disaster recovery plan.

**K. License Agreements:**

If the licensor of any component of the Offering has any terms that are required for execution of an agreement such as but not limited to, Subscription agreements or Professional Services Agreements, they are to be provided with Proposer’s proposal. No licensor documents will be accepted after Proposal submission.

**L. Acknowledgment of Addenda**

If any Addenda are posted or sent as part of this RFP, the Proposer shall complete, sign and include with its Proposal the addenda form(s). In the event any Proposer fails to conform to these instructions, its proposal will nevertheless be construed as though the Addenda had been acknowledged.

If the Proposer downloaded this RFP document, it is the responsibility of the Proposer to periodically check the Port Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> and download any addenda that might have been issued in connection with this solicitation.

**M. Acceptance of General Contract Provisions and Contract Specific Terms and Conditions**

The Port Authority has attached to this RFP as Attachment C – General Contract Provisions including Insurance Procured by Contractor and Attachment D – Contract Specific Terms and Conditions governing the Contract. The Proposer is expected to agree with these documents. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. After the proposal due date, the Proposer will be precluded from raising any exceptions unless such exceptions are justified by and directly related to substantive changes in the business or technical requirements and are agreed to by the Proposer and the Port Authority.

**8. CONDITIONS FOR THE SUBMISSION OF A PROPOSAL**

In addition to all other requirements of this RFP, the Proposer agrees to the following conditions for the submission of its proposal.

**A. Changes to this RFP**

At any time, in its sole discretion, the Port Authority may by written addenda, modify, correct, amend, cancel and/or reissue this RFP. If an addendum is issued prior to the date proposals are due, it will be provided to all parties in the medium in which the parties obtained the RFP. If an addendum is issued after proposals have been received, the addendum will be provided only to those whose proposals remain under consideration at such time.

**B. Proposal Preparation Costs**

The Port Authority shall not be liable for any costs incurred by the Proposer in the preparation, submittal, presentation, or revision of its proposal, or in any other aspect of the Proposer’s pre-contract activity. No Proposer is entitled to any compensation except

under an agreement for performance of services signed by an authorized representative of the Port Authority and the Proposer.

**C. Disclosure of Proposal Contents / Use of Ideas and Materials**

Proposal information is not generally considered confidential or proprietary. All information contained in the proposal is subject to the “Agreement on Terms of Discussion” attached hereto as Attachment A.

**D. Ownership of Submitted Materials**

All materials submitted in response to or in connection with this RFP shall become the property of the Port Authority. Selection or rejection of a Proposal shall not affect this right.

**E. Subcontractors**

If a Proposer intends to use subcontractor(s) the Proposer must identify in its proposal the names of the subcontractor(s) and the portions of the work the subcontractor(s) will perform.

**F. Conflict of Interest**

If the Proposer or any employee, agent or subcontractor of the Proposer may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Port Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. The Port Authority’s determination regarding any questions of conflict of interest shall be final.

**G. Authorized Signature**

Proposals must be signed by an authorized corporate officer (e.g., President or Vice President), General Partner, or such other individual authorized to bind the Proposer to the provisions of its proposal and this RFP.

**H. References**

The Port Authority may consult any reference familiar with the Proposer regarding its current or prior operations and projects, financial resources, reputation, performance, or other matters. Submission of a proposal shall constitute permission by the Proposer for the Port Authority to make such inquiries and authorization to third parties to respond thereto.

**I. Evaluation Procedures and Negotiation**

Only Proposers which meet the prerequisites may have their proposals evaluated based on the evaluation criteria set forth in this RFP. The Port Authority may use such procedures that it deems appropriate to evaluate such proposals. The Port Authority may elect to initiate contract negotiations with one or more Proposers including negotiation of costs/price(s) and any other term or condition, including modifying any requirement of this RFP. The option of whether or not to initiate contract negotiations rests solely with the Port Authority.

**J. Taxes and Costs**

Purchases of services and tangible personal property by the Port Authority in the States of New York and New Jersey are generally exempt from state and local sales and compensating use taxes, and from most federal excises (Taxes). All costs associated with the Contract must reflect this exemption and be stated in U.S currency.

**K. Most Advantageous Proposal/No Obligation to Award**

The Port Authority reserves the right to award the Contract to other than the Proposer proposing the lowest price. The Contract will be awarded to the Proposer whose proposal the Port Authority believes, in its sole discretion, will be the most advantageous to the Port Authority. Neither the release of this RFP nor the acceptance of any response thereto shall compel the Port Authority to accept any proposal. The Port Authority shall not be obligated in any manner whatsoever to any Proposer until a proposal is accepted by the Port Authority in the manner provided in the Section of this RFP entitled “Proposal Acceptance or Rejection.”

**L. Multiple Contract Awards**

The Port Authority reserves the right to award multiple Contracts for the products, work and/or services that are the subject matter of this RFP and Proposers are hereby given notice that they may not be the Port Authority’s only contractor for such products, work and/or services.

**M. Right to Extend Contract**

If this is a proposal for a contract for a term of years, including specified options for renewal, the Port Authority reserves the additional right to extend the contract term for an additional 180 days, upon the same terms and conditions of the original Contract negotiated between the Port Authority and the successful Proposer.

**N. Rights of the Port Authority**

- (1) The Port Authority reserves all its rights at law and equity with respect to this RFP including, but not limited to, the unqualified right, at any time and in its sole discretion, to change or modify this RFP, to reject any and all proposals, to waive defects or irregularities in proposals received, to seek clarification of proposals, to request additional information, to request any or all Proposers to make a presentation, to undertake discussions and modifications with one or more Proposers, or to negotiate an agreement with any Proposer or third person who, at any time, subsequent to the deadline for submissions to this RFP, may express an interest in the subject matter hereof, to terminate further participation in the proposal process by a Proposer or to proceed with any proposal or modified proposal, which in its judgment will, under all circumstances, best serve the Port Authority’s interest. The Port Authority may, but shall not be obliged to, consider incomplete proposals or to request or accept additional material or information. The holding of any discussions with any Proposer shall not constitute acceptance of a proposal, and a proposal may be accepted with or without discussions.
- (2) No Proposer shall have any rights against the Port Authority arising from the contents of this RFP, the receipt of proposals, or the incorporation in or

rejection of information contained in any proposal or in any other document. The Port Authority makes no representations, warranties, or guarantees that the information contained herein, or in any addenda hereto, is accurate, complete, or timely or that such information accurately represents the conditions that would be encountered during the performance of the contract. The furnishing of such information by the Port Authority shall not create or be deemed to create any obligation or liability upon it for any reason whatsoever and each Proposer, by submitting its proposal, expressly agrees that it has not relied upon the foregoing information, and that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever. Accordingly, nothing contained herein and no representation, statement or promise, of the Port Authority, its directors, officers, agents, representatives, or employees, oral or in writing, shall impair or limit the effect of the warranties of the Proposer required by this RFP or Contract and the Proposer agrees that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever.

- (3) At any time and from time to time after the opening of the proposals, the Port Authority may give oral or written notice to one or more Proposers to furnish additional information relating to its proposal and/or qualifications to perform the services contained in this RFP, or to meet with designated representatives of the Port Authority. The giving of such notice shall not be construed as an acceptance of a proposal. Information shall be submitted within three (3) calendar days after the Port Authority's request unless a shorter or longer time is specified therein.

#### **O. Personal Liability**

Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof shall be charged personally with any liability by a Proposer or another or held liable to a Proposer or another under any term or provision of this RFP or any statements made herein or because of the submission or attempted submission of a proposal or other response hereto or otherwise.

#### **9. ATTACHMENTS**

Attachment A – Agreement on Terms of Discussion

Attachment B – Scope of Work

Attachment C – General Contract Provisions

Attachment D – Contract Specific Terms and Conditions

**ATTACHMENT A – AGREEMENT ON TERMS OF DISCUSSION**

The Port Authority’s receipt or discussion of any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) shall not impose any obligations whatsoever on the Port Authority or entitle us to any compensation therefor (except to the extent specifically provided in such written agreement, if any, as may be entered into between the Port Authority and us). Any such information given to the Port Authority before, with or after this Agreement on Terms of Discussion (“Agreement”), either orally or in writing, is not given in confidence. Such information may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with this Agreement, whether made as part of or in connection with this Agreement, shall be void and of no effect. This Agreement is not intended, however, to grant to the Port Authority rights to any matter, which is the subject of valid existing or potential letters patent.

Any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) provided in connection with this procurement is subject to the provisions of the Port Authority Public Records Access Policy adopted by the Port Authority’s Board of Commissioners, which may be found on the Port Authority website at: <http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/>. The foregoing applies to any information, whether or not given at the invitation of the Authority.

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

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**Rev. 01/27/17**



## ATTACHMENT B – SCOPE OF WORK

In order to provide a world class, 21st century experience, the Port Authority of New York and New Jersey has embarked on a radical transformation to put our customers at the center of everything we do, with a relentless focus on optimizing the customer experience. Expanding the role of social media has been a core component of that strategy.

Social media has become a critical channel for communicating and engaging with the public, with a combination of service information and compelling content.

In addition to shaping the perception of the Port Authority brand, social media plays a key role in monitoring, tracking, and responding to our customers' needs across facilities. It has proven to be an effective alerts system and customer engagement tool for real-time issues that may be as big as a major crisis impacting thousands, to resolving our customers' day-to-day issues. Beyond improving our responsiveness to customers in real time, it has allowed the organization to track and analyze recurring issues, creating a feedback loop between operational optimizations and the customers' needs.

The following outlines the objectives and specific needs required to enable the social media team to deliver its mission:

### 1. OBJECTIVES

1. **Brand Building:** Enhance the Port Authority's reputation through the delivery of rich, dynamic, and timely content.
2. **Social Intelligence:** We aim to put the customer and data at the core of everything we do, to ensure strategic decisions, content, and messaging are on brand and in keeping with Agency priorities, operational optimizations, and impactful marketing communications and campaigns are powered by insights and analytics
3. **Real Time Responsiveness:** The Port Authority seeks to be responsive to customers in real time via 1 to 1 engagement and addressing large-scale or viral issues to the broader public. We aim to create a seamless flow between customer communication and operation response time.
4. **Anticipate Virality and Crises:** As we continue to improve the customer experience, it is critical that we not only react but anticipate potential issues that may turn into large-scale operational problems and/or reputation management crises.
5. **Expand Channels:** Customers take to all social media channels to complain. However, Twitter's open platform means that the conversation is mostly dominated by a channel that is not as widely adopted by all demographics and geolocations. We need to expand our capabilities to listen to customer concerns across the entirety of the known social universe.

