Torres Rojas, Genara FOI#13911

Subject: FW: FOIA Request - Port Authority of New York & New Jersey's current contract and winning proposal with PAN

From: Angela DeAwn [mailto:ADeawn@psionline.com]
Sent: Tuesday, April 09, 2013 1:50 PM
To: Van Duyne, Sheree
Subject: FOIA Request - Port Authority of New York & New Jersey's current contract and winning proposal with PAN

ATTN: Ann L. Qureshi
Freedom of Information Administrator
Office of the Secretary
Port Authority of New York & New Jersey
225 Park Avenue South, 17th Floor
New York, NY 10003

This is a FOIL/Open Records request to obtain a copy of Port Authority of New York & New Jersey's current contract and winning proposal with PAN for the Police Officer selection project.
An electronic version of this information sent to this email address is preferable. However, if copies will be mailed, please send them to:

PSI
Attn: Angela DeAwn
2950 N. Hollywood Way, Suite 200
Burbank, CA 91505

If you could provide this information it would be most helpful.

Regards,

Angela DeAwn
Administrative Assistant
PSI Services LLC
Headquarters
2950 North Hollywood Way, Suite 200
Burbank, CA 91505
adeawn@psionline.com
1-800-367-1565 Ext. 7220
www.psionline.com

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

November 10, 2014

Ms. Angela DeAwn
PSI Services LLC
2950 North Hollywood Way, Suite 200
Burbank, CA 91505

Re: Freedom of Information Reference No. 13911

Dear Ms. DeAwn:

This is in response to your April 9, 2013 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached), for a copy of the Port Authority current contract and winning proposal with PAN for the police officer selection project.

Material responsive to your request and available under the Code can be found on the Port Authority's website at http://www.panynj.gov/corporate-information/foi/13911-C.pdf. Paper copies of the available records are available upon request.

Certain portions of the material responsive to your request are exempt from disclosure pursuant to exemption (4) of the Code.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,

Daniel D. Duffy
FOI Administrator

Attachment

225 Park Avenue South, 17th FL
New York, NY 10003
T: 212 435 3642 F: 212 435 7555

Lillian D. Valenti
Director, Procurement

April 19, 2012

VIA OVER NIGHT MAIL

Jenni Ginsburg
Contracts Administrator
pan - A TALX Company
11590 North Meridian Street Suite 200
Carmel, IN 46032 USA

Re: Computerized Based Test Administration Services for The Port Authority of New York and New Jersey Human Resource Department Contract # 4600009038 and Purchase Order # 4500063156

Dear Ms. Ginsburg:

The Port Authority of New York and New Jersey ("Authority") hereby offers to enter into an Agreement with Performance Assessment Network, Inc. ("PAN") for Computerized Based Test Administration Services.

The Agreement between the parties will consist of the following documents set forth below and attached hereto, which are stated in order of precedence in case of conflict:

- This letter of proposal acceptance;
- The Port Authority standard contract terms and conditions that have been mutually agreed to between the Authority and PAN attached hereto;
- Standards and Guidelines for Port Authority Technology;
- Rider to the Standards & Guidelines for Port Authority Technology;
- Port Authority Security Documents;
- Insurance procured by the Contractor; and
- PAN Proposal dated March 7, 2012 from Doug Cole to Ron Pannone attached hereto

Except as they have been addressed above, no other documents or submissions by the Contractor are to be considered a part of this contract. While the Port Authority/PAN Contract is based upon an Exemption (4) that agreement does not form a part of the Authority-PAN Contract.

2 Montgomery Street, 3rd Floor
Jersey City, NJ 07302
T: 201 395 7477

If you are in agreement with the above, please indicate such agreement by signing the lower left and returning both signed copies of the letter to the attention of Nadine Aziz, Port Authority of New York and New Jersey, Commodities and Services Division, 2 Montgomery Street, 3rd floor, Jersey City, N.J. 07302. If you have any questions, Ms. Aziz can be reached at (201)395-3434.

Sincerely,

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

By: _____
Director of Procurement

Date 5/1/2012

Agreed:

Performance Assessment Network, Inc

By: Douglas Cole
(print)

Signature: Douglas Cole

Title: SVP, General Manager

Date: April 23, 2012

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STANDARD CONTRACT TERMS AND CONDITIONS

PART I GENERAL DEFINITIONS

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

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

Contract, Document or Agreement - shall 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 over the name of the Authority's Manager, Purchasing Services Division.

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

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

Month - unless otherwise specified, shall mean a calendar month.

Director - shall mean 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, acting personally or through one of his/her authorized representatives for the purpose of this Contract.

Manager - shall mean the Manager of the Facility for the time being or his successor in duties for the purpose of this Contract, acting personally or through his duly authorized representative for the purpose of this Contract.

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 Authority's Manager, Purchasing Services Division. 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.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 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 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.

Site of the Work - or words of similar import shall 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 - shall mean 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.

Women-Owned Business Enterprise (WBE) - shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 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 - shall 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.

PART II GENERAL PROVISIONS

1. Facility Rules and Regulations of The Port Authority

a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the facility Rules and Regulations of the Port Authority now in effect, and such further reasonable Rules and Regulations which may from time to time during the term of this Agreement be promulgated by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. The Port Authority agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.

b. A copy of the facility Rules and Regulations of the Port Authority shall be available for review by the Contractor at the Office of the Secretary of the Port Authority.

2. Contractor Not An Agent

This Agreement does not constitute the Contractor the agent or representative of the Port Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically

acknowledged and understood that the Contractor, in performing its services hereunder, is and shall be at all times an independent Contractor and the officers, agents and employees of the Contractor shall not be or be deemed to be agents, servants or employees of the Port Authority.

3. Contractor's Warranties

The Contractor represents and warrants:

a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation 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, and 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 investigation was adequate;

c. 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;

d. That no Commissioner, officer, agent or employee of the Port 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 Port 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, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) 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.

Nothing in the Specifications or any other part of the Contract is intended as or shall constitute a representation by the Port Authority as to the feasibility of performance of this Contract or any part thereof.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Port Authority to review thoroughly all documents forming this Contract prior to opening of Bids on 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 numbered clause (though not only such provisions) are essential to the Port Authority's consent to enter into this Contract and that without such provisions, the Authority would not have entered into this Contract.

4. Personal Non-Liability

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

5. Equal Employment Opportunity, Affirmative Action, Non-Discrimination

a. The Contractor is advised to ascertain and comply with all applicable federal, State and local statutes, ordinances, rules and regulations and, federal Executive Orders, pertaining to equal employment opportunity, affirmative action, and non-discrimination in employment.

b. Without limiting the generality of any other term or provision of this Contract, in the event of the Contractor's non-compliance with the equal opportunity and non-discrimination clause of this Contract, or with any of such statutes, ordinances, rules, regulations or Orders, this Contract may be cancelled, terminated or suspended in whole or in part.

6. Rights and Remedies of the Port Authority

The Port Authority shall have the following rights in the event the Contractor is deemed 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 others. For the avoidance of doubt, this does not transition any IP held by the Contractor to the Port Authority nor does it permit Port Authority access to Contractor facilities or systems.