### 2. REQUIREMENTS

The Product must be a singular solution for social listening, customer engagement, social content management, publishing, analysis, tracking and monitoring conversation.

The Offering shall include, but does not need to be limited to, the following:

1. **ACCESS TO API:** access to the full API of Twitter, Facebook, Instagram and LinkedIn.
2. **SOCIAL LISTENING:** the ability to ingest social posts across Twitter, Facebook, Instagram, YouTube, Reddit, LinkedIn, and a wide breadth of other internet sources such as, but not limited to, news outlets, blogs, etc. for engagement and analysis
3. **CONTENT PUBLISHING:** the ability to publish content across social channels (including Twitter, Facebook, and Instagram), and easily and efficiently schedule and replicate content across multiple channels.
4. **CHANNELS:** the ability to publish to the following channels supporting Gifs, static (jpeg) images, and videos:
  - Facebook
  - Twitter
  - Instagram
  - YouTube
  - Reddit
5. **CONTENT CALENDARIZATION:** (1) the ability to keep a record via a calendar of all content published from official channel and (2) the ability to provide a shared dynamic calendar for past, present and future campaigns, events and programs.
6. **COLLABORATION ENVIRONMENT:** (1) the ability to provide a collaborative environment for planning, sharing, viewing, editing and approving of social content and (2) the ability to allow for previews of content as it will render on social channels across mobile and desktop views.
7. **CUSTOMER ENGAGEMENT:** the ability to allow for multiple customer service agents at any given time to respond to customer queries when official handles are tagged
  - Engagement ‘queues’ shall be set up for specific hashtags as well as other keywords on an ad-hoc basis
  - Ability to engage public posts as well as direct messages.
8. **ANALYTICS:** ability to have an analytics and/or reporting platform to measure all social activity, including by not limited to all inbound mentions of owned accounts, all posts engaged with and content published from the channels.
  - Engagement measurement will be accomplished through labeling of posts that will feed into data visualization.
  - Raw data from analytics module shall be exportable as CSV/EXCEL for offline analysis
9. **CUSTOMER ENGAGEMENT:**
  - Failsafe Hand-Off Between Authority Social Customer Service Agents( known as SMMs): The Product shall have a means to ensure that when one SMM ends his/her duty, the next one will always know what’s outstanding and who they

need to follow up with. This queue should be dynamic and repopulate when a customer responds between SMM shifts.

**10. POST CATEGORIZATION:** All posts shall be labeled/tagged with relevant topics for tracking and reporting purposes.

- A hierarchy of categories with conditional drop downs for intuitive selection
- Rules/Macros shall be made available to automate tagging or manually applied.
- Mislabeling: ability to suggest labels based on context clues and keywords; with the ability to adjust as to allow for human oversight.

**11. WORKFLOWS (SEQUENTIAL APPROVALS):** Customer “Contractor must provide the capability for multiple teams to craft and sequentially approve messaging prior to publishing

**12. CUSTOMER POST ESCALATED TO PUBLICLY PUBLISHES POST:** The Product needs the native ability (not converting to an email) to allow for crafting a response with multiple individuals in said environment, when necessary.

- This includes the ability to flag a customer post, allow for determination of the appropriate type of response, and send it to the Publishing environment for multi-team collaboration. This requires built-in approvals.

**13. USER EXPERIENCE & TRACKING:**

- Conversation View: The tool will be required to have a user-friendly interface, ideally with one click, that shows historical conversation view when the post is inspected.
- Track & Monitor: The tool shall have a user-friendly interface for tracking and monitoring customer experience complaints on- and off-handle.
- At a minimum, the tool must be able to track and monitor all major social channels including Twitter, Facebook, and Instagram and have a solid approach to incorporate new channels.
- The tool shall be able to track all mentions to owned accounts over time, providing a historical perspective on repeat customers, complaints, detractors, advocates

**14. CUSTOMER EXPERIENCE REPORTING:**

- SMMs Response Rate: ability to measure the effectiveness and efficiency of the SMMs via their daily workflow
- The ability to measure the response time, handle time, service levels, engagement rate, status of posts, by customer service agent, team, social account, social platform
- The ability for accurate measurement within working hours (SMM teams do not moderate 24/7). The Product shall allow for setting thresholds and alerts for posts that have lapsed their target response time
- Rules shall be available to identify hot topics, influencers, detractors, advocates, based on content of message, followers, klout score, etc.

- Visualizing Trending Topics: The ability to visualize trending topics to monitor virality and potential crises.

#### **15. SOCIAL REPORTING & MEASUREMENT:**

- The ability to offer dedicated Reporting/Analytics module, including but not limited to out of the box dashboard, widgets, custom reports, as well as the ability to build custom widgets, dashboard, topics, topic profiles, audiences, complex queries, etc.
- Ability to analyze owned content and creative performance by channel, account, format, in real time and historically.
- Ability to conduct social listening for on brand handle mentions, hashtags, topics, as well as competitor/industry benchmarking.
- Ability to offer paid social reporting and optimization, CRM and custom audience integration
- Ability to offer ‘Command Center’ capabilities, for custom builds of dashboard which aggregate real time data for visualization, analysis, and ability to share via secure web address.
- Ability to schedule reports, sent via email and viewed online or offline as PNG/PDF/EXCEL.
- Ability to A/B test content/messaging and optimize for KPI performance via paid media amplification.
- Integration with Salesforce Marketing Cloud, Google Analytics, etc.

#### **16. PUBLISHING:**

- Content Calendar: ability to plan the content by being able to input high level objectives from a communications standpoint. The interface shall show the content being created by each project and each applicable business line.

#### **17. SALESFORCE INTEGRATION**

- Salesforce Integration: The Offering shall integrate with Salesforce’s Service Cloud case management system
- Integration with and allow for roll-up cross channel reporting with Salesforce’s Service Cloud.

#### **18. USER & ADMIN RIGHTS**

- The ability to allow for a hierarchy of right and access granted to specific users in the system. Ideally, a-la-carte rights will be provided to users based on access to specific social platforms, analytics, publishing capabilities, approvals, etc.
- Ability to allow for Authority to manage user role and access.

#### **19. POINTS OF DIFFERENTIATION:**

- Language Processing: the ability to continue to improve by innovating in natural language processing and semantic cues in order to improve automated labeling.
- Multi-Team Collaboration: ability for workflows to have alert functionality that allows for the collaboration to be housed natively but the changes can be made natively or via email.
- Access: access to the full firehose from each social channel.

- Mobile access: provide access via smartphone app, or web portal, Offering's ability to log in, publish, approve, etc. All functionality provided within the core application shall be available via the mobile platform.

### **3. ONGOING MAINTENANCE, SUPPORT, GROWTH SERVICES AND MISCELLANEOUS OBLIGATIONS:**

- Maintenance shall cover all software and includes, but is not limited to, continuous monitoring and troubleshooting; timely diagnosis and resolution of reported issues and bugs; proactive alerts of system outages and issues; and continuous improvement in applying system patches, updates and upgrades.
- The Offering shall have adequate disaster recovery capabilities as well as non production, i.e. development and testing capabilities.
- The Contactor shall provide a direct contact, i.e. a 'customer success manager', who will facilitate onboarding and training of new users, development requests for enhancements, regular check-ins, sharing of best practices, etc. as needed by the Port Authority.
- 24/7 Customer Support via Phone and Email
- The ability to extrapolate a new use-case need or recommend a workaround on an on-going basis.
- The Authority retains the right to interview and approve all vendor staff directly assigned to the Authority account prior to their being engaged
- At no additional cost, Contractor shall provide reasonable and timely assistance with transferring the Authority's data either internally or to an Authority selected successor platform. Such data shall be provided in a format mutually agreed to. Upon termination, contractor agrees to remove all Authority data from all electronic (including but not limited to backup and disaster recovery) and non electronic sources within a mutually agreed to period. Furthermore, Contractor agrees to provide attestation to such removal.

### **4. ADDITIONAL CONTEXT**

At present, the Port Authority has more than a hundred users for approximately 30 handles/pages utilized by its current tool, but it may require the support for more handles. At present, we have unlimited seats for users and new users are requested daily, so the number of seats needed will likely to continue to grow.

## ATTACHMENT C – GENERAL CONTRACT PROVISIONS

### 1. GENERAL AGREEMENT

The undersigned (hereinafter referred to as the "Contractor" or "you") agrees to provide, and The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority") agrees to accept to provide all the necessary supervision, personnel, equipment, materials and all other things necessary to perform the Services required by this Contract as more fully set forth in the Scope of Work attached hereto and made a part hereof. The Scope of Work requires the doing of all things necessary or proper for or incidental to the requirements as set forth in the Scope of Work. All things not expressly mentioned in the Scope of Work but involved in carrying out their intent are required by the Scope of Work and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

### 2. DEFINITIONS

To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows:

Authority or Port Authority - mean the Port Authority of New York and New Jersey.

Contract, Document or Agreement - mean the writings setting forth the scope, terms, conditions and Specifications for the procurement of Goods and/or Services, as defined hereunder and shall include, but not be limited to: Invitation for Bid (IFB), Request for Quotation (RFQ), Request for Proposal (RFP), Purchase Order (PO), Cover Sheet, executed Signature Sheet, AND PRICING SHEETS with Contract prices inserted," "STANDARD CONTRACT TERMS AND CONDITIONS," and, if included, attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued by an authorized member of the Procurement Department.

Days or Calendar Days - mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Director - means the Director of the Department which operates the facility of the Port Authority at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, or one of his/her authorized representatives for the purpose of this Contract.

Facility- means any Port Authority facility within the Port District, as may be designated from time to time by the Director or Manager.

Project Manager (or Manager) - means the individual with day-to-day responsibility for managing the project on behalf of the Port Authority. The Project Manager will be Lisa Baldini, or such other individual may be designated from time to time by Director or Manager.

No person shall be deemed a representative of the Director or Manager except to the extent specifically authorized in an express written notice to the Contractor signed by the Director or Manager, as the case may be. Further, no person shall be deemed a successor in duties of the Director unless the Contractor is so notified in writing signed by the Procurement Department. No person shall be deemed a successor in duties of the Manager unless the Contractor is so notified in a writing signed by the Director.

Services or Work - mean all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder, as set forth in the Scope of Work.

Specifications- means all requirements of this RFP, technical and otherwise, for the performance of the Scope of Work and services hereunder.