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 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 Port Authority indicating that the Contractor cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its 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 it will be able to perform any one or more of its obligations under this Contract.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of the Port 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 estop it from exercising such other rights or remedies.

7. 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 Port Authority, the Contractor expressly agrees that no default, act or omission of the Port Authority, excluding breach due to non-payment by the Port Authority, shall constitute a material breach of this Contract, entitling the Contractor to cancel or rescind this Contract or to suspend or abandon performance.

8. 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.

9. 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 located at the Facility 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.

10. Claims of Third Persons

The Contractor undertakes to pay all claims lawfully made against it by subcontractors, suppliers and workers, and all claims lawfully made against it 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.

11. No Third Party Rights

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

12. 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.

13. Costs Assumed By The Contractor

It is expressly understood and agreed that all costs of the Contractor of whatever kind or nature and whether imposed directly upon the Contractor under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the operation of the service or otherwise under this Agreement shall be borne by the Contractor or without compensation or reimbursement from the Port Authority, except as specifically set forth in this Agreement. The entire and complete cost and expense of the Contractor's services and operations hereunder shall be borne solely by the Contractor and under no circumstances shall the Port Authority be liable to any third party (including the Contractor's employees) for any such costs and expenses incurred by the Contractor and under no circumstances shall the Port Authority be liable to the Contractor for the same, except as specifically set forth in this Section.

14. Default, Revocation or Suspension of Contract

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

1. If fire or other cause shall destroy all or a substantial part of the Facility.

2. 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 or the Port Authority 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, such approval not to be unreasonably withheld, and deemed to be granted if not denied within fifteen (15) days, 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, or the Port Authority, 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, or the Port Authority, 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 for specific services shall be prorated when applicable on a daily basis; prorated compensation may not apply to all Contractor services. 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.

15. Sales or Compensating Use Taxes

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). Therefore, the Port Authority's purchase of the Contractor's services under this Contract is exempt from Taxes. Accordingly, the Contractor must not include Taxes in the price charged to the Port Authority for the Contractor's services under this Contract. The Contractor certifies that there are no such taxes included in the prices for this Contract. The Contractor shall retain a copy of this Contract to substantiate the exempt sale.

The compensation set forth in this Agreement is the complete compensation to the Contractor, and the Port Authority will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

16. No Estoppel or Waiver

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

No cancellation, rescission or annulment hereof, in whole or as to any part of the services to be provided hereunder, or because of any breach hereof, shall be deemed a waiver of any money damages to which the Port Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

17. Records and Reports

The Contractor shall set up, keep and maintain (and shall cause its subcontractors to set up, keep and maintain) in accordance with generally accepted accounting practice during the term of this Agreement and any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including, but not limited to, records of original entry and daily forms, payroll runs, cancelled checks, time records, union agreements, contracts with health, pension and other third party benefit providers) recording all transactions of the Contractor(and its subcontractors), at, through or in any way connected with or related to the operations of the Contractor (and its subcontractors) hereunder, including but not limited to all matters relating to the charges payable to the Contractor hereunder, all wages and supplemental benefits paid or provided to or for its employees (and its subcontractors' employees) and such additional information as the Port Authority may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times at the Contractor's Office(s). The Contractor shall permit (and cause its subcontractors to permit) in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any records and books of account of any company which is owned or controlled by the Contractor, or which owns or controls the Contractor if said company performs services similar to those performed by the Contractor at the Contractor's Office(s) and at the Port Authority's sole expense. However, if within the aforesaid three year period the Port Authority has notified the Contractor in writing of a pending claim by the Port Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six 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 employed by the Contractor performing work under this Contract. This includes citizens and noncitizens.

The Contractor (and its subcontractors) shall, at its own expense, install, maintain and use such equipment and devices for recording the labor hours of the service as shall be appropriate to its business and necessary or desirable to keep accurate records of the same and as the general manager or the Facility Manager may from time to time require, and the Contractor (and its subcontractors) shall at all reasonable times allow inspection by the agents and employees of the Port Authority of all such equipment or devices.

a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.
b. No provision in this Contract giving the Port Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

18. 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 is 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.

19. Assignments and Subcontracting

a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.

b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.

c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

20. 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, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including Contractor's employees, employees, officers, and agents of the Port Authority) arising out of or in any way connected 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 from the acts or omissions of the Contractor, the Port Authority, third persons(including Contractor's employees, employees, officers, and agents of the Port Authority), 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 from acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons (including Contractor's employees, employees, officers, and agents of the Port Authority)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 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 claim, 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 just or unjust of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or the Port Authority. This excludes claims of third persons made against the Contractor or the Port Authority, arising from the Port Authority's pre-existing work.

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.

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.

21. 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 injuries to persons or damage to property or environmental impairment arising out of its operations.

22. Safety and Cleanliness

a. The Contractor shall, in the furnishing of services at Port Authority facilities hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.

b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Manager.

c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by the Port Authority for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of the Port Authority which are located in said facilities.

23. Accident Reports

The Contractor shall promptly report in writing to the Manager of the Facility and to the Deputy Chief, Litigation Management of the Port Authority all accidents whatsoever arising out of or in connection with its operations hereunder at Port Authority facilities and which result in death or injury to persons or damage to property, setting forth such details thereof as the Port Authority may desire. In addition, if death or serious injury or serious damage is caused, such accidents shall be immediately reported by telephone to the aforesaid representatives of the Port Authority.

24. Trash Removal

If Contractor employees perform work at Port Authority facilities, 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 Facility Manager 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.

25. Lost and Found Property

The Contractor shall instruct its personnel that all items of personal property found by the Contractor's employees at the Site must be turned in to the Port Authority and a receipt will be issued therefor.

26. Property of the Contractor

a. All property of the Contractor at the Site by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.

b. If the Contractor shall fail to remove its property upon the expiration, termination or revocation of this Contract the Port Authority may, at its option, dispose of such property as waste or as agent for the Contractor and at the risk and expense of the Contractor, remove such property to a public warehouse, or may retain the same in its own possession, and in either event after the expiration of thirty (30) days may sell the same in accordance with any method deemed appropriate; the proceeds of any such sale shall be applied first, to the expenses of sale and second, to any sums owed by the Contractor to the Port Authority; any balance remaining shall be paid to the Contractor. Any excess of the total cost of removal, storage and sale and other costs incurred by the Port Authority as a result of such failure of performance by the Contractor over the proceeds of sale shall be paid by the Contractor to the Port Authority upon demand.

27. Modification of Contract

This Contract may not be changed except in writing signed by the Port Authority and the Contractor. The Contractor agrees that no representation or warranties shall be binding upon the Port Authority unless expressed in writing in this Contract.

28. 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.

29. Approval of Materials, Supplies and Equipment

30. Intellectual Property

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.

The Contractor shall indemnify the Port Authority against and save it harmless from all loss and expense incurred as a result of any claims in the nature of Intellectual Property Rights infringement arising out of the Contractor's or Port Authority's use, in accordance with the above immediately preceding paragraph, of any Intellectual Property. The Contractor, if requested, shall conduct all negotiations with respect to and defend such claims. If the Contractor or the Port Authority, its employees or agents be enjoined either temporarily or permanently from the use of any subject matter as to which the Contractor is to indemnify the Port Authority against infringement, then the Port Authority may, without limiting any other rights it may have, require the Contractor to supply temporary or permanent replacement facilities approved by the Manager, and if the Contractor fails to do so the Contractor shall, at its expense, remove all such enjoined facilities and refund the cost thereof to the Port Authority or take such steps as may be necessary to insure compliance by the Contractor and the Port Authority with said injunction, to the satisfaction of the Port Authority.

In addition, the Contractor shall promptly and fully inform the Director in writing of any intellectual property rights disputes, whether existing or potential, of which it has knowledge, relating to any idea, design, method, material, equipment or any other matter related to the subject matter of this Agreement or coming to its attention in connection with this Agreement.

31. 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. For the avoidance of doubt, all assessment content, assessment scoring keys, assessment score reports, and candidate data associated to this project is the property of the Port Authority. The Contractor technology platform and associated components are and shall remain the sole and exclusive property of Contractor, including all applicable common law and statutory rights in confidential and trade secret material, source code, object code, trademarks, service marks, trade secrets, patents, and copyrights, or other proprietary or intellectual property rights thereto. All modifications, enhancements, updates, derivative works and translations of the technology platform shall be deemed a part thereof.

32. 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.

33. 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 poses 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:

- 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" in order to assess the extent of compliance with security requirements, Confidential Information procedures, protocols and practices, which may include, but not be limited to, , confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

Exemption (4)

Exemption (4)

34. Construction In Progress

The Contractor recognizes that construction may be in progress at the Facility and may continue throughout the term of this Contract. Notwithstanding, the Contractor shall at all times during the term hereof maintain the same standards of performance and cleanliness as prevails in non-affected areas as required by the standards hereunder.

35. Permit-Required Confined Space Work

Prior to commencement of any work, the Contractor shall request and obtain from the Port Authority a description of all spaces at the facility which are permit-required confined spaces requiring issuance of an OSHA permit.

Prior to the commencement of any work in a permit-required confined space at a Port Authority facility requiring issuance of an OSHA permit, the Contractor shall contact the Manager to obtain an Authority Contractor Permit-Required Confined Space Notification form. The notification form must be filled out and submitted prior to commencing permit-required confined space work. All confined space work shall be performed in accordance with all applicable OSHA requirements. The Contractor shall provide its employees with a copy of its own company permit and shall furnish the Port Authority with a copy of the permit upon completion of the work. The Contractor must supply all equipment required for working in a confined space.

36. Signs

Except with the prior written approval of the Port Authority, the Contractor shall not erect, maintain or display any signs or posters or any advertising on or about the Facility.

37. Vending Machines, Food Preparation

The Contractor shall not install, maintain or operate on the Facility, or on any other Port Authority property, any vending machines without the prior written approval of the Port Authority. No foods or beverages shall be prepared or consumed at the Facility by any of the Contractor's employees except in areas as may be specifically designated by the Port Authority for such purpose.

38. 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. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009),* 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 confidential 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/General Manager 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.

39. Time is of the Essence

Time is of the essence in the Contractor's performance of this Contract inasmuch as the Work to be performed will affect the operation of public facilities.

40. Holidays

The following holidays will be observed at the Site:

New Year's Day	Labor Day
Martin Luther King Jr. Day	Columbus Day

Presidents Day	Veterans Day
Memorial Day	Thanksgiving Day
Independence Day	Day After Thanksgiving
Christmas Day	

This list is subject to periodic revision and the Contractor shall be responsible for obtaining all updated lists from the office of the Manager. If any such holiday falls on a Sunday then the next day shall be considered the holiday and/or if any such holiday falls on a Saturday then the preceding day shall be considered the holiday.

41. Personnel Standards

In addition to any specific personnel requirements that may be required under the clause entitled "Personnel Requirements" in the Specifications, the Contractor (and any Subcontractor) shall furnish competent and adequately trained personnel to perform the Work hereunder. If, in the opinion of the Manager, any employee so assigned is performing their functions unsatisfactorily, they shall be replaced by the Contractor within twenty-four (24) hours following the Contractor's receipt of the Manager's request for such replacement.

All Contractor's employees performing Work hereunder shall have the ability to communicate in the English language to the extent necessary to comprehend directions given by either the Contractor's supervisory staff or by the Manager's staff. Any employee operating a motor vehicle must have a valid driver's license.

The Contractor shall verify that employees working under this Contract in the United States are legally present in the United States and authorized to work by means of the federally required I-9 program

42. General Uniform Requirements for Contractor's Personnel

In addition to any specific uniform requirements that may be required by the Specifications, uniforms must be worn at all times during which the Services are being performed at Port Authority facilities hereunder. The Contractor agrees that his/her employees will present a neat, clean and orderly appearance at all times. Uniforms shall include the Contractor's identification badge with picture ID bearing the employee's name. All uniforms, colors, types and styles shall be subject to the prior approval of the Manager. The Contractor will also be responsible for ensuring that its employees are wearing shoes appropriate for the tasks performed. The Manager shall have the right to require removal of any employee who shall fail to wear the proper uniform and shoes, and the exercise of this right shall not limit the obligation of the Contractor to perform the Services or to furnish any required number of employees at a specific location at the Site as specified.

43. Labor, Equipment and Materials Supplied by the Contractor

44. Contractor's Vehicles – Parking - Licenses

At the discretion of the Manager, the Port Authority may permit the Contractor during the effective period of this Contract to park vehicle(s) used by it in its operations hereunder in such location as may from time to time or at any time be designated by the Manager. The Contractor shall comply with such existing rules, regulations and procedures as are now in force and such reasonable future rules, regulations and procedures as may hereafter be adopted by the Port Authority for the safety and convenience of persons who park automotive vehicles in any parking area at the Site or for the safety and proper persons who park automotive vehicles in any parking area at the Site or for the safety and proper identification of such vehicles, and the Contractor shall also comply with any and all directions pertaining to such parking which may be given from time to time and at any time by the Manager. Any vehicle used by the Contractor hereunder shall be

marked or placarded, identifying it as the Contractor's vehicle.

45. Manager's Authority

In the performance of the Work at a Port Authority facility hereunder, the Contractor shall conform to all orders, directions and requirements of the Manager and shall perform the Work hereunder to the satisfaction of the Manager at such times and places, by such methods and in such manner and sequence as he/she may require, and the Contract shall at all stages be subject to his/her inspection. The Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Specifications and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or staff or personnel to which the Manager objects. Upon request, the Manager shall confirm in writing any oral order, direction, requirement or determination.

The Manager shall have the authority to decide all questions in connection with the Services to be performed hereunder. The exercise by the Manager of the powers and authorities vested in him/her by this section shall be binding and final upon the Port Authority and the Contractor.

46. Price Preference

If this solicitation has not been set aside for the purposes of making an award based on bids solicited from Port Authority certified Minority Business, Women Business or Small Business Enterprises as indicated by the bidder pre-requisites in Part II hereof, for awards of contracts, not exceeding $1,000,000, for:

(a) Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE); or

(b) Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (M/WBE),

certified by the Port Authority by the day before the bid opening.