Holidays: means the following legal holidays which will be observed at Port Authority offices and facilities:

New Year's Day	Columbus Day
Martin Luther King, Jr. Day	Veteran's Day
Presidents Day	Thanksgiving Day
Memorial Day	Day After Thanksgiving
Independence Day	Christmas Day
Labor Day	

Do not perform any Work unless authorized by the Authority on these days.

Minority Business Enterprise (MBE) - means a business entity which is at least fifty-one percent (51%) owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Minority Group" means any of the following racial or ethnic groups:

- (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;
- (d) Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.
- (e) Month - unless otherwise specified, means a calendar month.

Service-disabled Veteran-owned Business Enterprise (SDVOB) - means a business entity which is at least fifty-one percent (51%) owned and controlled by one or more service-disabled veteran with a service connected disability, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more service-disabled veteran with a service connected disability, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Service-disabled Veteran, with a service-connected disability" means:

- (a) The term "service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.;
- (b) The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Site of the Work - or words of similar import mean the Facility and all buildings and properties associated therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- o The principal place of business must be located in New York or New Jersey;
- o The firm must have been in business for at least three years with activity;
- o Average gross income limitations by industry as established by the Port Authority.

Subcontractor - means anyone who performs work (other than or in addition to the furnishing of materials, plant or equipment) in connection with the services to be provided hereunder, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services. "Subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent of the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Week - unless otherwise specified, means seven (7) consecutive calendar days, Saturdays, Sundays, and holidays.

Women-owned Business Enterprise (WBE) - means a business enterprise which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women who are citizens or permanent or resident aliens.

Work Day- unless otherwise specified, means a day between Monday and Friday with Monday and Friday included.

### **3. GENERAL PROVISIONS**

- A. Under no circumstances shall you or your subcontractors communicate in any way with any department, board, agency, commission, or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of the Director, provided, however, that data from manufacturers and suppliers of materials, devices and equipment shall be obtained by you when you find such data necessary unless otherwise instructed by the Authority.
- B. Any services performed for the benefit of the Authority at any time by you or on your behalf, even if expressly and duly authorized by the Authority, shall be deemed to be rendered under and subject to this Agreement (unless referable to another expressly written, duly executed agreement by the same parties), whether such additional services are performed prior to, during or subsequent to the services described herein, and no rights or obligations shall arise out of such additional services except as provided under this Agreement.
- C. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the rules and regulations of the Port Authority now in effect, and such further rules and regulations which may from time to time during the effective period of this Contract, be promulgated by the Port Authority for reasons of safety, health, preservation of property, or maintenance of a good and orderly appearance of the Facilities, or for



the safe and efficient operation of the Facilities. The Port Authority agrees that, except in cases of emergency, it shall give notice to the Contractor of every rule and regulation hereafter adopted by it.

- D. This Contract does not constitute the Contractor as an agent or representative of the Port Authority for any purpose whatsoever. The Contractor shall perform all services hereunder as an independent contractor and the Contractor, its officers, and employees shall not be deemed to be agents, servants, employees or “special employees” of the Port Authority.

#### **4. INTELLECTUAL PROPERTY**

- A. Except as provided below: as between the Port Authority and the Contractor all process flows, codes including, but not limited to scripts, programs, routines, processes, procedures, documentation, estimates, reports, records, data, charts, documents, models, designs, renderings, drawings, specifications, photographs, computations, computer tapes or discs, and other documentation of any type whatsoever, whether electronic or in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the exclusive property of the Authority, and the Authority shall have the exclusive right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided for herein. With regard to training manuals or any other knowledge transfer documentation, communication or presentation prepared under this Agreement the Authority shall expressly have the right to use, alter and reproduce including electronically, said manuals for its internal business purposes. The Contractor hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties to this Agreement or not. Any information given to the Port Authority before, with or after submission of the Agreement on Terms of Discussion, either orally or in writing, is not given in confidence and may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever except as otherwise set forth in the Agreement On Terms Of Discussion.

The right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks, copyrights and trade secrets, collectively hereinafter referred to as “Intellectual Property Rights”, in the performance of the work, shall be obtained by the Contractor without separate or additional compensation. Where the services under this Agreement require the Contractor to provide materials, equipment or software for the use of the Port Authority or its employees or agents, the Port Authority shall be provided with the Intellectual Property Rights required for such use without further compensation than is provided for under this Agreement.

- B. All preexisting information or documentation including computer programs or code including source code, of the Contractor, utilized by the Contractor hereunder in the performance of his services hereunder shall be deemed licensed to the Authority for the duration and purposes of this agreement, but shall remain the property of the Contractor.
- C. When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.

- D. Third party software not specially prepared for the purpose of this agreement but utilized by the Contractor hereunder in the performance of his services hereunder shall be licensed to the Contractor and the Authority for the duration and purposes of this agreement but shall remain the property of said third party.
- E. The above-described software shall be furnished by the Contractor without additional compensation.

## **5. PROPRIETARY RIGHTS IN SUBJECT MATTER NOT WITHIN THE INTELLECTUAL PROPERTY CLAUSE**

If in accordance with this Contract the Contractor furnishes research, development or consultative services in connection with the performance of the Work and if in the course of such research, development, or consultation patentable or copyrightable subject matter or trade secrets or other proprietary matter is produced by the Contractor, its officers, agents, employees, subcontractors, or suppliers, which is not custom software, and not covered under the clause entitled, "Intellectual Property", the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that as between the Contractor and the Authority the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above. Such license may be transferred by the Authority to its successors, immediate or otherwise, in the operations of or ownership of any facility now or hereafter operated by the Authority but such license shall not be otherwise transferable.

The right of the Authority as well as the Contractor to use all patented material, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction as well as any copyrightable matter, trade secrets or other proprietary matters, shall be obtained by the Contractor without separate or additional compensation whether the same is patented or copyrighted before, during or after the performance of the Work.

## **6. INDEMNITY IN REGARD TO INFRINGEMENT MATTER**

The Contractor shall indemnify the Authority against and save it harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of patent, copyright, or other proprietary rights infringement arising out of or in connection with the Authority's use, in accordance with the preceding clause of such patentable subject matter or patented material, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction, or copyrighted matter or other matter protected as intellectual property. If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority. If the Authority be enjoined from using any of the facilities which form the subject matter of this Contract, and as to which the Contractor is to indemnify the Authority against proprietary rights claims, the Authority may, at its option and without

thereby limiting any other right it may have hereunder or at law or in equity, require the Contractor to supply, temporarily or permanently, facilities not subject to such injunction and not infringing any proprietary rights and if the Contractor shall fail to do so, the Contractor shall, at its expense, remove all such facilities and refund the cost thereof to the Authority and otherwise equitably adjust compensation and take such steps as may be necessary to ensure compliance by the Authority with such injunction, to the satisfaction of the Authority.

The Contractor shall promptly and fully inform the Director of any claims or disputes for infringement or otherwise, whether existing or potential, of which it has knowledge relating to any Intellectual Property used, developed or licensed in connection with the performance of the Work or otherwise in connection with this Contract.

## **7. CONTRACT RECORDS AND DOCUMENTS – PASSWORDS AND CODES**

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of the Port Authority, and the Port Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein.

When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.

## **8. COMPLIANCE WITH WEB SITE TERMS OF USE AND PRIVACY POLICIES**

Subject to all of the provisions of this Contract including, without limitation, the obligations of the Contractor under the section hereof entitled “Indemnification and Risks Assumed by the Contractor”, the Contractor shall, and shall compel its employees, agents and subcontractors, to strictly abide by and comply with the policies established by the Authority governing the use of the Authority’s web sites as set forth in the Authority web sites Terms of Use and Privacy Statement as the same may be supplemented or amended. The Contractor shall immediately implement all procedures in connection with such policies and in furtherance thereof as directed by the Authority.

## **9. TIME IS OF THE ESSENCE**

The Contractor's obligations for the performance and completion of all work within the time or times provided for in this Contract are of the essence of this Contract.

## **10. FINAL PAYMENT**

After satisfactory completion of all services required hereunder, and upon receipt from the Contractor of such information as may be required, the Director shall certify in writing to the Contractor the total compensation earned by the Contractor.

If so required, the Contractor shall thereupon furnish to the Authority a detailed sworn statement of all claims, just and unjust, of subcontractors, materialmen and other third persons then

outstanding which the Contractor has reason to believe may thereafter be made on account of the services provided under this Agreement.

Within thirty days after issuance of such certificate of total compensation earned (or within thirty days after receipt of the documents provided for in the immediately preceding paragraph, if required and if such date is later), the Port Authority shall pay to the Contractor by check the amount stated in said certificate, less all other payments and advances whatsoever to or for the account of the Contractor. All prior estimates and payments shall be subject to correction in this payment, which is throughout this Agreement called the Final Payment.

The acceptance by the Contractor, or by anyone claiming by or through him, of the Final Payment shall be and shall operate as a release to the Authority of all claims and of all liability to the Contractor for all things done or furnished in connection with this contract and for every act and neglect of the Authority and others relating to or arising out of the this contract, including claims arising out of breach of the contract and claims based on claims of third persons.

The Contractor's agreement as provided in the immediately preceding paragraph shall be deemed to be based upon the consideration forming part of this Contract as a whole and not to be gratuitous; but in any event even if deemed gratuitous and without consideration, such agreement as provided in the immediately preceding paragraph shall nevertheless be effective. Such release shall include all claims, whether or not in litigation and even though still under consideration by the Authority. Such release shall be effective notwithstanding any purported reservation of right by the Contractor to preserve such claim. The acceptance of any check designated as "Final Payment" or bearing any similar designation shall be conclusively presumed to demonstrate the intent of the Contractor that such payment was intended to be accepted as final, with the consequences provided in this numbered clause, notwithstanding any purported reservation of rights.

The Contractor agrees that he shall not be entitled to, and hereby waives any right he might otherwise have to, and shall not seek any judgment whether under this Contract or otherwise for any such Final Payment or for an amount equivalent thereto or based thereon, or for any part thereof, if such judgment would have the effect of varying, setting aside, disregarding or making inapplicable the terms of this numbered clause or have the effect in any way of entitling the Contractor to accept such Final Payment or an amount equivalent thereto or based thereon or any part thereof other than in the same fashion as a voluntary acceptance of a Final Payment subject to all the terms of this Contract including this numbered clause, unless and until the Contractor should obtain a judgment on any claim arising out of or in connection with this Contract (including a claim based on breach of contract) for an amount not included in said Final Payment.