If the Bidder is a Port Authority certified MBE, WBE or SBE, enter the applicable date(s) certification was obtained in the space provided on the Signature Sheet attached hereto.

47. M/WBE Good Faith Participation

If specified as applicable to this Contract, the Contractor shall use every good-faith effort to provide for participation by certified Minority Business Enterprises (MBEs) and certified Women-owned Business Enterprises (WBEs) as herein defined, in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

Good Faith efforts to include participation by MBEs/WBEs shall include 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 MBEs/WBEs as may be appropriate.

c. Soliciting services and materials, to be procured, from the Directory of MBEs/WBEs, a copy of which can be obtained on the Port Authority Website at http://www.panynj.gov/business-opportunities/supplier-diversity.html or by contacting the Port Authority's Office of Business Diversity and Civil Rights at (212) 435-7819 or seeking MBEs/WBEs from other sources.

d. Insuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.

e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Either prior or subsequent to Contract award, the Contractor may request a full or partial waiver of the M/WBE participation goals set forth in this Contract by providing documentation demonstrating to the Manager, for approval by the Port Authority's Office of Business Diversity and Civil Rights, that its good faith efforts did not result in compliance with the goals set forth above because participation by eligible M/WBEs could not be obtained at a reasonable price or that such M/WBEs were not available to adequately perform as subcontractors. The Contractor shall provide written documentation in support of its request to the Manager. The documentation shall include, but not be limited to, documentation demonstrating good faith efforts as described above, which may include, proof that the Authority's directory does not contain M/WBEs in this specific field of work, a list of organizations contacted to obtain M/WBEs, and/or a list of M/WBEs contacted and their price quotes. If approved by the Authority's Office of Business Diversity and Civil Rights, the Manager will provide written approval of the modified or waived M/WBE Participation Plan.

Subsequent to Contract award, all changes to the M/WBE Participation Plan must be submitted via a modified M/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the M/WBE Plan, Contractors are directed to use form PA3749C, which may be downloaded at http://www.panynj.gov/business-opportunities/become-vendor.html. The Contractor shall not make changes to its approved M/WBE Participation Plan or substitute M/WBE subcontractors or suppliers for those named in their approved plan 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 M/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the M/WBE Participation Report, annexed hereto as an attachment. The Statement must include the name and business address of each M/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

If, during the performance of this Contract, the Contractor fails to demonstrate good faith efforts in carrying out its M/WBE Participation Plan and the Contractor has not requested and been granted a full or partial waiver of the M/WBE participation goals set forth in this Contract, the Authority will take into consideration the Contractor's failure to carry out its M/WBE Participation Plan in its evaluation for award of future Authority contracts.

PART III 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. 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;
d. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Bid;
e. 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 $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;
f. 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
g. 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.

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 any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996, (a copy of which is available upon request to the individual named in the clause hereof entitled "Bidder's Questions"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
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; and
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.
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 shall be deemed to be 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 that 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 Director of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Contract. 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-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 on this Contract of any change of circumstances which might under this clause make it unable to make the foregoing certifications 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 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 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. No Gifts, Gratuities, Offers of Employment, Etc.

During the term of this Contract, 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., a spouse, child, parent, brother or sister) 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.

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 the Contract or any other Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Contractor, 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. 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 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.

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996, (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

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

5. 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 Director in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Director, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director 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 Director to be no longer appropriate because of such preclusion, then the Director 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.

6. 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 and others.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting 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.

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;
Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;
Bidder - shall mean Proposer;
Bidding - shall mean executing this Contract.

Insurance Procured by the Contractor

The Contractor shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, including but not limited to premises-operations, products-completed operations, and independent contractors coverage, and, if vehicles are to be used to carry out the performance of this Contract, then the Contractor shall also take out, maintain, and pay the premiums on Automobile Liability Insurance covering owned, non-owned, and hired autos in the following minimum limits:

Commercial General Liability Insurance - $ 2 million combined single limit per occurrence for bodily injury and property damage liability. ($ 25 million each occurrence, unescorted on airside)

Automobile Liability Insurance - $ 2 million combined single limit per accident for bodily injury and property damage liability. ($ 25 million each accident, unescorted on airside)

In addition, the liability policy (ies) shall name "The Port Authority of NY & NJ and its wholly owned entities, their commissioners, directors, officers, partners, employees and agents as additional insured", including but not limited to premise-operations, products-completed operations on the Commercial General Liability Policy.. The liability policy (ies) and certificate of insurance shall contain separation of insured condition and severability of interests clause 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 insureds shall not reduce or void coverage to the other insureds. Furthermore, the Contractor's insurance shall be primary insurance as respects to the above additional insureds. Any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim. These insurance requirements shall be in effect for the duration of the contract to include any warrantee/guarantee period.

The certificate of insurance and liability policy (ies) must contain the following endorsement for the above liability coverages:

"The insurer(s) 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 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 provisions of any statutes respecting suits against the Port Authority."

The Contractor shall also take out, maintain, and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than $1 million each accident.

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 of NY and NJ, Att: Facility Contract Administrator, at the location where the work will take place and to the General Manager, Risk Management.

Within ten (10) days after the award of this agreement or contract and prior to the start of work, the Contractor must submit an original certificate of insurance, to the Port Authority of NY and NJ, 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 agreement/contract number prior to the start of work. The General Manager, Risk Management 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 Management, 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, if the Manager shall so direct, the Contractor shall suspend performance of the contract at the premises. 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 Facility Contractor Administrator, Port Authority 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.

The requirements for insurance procured by the Contractor 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 Authority as to the adequacy of the insurance to protect the Contractor against the obligations imposed on them by law or by this or any other Contract. **CITS#3988N**

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March 7, 2012

Ron Pannone
The Port Authority of NY & NJ
2 Montgomery Street, 4th Floor
Jersey City, NJ 07302

Dear Mr. Pannone,

Performance Assessment Network, Inc. *(pan)* appreciates the opportunity to provide the Port Authority of New York &New Jersey with additional clarifications/pricing regarding our proctored testing services as a result of our teams' conference call today.

We would be happy to provide any clarifications or answer any other questions as needed.

Thank you.

Douglas E. Cole

Doug Cole
SVP, General Manager

■ Question #1

Provide access to software and/or internet-based computer system that allows Port Authority staff to directly:
-perform applicant tracking and interface activities including the design and execution of workflow activities
-develop employment tests in a wide variety of item formats and test delivery options and edit such tests
-select third party vendor tests for use by the Port Authority
- combine multiple tests into test batteries
- coordinate inviting applicants for testing through uploads/downloads and/or direct interface with PeopleSoft
- view scheduling and testing activity in real time
- access test results and test reports in real time
-download test results into PeopleSoft and/or through direct interface

PLATFORM FUNCTIONALITY

pan has one of the strongest and most robust platforms in the industry. In 2000, the ***pan*** web-based testing platform and assessment technology was created internally by ***pan's*** development team. The entire system is web-based and grounded in an Application Service Provider (ASP) model. This platform is patented under Patent No. US 6,681,098 B2: Test Administration System Using the Internet.

pan has continuously evolved its assessment offerings since the initial platform implementation. In 2007, ***pan*** initiated a project to create a new platform (***pan 2.0***) that would provide superior features, enhanced configurability, and decrease the time to market. This platform, created using an Agile development methodology and the latest Microsoft .Net technology, was placed into production in early 2008. The reporting features of the platform are driven by a SQL Server Reporting Services (SSRS) engine, licensed by Microsoft.

The ***pan*** solution will include a branded Port Authority private label site. Its easy-to-use interface provides a real-time snapshot of the entire assessment process, along with standardized reports that assist in the management of the assessment program.

Some of the private label features include:

- A user defined dashboard of optional widgets for management information
- Ability to order, assign, research publisher manuals and view sample reports
- The ability to create and manage groups for reporting and results purposes
- Custom demographic creation
- Ability to access item level data (if available from the publisher) and demographic information via data exports
- Hierarchical access to sub-client data
- Access to individual tester reports
- Access to ***pan*** standard reporting module
- Access to email templates
- Access to system logs for first level support and general system information
- System message to users and administrators
- Assessment self-authoring tool

- Uploading of candidates from an outside system (.CSV)
- Candidate self-scheduling capabilities
- Business Process Management module

Business Process Management (BPM)

As referenced in the system design section previously, the ***pan*** solution supports business process management (BPM) and the ability to create candidate workflows. A workflow can be classified as a sequence of one or more connected activities; these activities can have business rules put around the data collected within each activity to determine what to do next. The steps in a candidate workflow can be configured for each client and can include automated emails, test session scheduling, and assessment delivery.

pan's workflow designer provides the means for client administrators to easily create, edit, and publish workflows in just a few minutes. The ***pan*** BPM module supports both linear and non-linear workflows. In a linear workflow, the candidate goes to Activity A then Activity B and then Activity C. In contract, a non-linear workflow is when there is possibility that a candidate can jump around within activities A, B, and C based on the business rules defined by the administrator/client. Once assigned to the workflow, the ***pan*** system will walk a candidate through the workflow as defined by the workflow's business rules.

The ***pan*** system also provides the capabilities for tracking or monitoring candidates as they progress through the workflows with both summary and detail views of the workflow/candidate data.

TEST FORMAT/DELIVERY

The ***pan*** content delivery system is very flexible as it can support a full range of formats, including multiple choice (both radio and selection boxes), multiple-multiple choice, response de-selection, open ended text box inputs, and Likert scale (both tabular and slider scale). The use of graphics and "callout" sections in the item question text are standard. Audio and video can be implemented based upon client needs; Flash, Silverlight, mp3, .wav, .wmv and other standard video and audio formats are supported.

TEST AUTHORING

In order to supplement the development driven creation of assessment and static form content, ***pan*** has developed authoring tools to allow the user-driven creation of such instruments. The features and benefits of these tools are described below. Additionally, please note that item randomization and the in-basket test format are not currently available with the authoring tool.

Self-Authoring Tool Benefits

- Makes form, assessment and survey creation simple and inexpensive.
- Allow for clients to update content as needed.
- Extensive functionality supports many item types, scoring routines, and rubrics.
- Use of all content created with authoring tools are accessible through our user-driven BPM module (Business Process Management). This tool allows for custom creation of client HR processes.
- Flexible system allows for many different implementations, including:
    - Interview Forms
    - Data forms of any type

- Assessments
- Surveys
- Simple Performance Review Forms

Self-Authoring Tool Features – Assessments/Surveys

- Supports client creation and deployment of assessments and surveys.
- Navigation button configuration with page buttons or progress bars.
- Timing with time down warnings (assessment level and/or section/item level)
- Copying of existing assessments
- Item Editor/Creator
  - Content only
  - Textbox (Short Answer and Essay)
  - Multiple Choice item types
    - Radio buttons
    - Drop Downs
    - Check boxes
    - Likert/Martix
  - Operational and Experimental Item Types
  - Candidate, Administrator, and Client Demographics
- Flexible Test Builder/layout editor
- Scoring Types. All scores support score weighting.
  - Raw (Counts or sums the total of correct or incorrect responses)
  - Text (Text responses to given outputs)
  - Percentage (x out of y)
  - Percentile (User input lookup tables with numeric output)
  - Expression (All mathematical operations against other score types)
  - Banded (User input lookup tables with text output)

- Reports
  - Use of ***pan*** generic report format

Self-Authoring Tool Features – Static Forms

- Supports client creation and deployment of static forms.
- The form designer provides a user interface to easily create, edit, and publish forms in just a few minutes.
- The forms designer allows the user to add pages, create page headers/footers, add images, save prior to completion, define font styles/sizes, and preview the form.
- There are many types of fields available to use, including drop down lists, radio buttons, check boxes, text boxes, and content fields.

3RD PARTY TESTS/TEST BATTERIES

The Port Authority may choose to implement assessments from the ***pan*** catalog of commercial assessments. Our platform contains sample reports and technical manuals for those assessments that the Port Authority can review to determine which tools to use.

The ***pan*** platform allows users to combine assessments into test batteries that can be assigned to a candidate. All of the assessments in the battery will then be presented back-to-back to the candidate, eliminating the need for the administrator to assign each assessment to the candidate individually. If a battery of assessments is delivered, each assessment will generate its own score report.

APPLICANT INVITATIONS

pan will not transfer candidate eligibility, demographic, or exam results data via FTP, PeopleSoft, or another integration method.

Rather, the Port Authority will be responsible for determining eligible candidates, uploading candidate demographic data into the ***pan*** system, and for exporting any examination results data from the ***pan*** system. The ***pan*** system accepts CSV files for uploading candidate information (first name, last name, login ID, password, and email address).

SCHEDULING/TESTING ACTIVITY

The ***pan*** system has dashboards that will provide Port Authority users a real-time view the number of candidates at each step in the process as well as specific details for each candidate.