## **11. DEFAULT, REVOCATION OR SUSPENSION OF CONTRACT**

A. If one or more of the following events shall occur:

1. If fire or other event shall destroy all or a substantial part of the Facility, asset or infrastructure necessary to perform the Scope of Work.

If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of the Port Authority's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours written notice to the Contractor to revoke this Contract, such revocation to be effective upon the date and time specified in such notice.

In such event this Contract shall cease and expire on the effective date of revocation as if

said date were the date of the expiration of this Contract. Such revocation shall not, however, relieve the Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation.

B. If one or more of the following events shall occur:

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or
4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or
7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right upon five (5) days notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

C. If any of the following shall occur:

1. The Contractor shall cease, abandon any part of the service, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or

2. The Contractor shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within five (5) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligations requires activity over a greater period of time, and the Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or during the continuance thereof, the Port Authority shall have the right on twenty four (24) hours notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the Contractor of any liabilities, which shall have accrued on or prior to the effective date of termination.

- D. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract the Port Authority upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.
- E. No payment by the Port Authority of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.
- F. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.
- G. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the

Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.

- H. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Port Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, the Port Authority shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.
- I. If the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- J. If the Port Authority pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.
- K. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

## **12. WITHHOLDING OF PAYMENT**

If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Authority and the Contractor (including his obligation to the Authority to pay any claim lawfully made against him by any materialman, subcontractor or workman or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Authority and the Contractor is made against the Authority or (3) any subcontractor under this Contract or any other agreement between the Authority and the Contractor fails to pay any claims lawfully made against him by any materialman, subcontractor, workman or other third person which arises out of on in connection with this Contract or any other agreement between the Authority and the Contractor or if in the opinion of the Authority any of the aforesaid contingencies is likely to arise, then the Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payment has already been certified as due) such sums as the Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to protect it against delay or loss or to satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Authority shall create any obligation of any kind to such materialman, subcontractors, workman or other third persons.

Until actual payment to the Contractor, its right to any amount to be paid under this Contract (even though such amount has already been certified as due) shall be subordinate to the rights of the Authority under this clause.

## **13. CONTRACTOR PERSONNEL STANDARDS OF PERFORMANCE**

The Contractor shall furnish sufficiently trained management, supervisory, technical and operating personnel to perform the services required of the Contractor under this Contract. If, in the opinion of the Director, any of the Contractor's personnel are not satisfactory in the performance of services to be furnished hereunder, the Contractor shall remove such personnel and replace them with personnel satisfactory to the Director.

At the time the Contractor is carrying out its operations there may be other persons working physically in the vicinity or in the same logical or technical infrastructure. The Contractor shall so conduct its operations as to work in harmony and not endanger, interfere with or delay the operations of others, all to the best interests of the Authority and others and as may be directed by the Director.

## **14. DESIGNATED SECURE AREAS**

Services under the Contract may be required in designated secure areas, as the same may be designated by the Manager from time to time ("Secure Areas"). The Port Authority shall require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel designated by the Contractor or any subcontractor's personnel required to work therein. All personnel that require access to designated secure areas who are not under positive



escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Contractor shall notify the Manager. The Contractor shall conform to the procedures as may be established by the Manager from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of work, the Contractor shall request a description from the Manager of the Secure Areas which will be in effect on the commencement date. The description of Secure Areas may be changed from time to time and at any time by the Manager during the term of the Contract.

## **15. NOTIFICATION OF SECURITY REQUIREMENTS**

The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems, and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to certain documents, sensitive security construction sites and facilities (including rental spaces) to any person that declines to abide by Port Authority security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise pose a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the Contractor, its staff and subcontractors and their staffs depending upon the level of security required, or may make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Port Authority Approved Non-Disclosure and Confidentiality Agreements and/or Acknowledgments

At the direction of the Port Authority, the Contractor shall be required to have its principals, staff and/or subcontractor(s) and their staff, execute Port Authority approved Non-Disclosure and Confidentiality Agreements and/or Acknowledgments.

- Contractor/ Subcontractor identity checks and background screening

The Port Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification, to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Contractor may be required to have its staff, and any subcontractor's staff, material-men, visitors or others over whom the Contractor/ subcontractor has control, authorize the Port Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Port Authority. The Contractor and subcontractors may also be required to use an organization designated by the Port Authority to perform the background checks.

In accordance with the Port Authority's Information Security Handbook, background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority or PATH facility
- 4) Mission critical system

The Contractor shall perform background checks through the Port Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Port Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Port Authority. If the Port Authority requires facility-specific identification credentials for the Contractor and the subcontractor's staff, the Port Authority will supply such identification at no cost to the Contractor or its subcontractors. Such facility-specific identification credential shall remain the property of the Port Authority and shall be returned to the Port Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Contractor or subcontractors to immediately report to the Port Authority the loss of any staff member's individual facility-specific identification credential. The Contractor or subcontractor will be billed for the cost of the replacement identification credential. Contractor's and subcontractor's staff shall display identification badges in a conspicuous and clearly visible manner, when entering, working or leaving a Port Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identify verification for all employees of the Contractor and subcontractor shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority construction site or facility (including rental spaces). In addition, the Contractor, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or make sketches on any other medium at the

Authority construction sites or facilities (including rental spaces), except when necessary to perform the Work under this Contract, without prior written permission from the Authority. Upon request, any photograph, digital images, video recording or sketches made of the Authority construction site or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

The Contract may require access to Port Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Port Authority may conduct random or scheduled examinations of business practices under this section entitled “NOTIFICATION OF SECURITY REQUIREMENTS” and the Handbook in order to assess the extent of compliance with security requirements, Protected Information procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

## 16. INSURANCE PROCURED BY THE CONTRACTOR CITS#6415N

***The coverage and amounts indicated below are PRELIMINARY and may be subject to change; if the scope of work has been edited or changed after this document has being issued by Risk.***

The Contractor and its subcontractor(s) shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, for the life of the Contract and such Insurance and shall be written on an ISO occurrence form CG 00 01 04 13 or its equivalent form, covering the obligations assumed by the Contractor under this Contract including but not limited to premise-operations, products and completed operations, and independent contractors coverage, with contractual liability language covering the obligations assumed by the Contractor under this Contract, and used to carry out the performance of this Contract. The Contractor shall also take out, maintain, and pay the premiums on Liability Insurance in the following minimum limits, of not less than the amounts and terms as described below:

**Commercial General Liability Insurance** \$2,000,000 (Two Million Dollars) combined single limit per occurrence for bodily injury and property damage liability.

**As applicable, Automobile Liability Insurance** - \$2,000,000 (Two Million Dollars) combined single limit per accident for bodily injury and property damage liability for “any” vehicle(s) used to carry out the performance of this Contract.

**As applicable to the scope of work, Technology Professional Liability / (Errors and Omissions) Insurance** - If providing professional services, Contractor shall maintain, or if subcontracting services shall provide coverage subcontractor maintain, Errors and Omissions liability insurance with coverage of not less than \$2,000,000 (Two Million Dollars) per claim and as an aggregate annual limit. Policy limits must be adequate to cover both the cost of defense and damages arising out of any resulting claims, judgments and court costs; such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this contract.

**Cyber Liability, Network Security and Data Breach Insurance** – Contractor shall provide, coverage for errors, acts or omissions arising out of the scope of services covered by this Contract; the rendering/failure to render service based on the appropriate use and implementation of technology based products or services; failure of Contractor’s staff to perform the function or serve the purpose intended; coverage for loss, theft, unauthorized dissemination of non-public third party information in the Contractor’s care, custody, and control; and unauthorized access of computer networks, denial of service attacks and transmission of malicious code for the unauthorized access, accidental or deliberate disclosure of any of the Port Authority’s confidential, security, personally identifiable

The insurance shall be written, where applicable and as indicated, on an occurrence basis for Commercial General Liability and Automobile Liability, as distinguished from a “claims made” basis for the Professional/ Technology Professional Liability (Error and Omissions), Cyber Liability, Network Security and Data Breach Insurance policies shall not include any exclusions for “action over claims” (insured vs. insured). As required per the terms of the contract; and, as applicable to the Contractor and/or its subcontractors, the limits required herein may be provided through a combination of endorsements, primary and umbrella/excess policies and minimally arranged to provide and encompass at least the following coverages:

- **Contractual Liability** to cover liability assumed under the Contract;
- **Independent Contractor’s Coverage;**
- **Premise-Operations, Products and Completed Operations Liability Insurance;**
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Contractor and all subcontractor(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- As applicable, Excess/umbrella policies shall “follow form” to the underlying policy;
- As applicable, Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Contractor and subcontractor(s) obtains and/or maintains under this Contract contains “Other Insurance” language or provisions, such language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- Where applicable, insurance policies shall include a **Waiver of Subrogation**, as allowed by law, in favor of the Additional Insureds;

- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Contractor and/or its subcontractors obtains and/or maintains insurance in an amount greater than the minimum limits required under this Contract, then the full limits of that insurance coverage will be available to respond to any claim asserted against the additional insureds that arises out of or is in any way connected with this Contract;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law.
- Limits may be met by a combination of primary and excess (umbrella) policies. For the Commercial General Liability and Automobile Liability, excess/umbrella coverages shall follow form to the underlying policy/ies.

In addition, the liability policy (ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorsed to and name **“The Port Authority of New York and New Jersey, Port Authority Trans-Hudson Corporation and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns,”** as “Insured” (as defined in the policy or in an Additional Insured endorsement amending the policy’s “Who is An Insured” language as the particular policy may provide). The “Additional Insured” shall be afforded coverage and defense as broad as if they are the first named Insured and regardless of whether they are otherwise identified as Additional Insured under the liability policies, including but not limited to Premise-Operations, Products-Completed Operations on the Commercial General Liability policy. Such Additional Insured status shall be provided regardless of privity of contract between the parties. The liability policy(ies) and certificate(s) of insurance shall contain separation of insured and severability of interests’ clause(s) for all policies so that coverage will respond as if separate policies were in force for each Insured. An act or omission of one of the Additional Insureds shall not reduce or void coverage to the other Additional Insureds. The Contractor is responsible for all deductibles and losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Contractor is subject to the review and approval of the General Manager, Risk Finance. Furthermore, any insurance or SIR maintained by the above Additional Insureds shall not contribute to any loss or claim.

If any of the Work is to be done on or at Port Authority [or PATH] facilities by subcontractors and, if the Contractor requires its subcontractors to procure and maintain such insurance in the name of the Contractor, then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this section known as “Insurance Procured by the Contractor”.