TEST RESULTS/REPORTS

Individual Assessment Reports

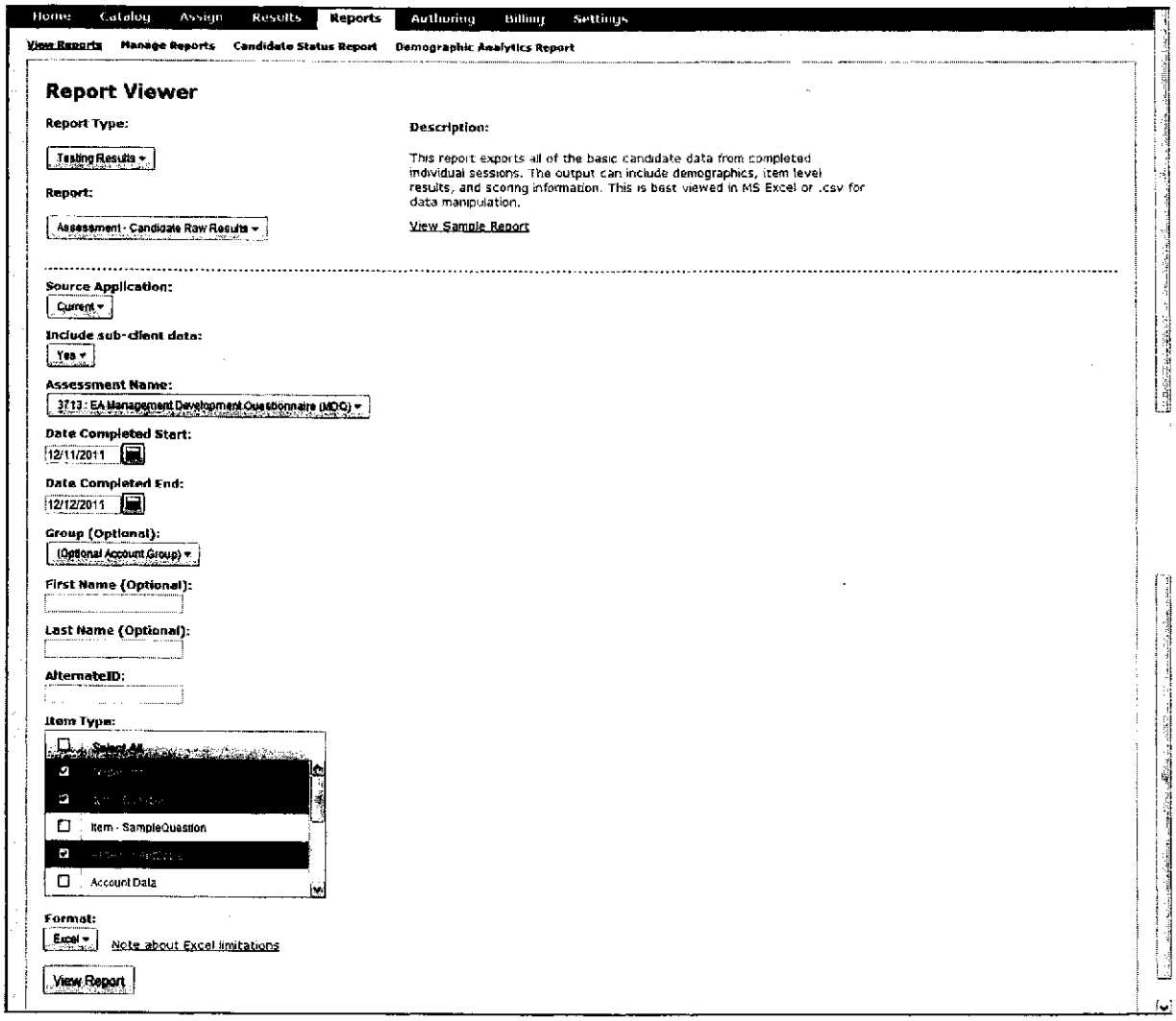
As test takers complete the assessment (or time has expired), their answers are uploaded automatically to ***pan*** scoring servers with 128-bit SSL encryption. Once the assessment is complete, ***pan's*** scoring servers automatically score the assessment. The time between test completion and generating the scores/report is typically less than a minute. The assessment report is also immediately available for the Port Authority test administrator to access in the ***pan*** system.

Each assessment in the ***pan*** commercial catalog contains an off-the-shelf report that provides the candidate's results; Port Authority test administrators can access this in the ***pan*** system.

Aggregate Assessment Reports

In addition to individual assessment results reports, assessment administrators will also have 24x7 access to aggregate assessment reports. These reports support record keeping and data monitoring by providing easily accessible, accurate, and detailed information about the client's assessment program including administrator activity, candidate status, and raw assessment results. The ***pan*** platform also provides aggregate reports that calculate descriptive statistics such as assessment scale score ranges, means, standard deviations, and demographic comparisons for legal defensibility analyses. These aggregate reports provide a snapshot of group assessment performance and can be generated based on date ranges, candidate groups, and any other demographic information recorded in the ***pan*** system and can be exported into XLS, CSV, and PDF files.

pan will <u>not</u> transfer candidate results data via FTP, PeopleSoft, or another integration method. Rather, the Port Authority will be responsible for exporting any examination results data from the *pan* system.



■ Question #2

Publish test content associated with the Port Authority examination program in PAN proprietary test delivery software.

Self-Authoring Assessment
Information regarding features of ***pan's*** self-authoring assessment tool is provided in Question #1.

pan *IT Assessment Development*
The web-enabling of proprietary content from our customers and partners is a cornerstone of ***pan's*** capabilities from its inception. For each web-enablement project, ***pan*** follows a standard process which includes: business requirements, web-development, quality assurance, user acceptance testing, and production release.

The ***pan*** content delivery system is very flexible as it can support a full range of formats, including multiple choice (both radio and selection boxes), multiple-multiple choice, response de-selection, open ended text box inputs, and Likert scale (both tabular and slider scale).

■ Question #3

Ensure that the Port Authority has an opportunity to review and approval the final version of all published test content for its program prior to launch in the PAN testing network in a timely basis within agreed upon timeframe.

If ***pan*** performs the IT development work to implement the assessment(s), part of our standard process is to provide clients a UAT period to review the assessment(s) prior to releasing the assessment(s) to the live production environment. Typically the ***pan*** project manager or account manager will inform the client of their UAT dates.

■ Question #4

Distribute active Port Authority exams to the approved test center locations on a timely basis within agreed upon timeframe to ensure examinations are available for registration, scheduling, and delivery to the target population.

pan will work with the Port Authority after contract execution to determine the timeframe for the exams to be available to the test centers. Once the assessments are added to our platform, candidates can register, schedule, and complete their exam sessions. Candidates complete the assessments on our online testing platform, so there is no physical "distribution" of exams to the test center locations.

■ Question #5

Should the Port Authority want to utilize a test not in the PAN testing catalog, PAN will provide assistance to encourage the test vendor to make test available through PAN.

The Port Authority may choose to use assessments from the ***pan*** commercial catalog; such assessments will be billed at ***pan's*** then-current list prices.

Should the Port Authority have a need for an assessment that ***pan*** does not currently offer, we can participate in a joint discussion with the Port Authority and the test vendor. There may be additional fees to add additional assessments to the pan platform and are outside the scope of this project. ***pan*** and the Port Authority would mutually-agree to a statement of work prior to any work commencing.

■ Question #6

Employ policies, procedures, and tools to maintain the test security and confidentiality of all examination content and personal demographic data associated with the Port Authority examination program. PAN agrees to indemnify, defend and hold Client harmless from and against any and all Losses arising out of any third party claim, action or proceeding, based directly or indirectly on (a) the operation by PAN or its agents of any PAN Test Center or equipment or facilities, (b) its failure to comply with any applicable laws or regulations concerning the operation of the PAN Test Centers or (c) the administration of the Tests.

pan takes testing center security very seriously. All ***pan*** testing centers are locked after hours and have alarm systems installed. All data transmissions during the test session are encrypted using TLS 1.0 (SSL 3.1). However, even if there were a physical security breach and a PC used for testing was stolen, no secure materials would be compromised because test content is not cached after the test session terminates. Additional security information is provided in Question #24.