All insurance coverage shall be provided by the Contractor and/or by or for any of its subcontractors at no additional expense to the Port Authority and its related entities. A copy of this section titled “Insurance Procured by the Contractor” shall be given to your insurance agent and subcontractors and shall form a part of the covered contract or subcontract for insurance purposes in furtherance of the insurance requirements under this Contract.

Further, it is the Contractor’s responsibility to maintain, enforce and ensure that the type of

coverages and all limits maintained by it and any of all subcontractors are accurate, adequate and in compliance with the Port Authority requirements; and the Contractor is to retain a copy of its subcontractors' certificates of insurance. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, including subcontractors' work, and upon completion of the Contract.

***The contractor, its subcontractors and its insurers shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of any court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, directors, officers, agents or employees, their affiliates, successors and/or assigns, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority. The Port Authority is an intended third-party beneficiary of the agreement between the Contractor, and each of its respective subcontractors and insurers, with the direct right to enforce the agreement with respect to this provision.***

Each policy above shall contain an endorsement that the policy may not be canceled, terminated, or modified without thirty (30) days' prior written notice to the Port Authority Att: Facility Contract Administrator, at the location where the work will take place with a copy to the General Manager, Risk Finance.

The Port Authority may, at any time during the term of this Contract, change or modify the limits and coverages of insurance. Should the modification or change results in an additional premium, the General Manager, Risk Finance for the Port Authority may consider such cost as an out-of-pocket expense. Submit proof of insurance by (a) e-mail: [certificates-portauthority@riskworks.com](mailto:certificates-portauthority@riskworks.com) and (b) to Certificate Holders: (i) Port Authority of New York and New Jersey/PATH c/o EXIGIS Insurance Compliance Services P.O. Box 4668 - ECM #35050 New York, NY 10163-4668 and (ii) Port Authority of New York and New Jersey c/o Risk Finance 140 Greenwich Street, 4 WTC N.Y. NY 10007.

Within five (5) days after the award of this Contract and prior to the start of work, the Contractor must submit an original certificate of insurance to the PATH Facility Contract Administrator, at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy (ies), including, but not limited to, the cancellation notice endorsement and stating the contract number prior to the start of work. The Contractor is also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors or assigns. The General Manager, Risk Finance must approve the certificate(s) of insurance before any work can begin. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Finance, a certified copy of each policy, including the premiums.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Contractor and all subcontractors shall suspend performance of the Contract at the premises until a satisfactory insurance policy (ies) and certificate of insurance is provided to and approved by Risk Finance, unless the Facility or Project Manager directs the Contractor, in writing, to continue to performing work under the Contract. If the Contract is so suspended, no extension of time shall be due on account thereof.

Renewal certificates of insurance or policies shall be delivered to the Port Authority Facility Contractor Administrator, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Port Authority, the Contractor shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

Failure by the Contractor to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Contract without limitation, shall be deemed a material breach of contract and may be a basis for termination of this Contract by the Port Authority.

The requirements for insurance procured by the Contractor and subcontractor(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Contractor under this Contract. The insurance requirements are not a representation by the Port Authority as to the adequacy of the insurance necessary to protect the Contractor against the obligations imposed on it by law or by this or any other contract. CITS#6415N

## **17. ASSIGNMENTS AND SUBCONTRACTS**

Any assignment or other transfer by the Contractor of this Contract or any part hereof or of any of his rights hereunder or of any monies due or to become due hereunder and any delegation of any of his duties hereunder without the express written consent of the Director shall be void and of no effect as to the Authority, provided, however, that the Contractor may subcontract portions of the Work to such persons as the Director, may, from time to time, expressly approve in writing. For each individual, partnership or corporation proposed by the Contractor as a subcontractor, the Contractor shall submit to the Authority a certification or, if a certification cannot be made, a statement by such person, partnership or corporation to the same effect as the certification or statement required from the Contractor pursuant to the clauses of the "Integrity" Section entitled "Certification of No Investigation Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information and "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage Contingent or Other Fee". All further subcontracting by any subcontractor shall also be subject to such approval of the Director

No consent to any assignment or other transfer, and no approval of any subcontractor, shall under any circumstances operate to relieve the Contractor of any of his obligations; no subcontract, no approval of any subcontractor and no act or omission of the Authority or the Director shall create any rights in favor of such subcontractor and against the Authority; and as between the Authority and the Contractor, all assignees, subcontractors, and other transferees shall for all purposes be deemed to be agents of the Contractor. Moreover, all subcontractors and all approvals of subcontractors, regardless of their form, shall be deemed to be conditioned upon performance by the subcontractor in accordance with this Contract; and if any subcontractor shall fail to perform the Contract to the satisfaction of the Director, the Director shall have the absolute right to rescind his approval forthwith and to require the performance of the Contract by the Contractor personally or through other approved subcontractors.

## **18. CERTAIN CONTRACTOR'S WARRANTIES**

The Contractor represents and warrants:

- A. That it is financially responsible and experienced in, and competent to perform this Contract; that no representation, promise or statement, oral or in writing, has induced it to submit its Proposal, saving only those contained in the papers expressly made part of this Contract; that the facts stated or shown in any papers submitted or referred to in connection with his Proposal are true; and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- B. That it has carefully examined and analyzed the provisions and requirements of this Contract, that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigations was adequate;
- A. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;
- B. That no Commissioner, officer, agent or employee of the Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;
- E. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Authority, its Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability or completeness of any provisions or requirements of this Contract; (2) the nature, existence or location of materials, structures, obstructions, utilities or conditions, which may be encountered at the installation sites; (3) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (4) the general or local conditions which may in any way affect this Contract or its performance; (5) the price of the Contract; or (6) any other matters, whether similar to or different from those referred to in (1) through (5) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.
- F. That, notwithstanding any requirements of this Contract, any inspection or approval of the Contractor's services by the Authority, or the existence of any patent or trade name, the Contractor nevertheless warrants and represents that the services and any intellectual property supplied to the Authority hereunder shall be of the best quality and shall be fully fit for the purpose for which they are to be used. The Contractor unconditionally guarantees against defects or failures of any kind, including defects or failures in design, workmanship and materials, excepting solely defects or failures which the Contractor demonstrates to the satisfaction of the Authority have arisen solely from accident, abuse or fault of the Authority occurring after issuance of Final Payment hereunder and not due to fault on the Contractor's part. In the event of defects or failures in said services, or any part thereof, then upon receipt of notice thereof from the Authority, the Contractor shall correct such defects or failures as may be necessary or desirable, in the sole opinion of the Authority, to comply with the above guaranty.

Moreover, the Contractor accepts the conditions at the sites of work as they may eventually be found to exist and warrants and represents that it can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at its own cost and expense, anything in this Contract to the contrary notwithstanding.

Nothing in the Scope of Work or any other part of the Contract is intended as or shall constitute a representation by the Authority as to the feasibility of performance of this Contract or any part thereof. Moreover, the Authority does not warrant or represent either by issuance of the Scope of Work or by any provision of this Contract as to time for performance or completion or otherwise that the Contract may be performed or completed by the times required herein or by any other times.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Authority to review thoroughly all documents forming this Contract prior to execution of this Contract in order that it might request inclusion in this Contract



of any statement, representation, promise or provision which it desired or on which it wished to place reliance; that it did so review said documents; that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that it expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this clause (though not only such provisions) are essential to the Authority's consent to enter into this Contract and that without such provisions; the Authority would not have entered into this Contract.

## **19. RIGHTS AND REMEDIES OF THE AUTHORITY**

The Authority shall have the following rights in the event the Director shall deem the Contractor guilty of a breach of any term whatsoever of this contract:

- a) The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through other Contractors;
- b) The right to cancel this Contract as to any or all of the Work yet to be performed;
- c) The right to specific performance, an injunction or any other appropriate equitable remedy;
- d) The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of The Authority indicating that he cannot or will not perform any one or more of his obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that he will be able to perform any one or more of his obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that he will be able to perform any one or more of his obligations under this Contract; any false certification at any time by the Contractor as to any material item certified pursuant to the clauses hereof entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Required Information" and "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent or Other Fee", or the willful or fraudulent submission of any signed statement pursuant to such clauses which is false in any material respect; or the Contractor's incomplete or inaccurate representation of its status with respect to the circumstances provided for in such clauses.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of The Authority shall not be deemed to limit any other rights or remedies which The Authority would have in the absence of such enumeration; and no exercise by The Authority of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to stop it from exercising such other rights or remedies.

Neither the acceptance of the work or any part thereof, nor any payment therefor, nor any order or certificate issued under this Agreement or otherwise issued by the Authority, or any officer, agent or employee of the Authority, nor any permission or direction to continue with the performance or work, nor any performance by the authority of any of the Contractor's duties or obligations, nor any aid provided to the Contractor by the Authority in his performance of such duties or obligations, nor any other thing done or omitted to be done by the Authority, its Commissioners, officers, agents or employees shall be deemed to be a waiver of any provision of this agreement or of any rights or remedies to which the Authority may be entitled because

of any breach hereof, excepting only a resolution of its Commissioners, providing expressly for such waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the work, because of any breach hereof, shall be deemed a waiver of any money damages to which the Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Agreement shall be deemed to be a waiver of any other or any subsequent breach.

## **20. RIGHTS AND REMEDIES OF THE CONTRACTOR**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Authority, the Contractor expressly agrees that no default, act or omission of the Authority shall constitute a material breach of this Contract, entitling him to cancel or rescind it or (unless the Director shall so direct) to suspend or abandon performance.

## **21. TAX EXEMPTIONS**

Purchases of services and tangible personal property by the Port Authority are exempt from New York and New Jersey state and local sales and compensating use taxes. (Sales Taxes). Therefore, the Port Authority's purchase of the Contractor's services under this Contract is exempt from Sales Taxes. Accordingly, the Contractor must not include Sales Taxes in the price charged to the Port Authority for the contractor's services under this Contract.

## **22. TITLE TO EQUIPMENT**

Title to all equipment to be furnished hereunder by the Contractor shall be transferred to the Authority upon its delivery to the installation site.

The Contractor shall furnish such bills of sale and affidavits of title as the Authority shall reasonably request.

## **23. NOTICE REQUIREMENTS**

No claim against the Authority shall be made or asserted in any action or proceeding at law or in equity, and the Contractor shall not be entitled to allowance of such claim, unless the Contractor shall have complied with all requirements relating to the giving of written notice and of information with respect to such claim as provided in this clause. The failure of the Contractor to give such written notice and information as to any claim shall be conclusively deemed to be a waiver by the Contractor of such claim, such written notice and information being conditions precedent to such claim. As used herein "claim" shall include any claim arising out of this agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to execution of this Agreement and claims of a type which are barred by the provisions of this agreement) for damages, payment or compensation of any nature or for performance of any part of this Agreement.