To prevent unauthorized exam content exposure, the candidate cannot begin an exam prior to being successfully checked in by the proctor. Upon candidate login, the system checks to ascertain that the unique identifier entered by the candidate is valid and that the candidate has checked into the exam at the time and location specified in the record. To further enhance security, tests can only be accessed by specific pre-determined IP addresses at the testing centers.

pan will abide by the security and confidentiality clauses in the Agreement, including any standard Port Authority security/IT/auditing related checklists that we have amended.

pan agrees to the indemnification clause above and to the indemnification clauses in the Agreement. However, ***pan*** is not responsible for any third party claim related to the "fairness" of the exam or the examination content as ***pan*** did not develop the exam content or review its validation research.

■ Question #7

Notify the Port Authority of any breaches or potential breaches in test security or confidentiality within 24 hours of the suspected breach.

pan will notify the PA of any confirmed breaches in test security or confidentially within one (1) business day of said confirmation.

■ Question #8

Support the transfer of candidate eligibility and demographic data, as well as examination results data, via a secure transmission protocol – such as FTP or via direct interface with PeopleSoft.

pan will not transfer candidate eligibility, demographic, or exam results data via FTP, PeopleSoft, or another integration method.

Instead, the Port Authority will be responsible for determining eligible candidates, uploading candidate demographic data into the ***pan*** system, and for exporting any examination results data from the ***pan*** system.

■ Question #9

Provide and maintain an internet-based registration and scheduling tool system for candidates to register for Port Authority approved exams and to schedule appointments within 48 hours of PAN's receipt of candidate eligibility data. This system should enable candidates to pay all or their designated portion of the examination fees on-line, via major credit cards (Visa, Mastercard) or via Debit Card (check card).

PAN will work with the Port Authority to identify those individuals for whom the Port Authority will waive all fees, and will provide support to effectively schedule those appointments if a separate process is required.

After the eligible candidates have been uploaded into the ***pan*** system by the Port Authority and assigned to an assessment process, the candidate will receive an email inviting them to log into the ***pan*** system to pay for and schedule their exam. Candidates are presented with a screen (or page) outlining scheduling procedures and policies, as well as pre-test preparation information such as when to arrive, what identification will be required, and cancellation or rescheduling requirements. The candidate will then pay the appropriate fee based on the exam they selected.

The candidate will then use ***pan's*** web-based scheduling system to search for test sessions by date, time, and location. Candidates will be able to search by zip code, identify the testing center that is most convenient, and schedule their test session at the center and time of their choice. If candidates need to cancel or reschedule their appointment, they can log into their account and use the web-based scheduling system to choose another date, time and location.

In regards to candidates with waived fees, the Port Authority will be responsible for making those determinations and for uploading those candidate records into the ***pan*** system. Those

candidates can then be assigned to a separate process workflow that will allow them to bypass the payment step prior to scheduling their exam session.

■ Question #10

Provide a toll-free number for Port Authority candidates to call for assistance in registering and scheduling a testing appointment. The hours of operation should include weekdays and evenings, from Monday through Friday. Staff will be trained to support the administration of the Port Authority program requirements.

Should any candidate need assistance during the exam process, they can call ***pan's*** toll-free technical support line for assistance. ***pan*** provides e-mail and domestic toll-free technical support for users during normal business hours (7 am – 6 pm Eastern Mon-Fri and 8 am – noon Saturdays, excluding major US holidays) in English. After hours and holiday technical support is available via telephone with the on-call technician. ***pan's*** telephone menu system permits the after-hours caller to be connected directly with the on-call technician for urgent issues or to leave a voice mail message to be returned the next business day for non-urgent issues.

Additionally, the ***pan*** system contains a "Check My Browser" feature that clearly verifies the minimum system requirements are met. The information on this page also assists the ***pan*** technical support team in resolving support issues.

All technical support technicians are fully trained on our systems and client programs to ensure all candidate needs are met. ***pan*** holds weekly technical support team meeting to discuss current issues and industry changes. ***pan*** holds a training session prior to each major client launch to review any specific client policy items that need to be communicated.

■ Question #11 – *Updated 3/7/12*

Provide **multiples accessible test centers throughout the New York and New Jersey region** that offer an environment conducive for professional, secure computer-based test administration. Facilities are well maintained and have appropriate restroom facilities, lighting, seating and desks, and offer security features to monitor candidates and PAN staff to ensure test security. All centers will conform to the accessibility requirements of the Americans with Disabilities Act (ADA). Test centers will typically be open and available 5-6 days a week, Monday through Saturday, (excluding holidays) with testing available from 8:00 AM to 5:00 PM. Actual operating hours will vary by site. Centers will flex schedules to ensure that Port Authority candidates are typically able to schedule an appointment within 10 business days of the date on which they contact PAN.

pan will provide testing centers in the New York and New Jersey region for the Port Authority exam program. Due to the size of ***pan's*** testing center network, candidates should be able to use the self-scheduler to select an appointment within 10 business days; candidates will be presented real-time information on test session availability. Appointments may be scheduled 24 hours prior and cancelled/rescheduled at least 48 hours prior.

pan imposes stringent standards that each partner testing center must meet in order to serve as an authorized ***pan*** testing center location. Those standards address requirements regarding testing procedures, location attributes, proctor and testing center personnel, security, and equipment. By instituting these standards, ***pan*** ensures consistent test-site experiences for all candidates.

Our typical testing center is located in a college/university or professional office settings, with access to public transportation and parking facilities. The average number of testing center seats per location is 10; in high population areas there are multiple centers that can be utilized to meet candidate demand. All testing centers are ADA compliant.

pan testing centers maintain operating hours that allow candidates to easily schedule their appointments at times most convenient for them. We usually operate Monday through Friday during normal business hours, including at least some evenings and weekends by location. Testing centers may also extend hours to meet local demand by market or season, and have been known to open early or stay open late to accommodate increases in testing demand.

pan's Testing Center Standards Overview

- Maintain a distraction-free testing environment
- Secure, temperature controlled environment, well-lighted
- Adequate spacing between testing stations and vertically aligned computer monitors.
- Standardized process and protocols to ensure consistent service delivery
- Convenient parking/access
- Convenient access to mass transit where available
- Facilities provide comfortable environment with restroom facilities and conveniences

■ Question #12

Adjust computer–based testing capacity to accommodate large scale recruitments with advanced notice.

The ***pan*** testing center management staff routinely conducts forecasting meetings to ensure that available capacity provides a comfortable margin in excess of projected volumes. To accomplish this, we work with our clients to determine if additional centers need to be activated. ***pan*** also conducts reviews or planning calls with clients when a known increase in testing volume is forecasted to ensure we plan for their needs.

■ Question #13

Ensure that PAN test center staff consistently adhere to Port Authority program requirements during exam administrations, including validating candidate identification requirements and other client policies and procedures.

All testing center proctors are trained, certified, and then recertified every six (6) months by ***pan*** on the administration of its testing systems, candidate check-in/out procedures, and the management of our client's exam protocols. ***pan*** requires proctors to take online computer based training and then pass a quiz. Only after proctors are trained and certified will they be registered and issued a unique password to ***pan's*** proprietary EvM Console, which will enable them to administer the tests.

pan has a proctor guide that is used for all proctor training and day-to-day reference of policy and procedure requirements. The guide is accessible to proctors and can be viewed prior to, during, and after active testing sessions.