The requirements as to the giving of written notice and information with respect to claims shall be as follows:

- A. In the case of any claims for which requirements are set forth elsewhere in this Agreement as to notice and information, such requirements shall apply.
- B. In the case of all other types of claims, notice shall have been given to the Director, as soon as practicable, and in any case within forty eight (48) hours after occurrence of the act, omission, or other circumstances upon which the claim is or will be based, stating as fully as practicable at the time all information relating thereto. Such information shall be supplemented with any further information as

soon as practicable after it becomes or should become known to the Contractor, including daily records showing all costs which the Contractor may be incurring or all other circumstances which will affect any claim to be made which records shall be submitted to the Authority.

The above requirements for notices and information are for the purpose of enabling the Authority to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expense or circumstance as they occur and the requirements herein for such notice and information are essential to this Agreement and are in addition to any notice required by statute with respect to suits against the Authority.

The above referred to notices and information are required whether or not the Authority is aware of the existence of any circumstances which might constitute a basis for a claim and whether or not the Authority has indicated it will consider a claim.

No, act, omission or statement of any kind shall be regarded as a waiver of any of the provisions of this clause or may be relied upon as such waiver except only either a written statement signed by the Executive Director of the Authority or a resolution of the Commissioners of the Authority expressly stating that a waiver is intended as to any particular provision of this clause, and more particularly, no discussion, negotiation, consideration, correspondence or requests for information with respect to a claim by any Commissioner, officer, employees or agent of the Authority shall be construed as a waiver of any provision of this clause or as authority or apparent authority to effect such a waiver.

Since merely oral notice or information may cause disputes as to the existence or substance thereof, and since notice, even if written, to other than the Authority representative above designated to receive it may not be sufficient to come to the attention of the representative of the Authority with the knowledge and responsibility of dealing with the situation, only notice and information complying with the express provisions of this clause shall be deemed to fulfill the Contractor's obligation under this Agreement.

#### **24. SERVICE OF NOTICES ON THE CONTRACTOR**

Whenever provision is made in this Contract for the giving of any notice to the Contractor, its deposit in any post office box, enclosed in a postpaid wrapper addressed to the Contractor at his/her office, or its delivery to his/her office, shall be sufficient service thereof as of the date of such deposit or delivery, except to the extent, if any, otherwise provided in the clause entitled "Submission to Jurisdiction". Until further notice to the Authority the Contractor's office will be that stated in his/her Proposal. Notices may also be served personally upon the Contractor; or if a corporation, upon any officer, director or managing or general agent; or if a partnership upon any partner.

#### **25. NO THIRD PARTY RIGHTS**

Nothing contained in this Agreement is intended for the benefit of third persons, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

#### **26. INDEMNIFICATION AND RISKS ASSUMED BY THE CONTRACTOR**

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, Directors, agents, servants, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including Contractor's agents, servants, officers, representatives and employees) arising out of or in any way connected to or alleged to arise out of or alleged to be in any way connected with the Contract and all other services and activities of the Contractor under this Contract and for all expenses incurred by it and

by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise out of or are in any way connected to the Contractor's operations or to its performance of work under this Contract, or arise out of the acts, omissions or negligence of the Contractor, the Port Authority, its Commissioners, Directors, agents, servants, officers, representatives or employees, third persons (including Contractor's agents, servants, officers, representatives and employees), or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise out of or are in any way connected to the Contractor's operations or to its performance of work under this Contract, or arise out of acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of the Port Authority and the Contractor) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

- a. The risk of any and all loss or damage to Port Authority property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder. The Contractor shall if so directed by the Port Authority, repair, replace or rebuild to the satisfaction of the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions (negligent or not) of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to the Port Authority the cost thereof.
- b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.
- c. The risk of claims, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.
- d. The risk of claims for injuries, damage or loss of any kind whether just or unjust of third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of the Port Authority and the Contractor) arising or alleged to arise out of or in connection with the Contractor's operations or its performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of any court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, directors, officers, agents or employees, their affiliates, successors and/or assigns, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

The Port Authority is an intended third-party beneficiary of the agreement between the Contractor, and each of its respective subcontractors and insurers, with the direct right to enforce the agreement with respect to this provision.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

## **27. APPROVAL OF METHODS**

Neither the approval of the Port Authority of the methods of furnishing services hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of the Port Authority to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall relieve the Contractor of its liability for any injuries to persons or damage to property or environmental impairment arising out of its operations.

## **28. PORT AUTHORITY TECHNOLOGY STANDARDS AND GUIDELINES AND SUPPLEMENTAL GUIDELINES FOR THE PORT AUTHORITY TECHNOLOGY SERVICES DEPARTMENT**

The Contractor and any subcontractors shall follow the Port Authority Technology Standard and Guidelines and the Supplemental Guidelines for the Port Authority Technology Services Department attached hereto and made a part hereof, and shall comply with any updates to or changes in best practices related to such Standards and Guidelines.

## **29. SUBMISSION TO JURISDICTION**

The Contractor hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New York and New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this Contract.

The Contractor agrees that the service of process on the Contractor in relation to such jurisdiction may be made, at the option of the Port Authority, either by registered or certified mail addressed to it at the address of the Contractor indicated on the signature sheet, or by actual personal delivery to the Contractor, if the Contractor is an individual, to any partner if the Contractor be a partnership or to any officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

## **30. APPLICABLE LAW**

This Contract shall be construed in accordance with the laws of the State of New York. The Contractor hereby consents to the exercise by the courts of the States of New York and New Jersey

of jurisdiction in personam over it with respect to any matter arising out of or in connection with this Contract and waives any objection to such jurisdiction which it might otherwise have; and the Contractor agrees that mailing of process by registered mail addressed to it at the address of the Contractor set forth in the Proposal, shall have the same effect as personal service within the States of New York or New Jersey upon a domestic corporation of said State.

### **31. AUTHORITY OF THE DIRECTOR**

Inasmuch as the public interest requires that the Project to which this Contract relates shall be performed in the manner which the Authority, acting through the Director deems best, the Director shall have absolute authority to determine what is or is not necessary or proper for or incidental thereto and the Specifications shall be deemed merely the Director's present determination on this point. In the exercise of this authority, the Director shall have power to alter the Specifications, to require the performance of Work not required by them in their present form, even though of a totally different character from that not required, and to vary, increase and diminish the character, quantity and quality of, or to countermand any Work now or hereafter required. If at any time it shall be, from the viewpoint of the Authority, impracticable or undesirable in the judgment of the Director to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of the Authority, the Director shall have authority to suspend performance of any part or all of the Contract until such time as the Director may deem it practicable or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of the Authority impracticable or undesirable in the judgment of the Director to proceed with or continue the performance of the Contract or any part thereof for reasons within or beyond the control of the Authority, the Director shall have authority to cancel this Contract as to any or all portions not yet performed and as to any materials not yet installed even though delivered. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already satisfactorily performed, but no allowance shall be made for anticipated profits. To resolve all disputes and to prevent litigation, the parties to this Contract authorize the Director to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal and claims of a type which are barred by the provisions of this Contract) and such decision shall be conclusive, final and binding on the parties. The Director's decision may be based on such assistance as she may find desirable. The effect of the decision shall not be impaired or waived by any negotiation or settlement offers in connection with the question decided, whether or not she participated therein, or by any prior decision of her or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by the Contractor to the Director for a decision together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. In any action against the Authority relating to any such question the Contractor must allege in the complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to the Director.

In the performance of the Contract, the Contractor shall conform to all orders, directions and requirements of the Director and shall perform the Contract to her satisfaction at such times and places, by such methods and such manner and sequence as she may require, and the Contract shall at all stages be subject to her inspection. The Contractor shall employ no equipment, materials, methods or men to which she objects, and shall remove no materials, equipment or other facilities from the Authority site without permission. Upon request, she shall confirm in writing any oral order, direction, requirements or determination.

The enumeration herein or elsewhere of particular instances in which the opinion, judgment, discretion or determination of the Director shall control or in which the Contract shall be performed

to her satisfaction or subject to her inspection, shall not imply that only the matters of a nature similar to those enumerated shall be so governed and performed, but without exception the entire Contract shall be so governed and performed.

This provision shall be construed in accordance with the laws of the State of New York excluding its conflict of law provisions.

### **32. APPROVALS BY THE DIRECTOR**

The approval by the Director of any service required hereunder, shall be construed merely to mean that at that time the Director knows of no good reason for objecting thereto and no such approval shall release the Contractor from its full responsibility for the satisfactory performance of the services to be supplied. "Approved equal" shall mean approved by the Director.

### **33. CONTRACT REVIEW AND COMPLIANCE AUDITS**

The Contractor, and any subcontractors, shall provide prompt system access and reasonable assistance to the Authority's External and Internal Audit staff or its consultants in their performance of work under the contract, including producing specific requested information, extraction of data and reports. The Contractor, and any subcontractors, shall promptly support requests related to audits of the contract, administrative functions and operations covered by this Contract. The Authority will require access to the Contractor's environment which supports the systems used to provide services required under the contract on a periodic basis; the hours to be determined, at the convenience of the authority.

The Authority reserves the right to use compliance software to evaluate the level of security and vulnerabilities in all systems which control, collect, dispense, contain, manage, administer, or monitor operations related to this Port Authority contract.

### **34. AUTHORITY ACCESS TO RECORDS**

The Authority shall have access during normal business hours to all records and documents of the Contractor relating to any service provided under this Agreement, amounts for which it has been compensated, or claims he should be compensated, by The Authority above those included in the lump sum compensation set forth elsewhere herein. All Contractor records shall be kept in the Port District. The Contractor shall obtain for The Authority similar access to similar records and documents of subcontractors. Such access shall be given or obtained both before and within a period of three (3) years after Final Payment to the Contractor, provided, however, that if within the aforesaid three (3) year period The Authority has notified the Contractor in writing of a pending claim by The Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of his subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six (6) years from the date of Final Payment with respect to the records and documents involved.

Upon request of the Port Authority, the Contractor shall furnish or provide access to the federal Form I-9 (Employment Eligibility Verification) for each individual performing work under this Contract. This includes citizens and noncitizens.

The Contractor shall provide, at no cost to the Authority, access for and reasonable assistance to such auditors from the Authority or the Authority's external auditors that may, from time to time, be designated to audit detail records which support Contractor charges to the Authority. The Authority shall have access to the detail records that support Contractor charges to the Authority for up to three (3) years following the termination of the Contract.

No provision in this Contract giving The Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents that The Authority would have in the absence of such provision.

### **35. HARMONY**

- a. The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of the Port Authority or with the operations of lessees, licensees or other users of the Facility or with the operations of the Contractor under this Contract.

The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of the Port Authority, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of the Port Authority, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, the Port Authority shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as the Port Authority deems necessary and without cost to the Port Authority. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to the Port Authority under this Contract or otherwise.

- b. During the time that the Contractor is performing the Contract, other persons may be engaged in other operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other Contractors performing at the worksite, all of which shall remain uninterrupted.

The Contractor shall so plan and conduct its operations as to work in harmony with others engaged at the site and not to delay, endanger or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of the Port Authority and the public as may be directed by the Port Authority.



### **36. CLAIMS OF THIRD PERSONS**

The Contractor undertakes to pay all claims lawfully made against him by subcontractors, materialmen and workmen, and all claims lawfully made against him by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

### **37. NON-DISCRIMINATION REQUIREMENTS**

The Contractor shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Contract.

- A. Contractor hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subcontractors and/or vendors under this Contract. Contractor shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment.
- B. Contractor agrees that these “Non-Discrimination Requirements” are a binding part of this Contract. Without limiting the generality of any other term or provision of this Contract, in the event the Authority, or a state or federal agency finds that the Contractor or any of its subcontractors or vendors has not complied with these “Non-Discrimination Requirements”, the Authority may cancel, terminate or suspend this Contract in accordance with the clause in these General Contract Provisions entitled, “Default, Revocation, or Suspension of Contract.”
- C. Contractor agrees to cooperate fully with the Authority’s investigation of allegations of discrimination. Cooperation includes, but is not limited to, allowing the Authority to question employees during the investigation of allegations of discrimination, and complying with directives that the Authority or the State or Federal government deem essential to ensure compliance with these “Non-Discrimination Requirements.”

### **38. CONTRACTOR’S INTEGRITY PROVISIONS**

#### **1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information**

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

- a. been indicted or convicted in any jurisdiction;
- b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
- c. received a less than satisfactory rating on a public or government contract;
- d. had a contract terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- e. ever used a name, trade name or abbreviated name, or an Employer Identification

- Number different from those inserted in the Bid;
- f. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of fifty thousand dollars (\$50,000) as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
  - g. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
  - h. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

**2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees**

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

- a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- d. this organization has not made and will not make any offers or agreements or take any other action with respect to any Authority employee or former employee or immediate family member (i.e. spouse, domestic partner, child, parent, sibling, grandparent or grandchild) of either which would cause any Authority employee or former employee to violate his/her obligations under Administrative Instruction 20-1.15, Conflicts of Interest and Financial Disclosure (Revised September 30, 2019), and Administrative Instruction 20-1.16, Offers of Employment and Post-Employment Obligations (Issued September 30, 2019), and as the same may be revised from time to time (copies of which are available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former employee relating either directly or indirectly to this organization which constitutes a breach of his/her obligations as set forth in said Administrative Instructions. This organization acknowledges that if awarded this Contract by the Port Authority it will be bound by the provisions of the Port Authority Vendor Code of Ethics prohibiting, among other things, such offers or agreements or other actions giving rise to a breach by an Authority employee or former employee of his/her obligations as set forth in the aforesaid Administrative Instructions;
- e. no person or selling agency other than a bona fide employee or bona fide established

- commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency;
- f. the Bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract; and
  - g. no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination with respect to (i) the solicitation, evaluation or award of this Contract, or (ii) the preparation of specifications or request for submissions in connection with this Contract.

The foregoing certifications in these Contractor's Integrity Provisions, Sections 1 and 2, shall be deemed to have been made by the Bidder as follows:

- \* if the Bidder is a corporation, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each parent, affiliate, director, and officer of the Bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Bidder with an ownership interest in excess of 10%;
- \* if the Bidder is a partnership, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each partner.

Moreover, the foregoing certifications, if made by a corporate Bidder, shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "2g", if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Contract, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Port Authority). Such disclosure is to be updated as necessary. As a result of such disclosure, the Port Authority shall take appropriate action up to and including a finding of non-responsibility.

Failure to make the required disclosures shall lead to administrative actions up to and including a finding of non-responsiveness or non-responsibility.

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids and the term of the Contract, if Bidder is awarded the Contract, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding and continuing this

Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Port Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

### **3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts**

Bidders are advised that the Authority has adopted a policy to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a Bidder is not eligible to bid on or be awarded public contracts because the Bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

The full text of the resolution adopting the policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

### **4. Contractor Responsibility, Suspension of Work and Termination**

During the term of this Contract, the Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Port Authority to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Port Authority, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must

comply with the terms of the suspension order. Contract activity may resume at such time as the Port Authority issues a written notice authorizing a resumption of performance under the Contract. Upon written notice to the Contractor, and an opportunity to be heard with appropriate Port Authority officials or staff, the Contract may be terminated by Port Authority at the Contractor's expense where the Contractor is determined by the Port Authority to be non-responsible. In such event, the Port Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Contractor associated with such termination.

#### **5. No Gifts, Gratuities, Offers of Employment, Etc.**

At all times, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., spouse, domestic partner, child, parent, sibling, grandparent or grandchild) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Contractor on behalf of the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract. The Bidder acknowledges that if it is awarded this Contract it will be bound by the provisions of the Port Authority Vendor Code of Ethics regarding Gifts, Gratuities and Favors. As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by this Contract or any other Port Authority contract), etc., and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity, other than as permitted under Administrative Instruction 20-1.06, Gifts, Gratuities, Business Expenses, and Offers of Employment (Revised March 11, 2014), and as the same may be revised from time to time. Such term shall not include compensation contemplated by this Contract or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries and component units of the Port Authority.

The Contractor shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

#### **6. Obligation to Report**

In the event that the Contractor becomes aware of the occurrence of any conduct that is prohibited by the section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", or if the Contractor knows or should reasonably know that a principal, employee, or agent of the Contractor or of its subcontractor(s) has committed a violation of federal, New York or New Jersey law addressing or governing: antitrust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Port Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>" for information about how to report information to the Office of Inspector General). Failing to report such conduct may be grounds for a finding of

non-responsibility. The Contractor shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or take any action with respect to a Port Authority employee or former employee that would require or cause such employee or former employee to breach his/her obligations under Administrative Instruction 20-1.15, Conflicts of Interest and Financial Disclosure (Revised September 30, 2019), and Administrative Instruction 20-1.16, Offers of Employment and Post-Employment Obligations (Issued September 30, 2019), and as may be revised from time to time (copies of which are available upon request to the Port Authority). The Contractor shall not require any former Port Authority employee in its employ to violate his/her post-employment obligations under Administrative Instruction 20-1.16. The Contractor acknowledges that if it is awarded the Contract it will be bound by the Port Authority Vendor Code of Ethics, which prohibits all vendors from taking such actions.

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

## **7. Conflict of Interest**

During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Chief Procurement Officer in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Chief Procurement Officer, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Chief Procurement Officer may require the Contractor to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Chief Procurement Officer and shall become a requirement, as though fully set forth in this Contract. In the event the Chief Procurement Officer shall determine that the performance by the Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said Services is determined by the Chief Procurement Officer to be no longer appropriate because of such preclusion, then the Chief Procurement Officer shall have full authority on behalf of both parties to order that such portion of the Contractor's Services not be performed by the Contractor, reserving the right, however, to have the Services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor knows of no

circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Contractor's part. The Contractor acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any contract, which results, directly or indirectly, from the Services provided by the Contractor hereunder. The Port Authority's determination regarding any questions of conflict of interest shall be final.

## **8. Integrity Monitor**

In the event that the Authority hires an Integrity Monitor in connection with the Work under this Contract, the Contractor and any subcontractors shall cooperate fully with the Integrity Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Contract. Any failure to cooperate may result in the termination of this Contract. The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

## **9. Right to Audit**

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, or its designee(s) each shall have the right to audit all of the records of the Contractor with respect to the Work and the Contract, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Contract. The Contractor shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

The Contractor agrees to pay for the cost of any audit or investigation conducted by the Authority, in which any criminal activity, ethics violations, or professional misconduct by the Contractor or any of its employees, or subcontractors or any of its employees, are discovered. The Contractor shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Contractor an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General).

## **10. Definitions**

As used in this section, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting and/or law enforcement agency and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for

employment, or Federal, State, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Bidder by whatever titles known.

Parent - An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the Bidder.

Retaliatory Action- Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;

Bidder - shall mean Bidder; except and until the Contract has been awarded, then it shall mean Contractor;

Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;

Bidder - shall mean Proposer; except and until the Contract has been awarded, then it shall mean Contractor;

Bidding - shall mean executing this Contract.

### **39. CONFIDENTIAL INFORMATION/NON-PUBLICATION**

a. As used herein, confidential information shall mean all information disclosed to the Contractor or the personnel provided by the Contractor hereunder which relates to the Authority's and/or PATH's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and/or PATH and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including but not limited to computer identification numbers, access codes, passwords, and reports obtained and/or used during the performance of the Contractor's Services under this Contract.

b. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018, and as may be further amended)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

c. The Contractor shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after



termination or expiration of this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Contractor shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor's attention in connection with this Contract.

d. The Contractor shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Port Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the vendor first obtains the written approval of the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

#### **40. PROVISIONS OF LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

#### **41. INVALID CLAUSES**

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

#### **42. NO ESTOPPEL OR WAIVER**

The Authority shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, issued or made under this Contract or otherwise issued or made by it, the Director or any officer, agent or employee of The Authority, from showing at any time the true amount and character of Work performed, or from showing that any such acceptance, certificate or payment is incorrect or was improperly issued or made; and The Authority shall not be precluded or estopped, notwithstanding any such acceptance, certificate or payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on his part to comply strictly with this Contract, and any monies which may be paid to him or for his account in excess of those to which he is lawfully entitled.

#### **43. NON-LIABILITY OF THE AUTHORITY REPRESENTATIVES**

Neither the Commissioners of the Authority, nor any officer, agent, or employee thereof shall be charged personally by the Contractor with any liability or held liable under any term or provision of this Contract, or because of its execution or attempted execution, or because of any breach hereof.

#### **44. MODIFICATION OF CONTRACT**

No change in or modification, termination or discharge of this Contract, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or his duly authorized representative, provided, however, that any change in or modification, termination or discharge of this Contract expressly provided for in this Contract shall be effective as so provided.

#### **45. M/WBE/SDVOB GOOD FAITH PARTICIPATION**

The Contractor shall use every good-faith effort to provide for participation by Port Authority Certified Minority Business Enterprises (MBEs), Port Authority Certified Women-owned Business Enterprises (WBEs) and Port Authority Certified Service-disabled Veteran-owned Businesses (SDVOBs) in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services. If this Contract contains participation goals, the Contractor shall use good faith efforts to achieve the goals.

Good faith efforts to include participation by Port Authority certified MBE/WBE/SDVOBs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into small portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBE/SDVOBs as may be appropriate.
- C. Soliciting services and materials from a Port Authority certified MBE/WBE/SDVOB. To access the Port Authority's Directory of MBE/WBE/SDVOB Certified Firms go to [www.panynj.gov/supplierdiversty](http://www.panynj.gov/supplierdiversty)
- D. Ensuring that provision is made to provide progress payments to MBE/WBE/SDVOBs on a timely basis.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

#### **46. TRASH REMOVAL**

The Contractor shall remove daily from the Facility by means provided by the Contractor all garbage, debris and other waste material (solid or liquid) arising out of or in connection with its operations hereunder, and any such garbage, debris and other waste material not immediately removed shall be temporarily stored in a clear and sanitary condition, approved by the Manager of the Facility, and shall be kept covered except when filling or emptying them. The Contractor shall exercise care in removing such garbage, debris and other waste materials from the Facility. The manner of such storage and removal shall always be subject in all respects to the continual approval of the Port Authority. No equipment or facilities of the Port Authority shall be used in such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the Facility.

#### **47. CODE OF ETHICS FOR PORT AUTHORITY VENDORS**

The Port Authority has adopted a Code of Ethics for Port Authority Vendors (the "Code"). The Code is hereby made a part of this Agreement. The Code can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

#### **48. CONTRACT RECORDS AND DECOMMISSION CLAUSE**

Port Authority will own and have all right, title and interest in all data, regardless of media used, including, but not limited to all notations, electronic copy of documents and hard copy documents in Contractors possession, even if such data was obtained by the Contractor on behalf of the Port Authority prior to the Effective Date of this Agreement (the "Work Product") and, to the extent possible all Work Product shall be considered a work made for hire for Port Authority within the meaning of Title 17 of the United States Code (the Copyright Act). Contractor hereby grants, transfers and assigns any and all right, title and interest in and to the Work Product and all materials contained therein or prepare therefor. In addition, Contractor shall assign and hereby so assigns to Port Authority all of its interest in the Work Product. Each party shall retain ownership of its pre-existing material used in accordance with this Agreement. While this Agreement is in force, Contractor grants to Port Authority an irrevocable, non-exclusive, worldwide, royalty free license to use, execute and copy for its internal purpose any pre-existing materials contained in the Work Product. Contractor and all of its personnel shall cooperate fully with Port Authority and shall execute such further documentation as Port Authority may request in order to establish, secure, maintain or protect Port Authority, or its assignee's, ownership the Work Product and of all rights therein. Furthermore, Contractor agrees that it shall never transfer or assign the Work Product, or any rights therein, to any third party.

Contractor hereby (i) waives any so-called "moral rights" with respect to the Work Product; (ii) agrees never to use the Work Product without the prior express written consent of Port Authority; (iii) agrees never to contest Port Authority or its assignee's exclusive, complete and unrestricted ownership in and to the Work Product (including all copyright rights therein), or to claim adverse rights therein; and (iv) acknowledges that it shall not be entitle to any compensation beyond the specifically provided herein for any of the Work Product.

When in the performance of the contact services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by the Authority, and restricted to data and systems used by the Authority related to this Agreement, the Contractor shall make available to the designated Authority representative all such passwords and codes.

Upon Agreement expiration or termination, all Authority Work Product shall be returned to the Authority at no additional cost, within 30 days of such termination or expiration and via a methodology and in a format to be mutually determined at the time of contract expiration or termination. Furthermore, the Contractor shall provide to the Project Manager, within 30 days of Agreement termination or expiration, written confirmation all electronic instances of Authority data, including, but not limited to production data, test data, backups, disaster recovery data, shall have been purged, permanently removed or destroyed in a manner consistent with Contractor company policy related to such data.

#### **49. NO VIRUSES/MALWARE**

- A. All software, whether owned or licensed by the Contractor, that is provided to the Port Authority shall be and shall remain free of any software, hardware or other technologies, devices or means, the purpose or effect of which is to:
  - 1. permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any (i) computer, software, firmware, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data processed thereby; or
  - 2. prevent the Port Authority or any of its authorized users from accessing or using the such software as intended by this Contract

and includes any virus, bug, Trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

- B. In performing the services required by this Contract the Contractor shall not introduce any software, hardware or other technologies, devices or means, the purpose or effect of which is to:
1. permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any (i) computer, software, firmware, hardware, system or network, or (ii) prevent any application or function of any of the foregoing or the integrity, use or operation of any data processed thereby; or
  2. prevent the Port Authority or any of its authorized users from accessing or using the such software as intended by this Contract

and includes any virus, bug, Trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

## **50. SSAE 18 COMPLIANCE**

Contractor agreed to produce an “Independent Service Auditor’s Report on a Description of Service Organization’s System and the Suitability of Design of Controls” in accordance with the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements No 18 (SSAE 18 formerly known as SSAE 16). The scope of the SSAE 18 audit report will include client considerations and services such as those provided within this contract and are reasonably expected within the industry, and as mutually agreed to by the two parties. The Contractor further agrees to maintain, SSAE 18 SOC 2 Type II, or similar certification for the duration of Agreement. The copy of the report and subsequent updates shall be submitted to the Authority throughout the term of this contract within 4 months following each report’s audit period close date, confirming compliance. Contractor agrees to remain “SSAE 18 Compliant” throughout the term of its contract with the Authority at no additional cost. This should also include all datacenters where the Authority’s data may be stored or transmitted. The Contractor agrees to include the Authority in the sample tested by the independent auditor.

## **51. GENERAL OBLIGATIONS**

- a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Manager at the Facility.
- b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's

obligation to comply with governmental requirements are not to be construed as a submission by the Port Authority to the application to itself of such requirements.

c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.

d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury. In the event the Contractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, in conducting its operations hereunder, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Manager.

e. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

The Contractor shall not do or permit to be done any act which:

1. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or

2. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or

3. in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or

4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or

5. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or

6. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.

f. If by reason of the Contractor's failure to comply with the provisions of this Section and provided the Port Authority has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay the Port Authority that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by the Port Authority which shall have been charged because of such violations by the Contractor.

g. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by law of the Port Authority and shall conduct operations hereunder in a courteous, efficient and safe manner.

h. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first aid service in case of accidents to its personnel who may be injured in the furnishing

of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.

## **52. PERSONAL PROTECTIVE EQUIPMENT REQUIREMENTS**

The Contractor shall provide its personnel, and shall require its subcontractors to provide their personnel, with Personal Protective Equipment (PPE) prior to entering the Facility, and shall replenish PPE periodically as appropriate. PPE is equipment worn to minimize exposure to hazards that may cause serious injuries and illnesses at the workplace. These injuries and illnesses may result from contact with biological, chemical, radiological, physical, electrical, mechanical, or other workplace hazards. PPE may include, but shall not be limited to, items such as face coverings, gloves, safety glasses, shoes, earplugs, muffs, hard hats, respirators, coveralls, vests and full body suits. The Contractor shall require its personnel, and shall require its subcontractors to require its personnel, to utilize such PPE as appropriate to the Facility and Work covered under the Contract or as may be required by the Port Authority. Regardless of the type of Work, face coverings are required to be worn at all times at all Port Authority Facilities, unless otherwise directed in writing by the Port Authority.

## **53. ENTIRE AGREEMENT**

This Contract shall be comprised of the documents as set forth in the award letter.

## ATTACHMENT D – CONTRACT SPECIFIC TERMS AND CONDITIONS

1. The contract anticipated to be awarded pursuant to this RFP (the “Contract”) shall be for a two-year base term (“Base Term”). There shall be two (2), one (1) year option periods (each an “Option Period” and together, the “Option Periods”) exercisable at the Port Authority’s sole discretion. The Contract shall also allow for a one hundred and eighty (180) day extension period after either the Base Term or either Option Period, if exercised, with such extension period being exercisable at the Port Authority’s sole discretion.
2. Contractor agrees to keep the type of security and protections as presented and as agreed to at the same, or higher level for the duration of the Agreement. Furthermore, Contractor shall advise the Authority, within 72 hours of actual knowledge, if any part of the delivery supply chain (i.e. hosting platform) is changed or undergoes change in ownership. The Authority reserves the right to terminate the Agreement for convenience with prorated refund of paid but unused services if, in the Authority’s sole discretion these changes are deemed unacceptable to the Authority.
3. **Cybersecurity** – All Agency product, service, and maintenance acquisitions must obtain and maintain in compliance with all applicable regulatory and contractual responsibilities based on the data processed and function of the system. Contractor shall comply with all US cybersecurity government regulations, Federal, NYS, and NJS laws (CJIS, NERC, Cyber, PII, PHI, etc.), industry requirements (Sarbanes-Oxley, Gramm-Leach, PCI-DSS, etc.), Port Authority Policies (Cybersecurity Policy, Cybersecurity Policy Standards and Guidelines, etc.), and assigned best practices (NIST 800-53 R4 and CSA security controls) as applicable. The Social Listening Offering (further referred to as “System”) has been classified by the Agency System Owner as “[High]” risk, in accordance with the NIST SP 800-37 risk management framework practice. The Contractor (further referred to as “Vendor”) shall be responsible for and provide evidence of continued compliance with NIST controls standard as applicable and is required to fill out the CSO Security Controls Matrix (NIST based for an on-premise solution and/or off-premise solution, CSA based for cloud solution, and both for hybrid combination) form(s) to be returned to the Authority’s Contract Administrator. At all times while this Agreement is in effect, Vendor shall ensure that the Agency data and the System used to perform the Work remain in compliance with the controls set forth in the Matrix. In an event, when the System, in the Port Authority’s sole discretion, is determined to be out of compliance with applicable security controls, the Vendor shall correct such deficiencies pursuant to a remediation plan approved by the Port Authority or pursuant to the direction of the Port Authority. Any failure to correct such deficiencies promptly or the repeated occurrence of deficiencies, may be deemed a material breach of this Agreement and be cause for the Port Authority to terminate this Agreement.