■ Question #14

PAN test centers will provide lockers for candidates to store their personal items which are not allowed into the testing area.

Not all ***pan*** testing centers will have lockers available for candidates. The testing center proctor will instruct the candidate where they can store their personal items and they will not allow personal items in the testing area.

■ Question #15

Prior to being admitted to the test room, candidates identify will be verified and re-verified as they leave/re-enter the test room.

Upon logging onto ***pan's*** proprietary Event Manager Console (EvM), testing center proctors are presented with a list of candidates scheduled to test at their designated location. The proctor will make visual verification of the candidate to the photo on the ID presented, as well as cross check the name on the ID to the candidate name in the system. The type of identification used for candidate verification is entered into EvM for tracking purposes.

Should the candidate choose to leave the testing room, the proctor will use the break check-out/in feature in EvM and re-verify the candidate's ID when they return to the testing room.

■ Question #16

PAN test proctors will ensure that each candidate is escorted into the testing room and is seated at the appointed workstation for the test event. Only approved reference materials will be allowed in the testing room. PAN will distribute scratch paper, if approved, and will collect and discard of scratch paper at the end of the testing event.

After verifying the test taker's identification, the proctor will then provide any required test materials (such as pencil, 4-function calculator, scratch paper, etc.) and will read any pre-test instructions. Pre-test instructions inform the candidate of important information prior to the start of the test, such as testing room restrictions (no electronic devices, personal items, etc.) and consequences for the breach of testing policies, such as cheating. The proctor will then escort the candidate to their testing station to begin the exam.

During the check out process, the proctor is required to collect all test materials that were distributed to the candidate, including any scratch paper or reference materials. The proctor must verify that all materials are accounted for prior to allowing the candidate to exit the testing center. Should a candidate leave the testing center with any scratch paper or printed materials in their possession, the proctor must immediately follow ***pan's*** breach in testing policies procedure.

■ Question #17

Offer special test accommodations (e.g., extra time, large print) to candidates as approved by the Port Authority.

The Port Authority will be responsible for reviewing and approving any special test accommodations requested by the candidate. ***pan*** shall provide any accommodation necessary under law for an appointment. Any additional fees that are incurred by ***pan*** for these appointments will be charged at cost to the Port Authority. This includes items such as a Reader, magnifier, extended time test versions, etc.

■ Question #18

PAN test proctors will monitor candidates closely (remotely and directly) and follow procedures necessary to maintain test security and confidentiality.

During the test session, the proctor monitors the entire test taking process. All ***pan*** proctors use the EvM Console to track critical administrative tasks during a test session, including check-in time, start time, break times, test completion, and check-out time.

A significant component of proctoring involves ascertaining that all examination protocols are followed, as well as monitoring irregularities and deviations from prescribed protocols such as late candidate arrival, technical problems, medical issues, environmental events (e.g., power outage or fire alarm at testing center), suspected cheating, in addition to any candidate-reported issues. Question #21 provides more detail related to unusual occurrences at the testing center.

■ Question #19

PAN test proctors will not be eligible to be considered for Port Authority job titles, nor may PAN test proctors be eligible to sit for Port Authority exams for a minimum of 5 years after end of employment.

Read and understood. The Port Authority monitors this through review of employment history.

■ Question #20

PAN test proctors will immediately provide candidates a hard copy score report upon completion of test administration. The content and format of the score report will be determined in collaboration with the Port Authority.

When the candidate completes the exam at the testing center, their responses are automatically scored on a real-time basis and the exam score report is generated. During the candidate check-out process at the testing center, the proctor will print the score report for the candidate. ***pan*** does not provide an "official" designation on the score report such as a seal, stamp, or use of special paper.

The content and format of the score report is assumed to be similar across all exams; final report designs will be determined by ***pan*** and the Port Authority.

■ Question #21

PAN test proctors will file an unusual occurrence report for any test center issue that may impact a Port Authority testing candidate. PAN client services managers for the Port Authority account will advise the Port Authority of the nature of any such occurrences and will advise the Port Authority of actions taken to remedy the issue. PAN will cooperate with the Port Authority in any investigation that the Port Authority deems necessary.

If a proctor observes any suspicious behavior, the proctor initiates an Incident Report in the proctor console, which is sent immediately to the ***pan*** testing center director for further exploration and action. Proctors are also trained to immediately call a ***pan*** testing center manager to discuss suspicious activity and take the necessary steps to intervene, terminate the exam, or contact the client to discuss. ***pan*** testing center directors monitor Incident Reports daily, utilizing several proprietary reporting and dashboard mechanisms which allow ***pan*** to ensure that all are reviewed and resolved in a thorough and efficient manner.

pan's operations team or account managers can work with the Port Authority to notify them of serious breaches of testing policy (such as suspected cheating) and actions that were taken.

■ Question #22

Provide an invoice to the Port Authority for the balance of the test administration fee not paid by the candidate. Invoices will include all tests administered during the period, as well as candidate no shows and cancellations with less than two days notice from the prior calendar month. The invoice will be issued no later than the **15th of the following month**. The invoice will identify the candidate tested or scheduled for testing, the test administered or scheduled to be administered, and the associated fee. The invoice will also identify candidates for whom the candidate fee was waived for whom the Port Authority will be billed the full test administration fee.

pan will collect all applicable fees prior to examination scheduling. Payments may be made via credit/debit card (Visa, MasterCard, and American Express) and are processed by PayPal . Once processed, payment information details are neither displayed online nor stored internally at ***pan***.

A candidate can cancel their appointment at least 48 hours ahead of time and then reschedule without paying an additional fee. Additionally, all paid exams must be completed within 365 days of purchase.

By no later than the 15th of the following month, ***pan*** will submit an invoice to the Port Authority for the proctored testing activity from the previous month. The invoice will include a detailed recap of each test session, including elements such as: candidate name, appointment date/time/location, exam, candidate status (complete, no show, etc.), candidate fee paid, and fee due to ***pan***.

■ Question #23

Enact changes, corrections and resolve client or candidate related problems within 24 hours.

pan will use best commercial effort resolve candidate related problems within 1 business day.

pan's will utilize its standard SLA (included in Appendix 1) to determine the severity of an incident and will respond in the appropriate timeframe. Changes or corrections for exam content, scoring, or reporting that require ***pan's*** development resources may take longer than 24 hours.

■ Question #24

Maintain security and confidentiality of all electronic and hard copy candidate data, test score information, and credit card information.

The ***pan*** system has been designed to provide maximum data security at its core. The system utilizes a three-tier architecture with the web servers residing in the DMZ and application and database servers residing on data center segment. Only obfuscated ports are open between the web and application servers – no direct connections from the web servers to the database servers are permitted.

Traffic from both the DMZ and data center segments is inspected by a Network Intrusion Prevention System (NIPS) that is monitored 24x7x365 by IBM/ISS. Any suspected incident is escalated to the appropriate party within the company.

As the assessment vendor for the Department of Homeland Security (DHS) Transportation Security Administration's (TSA) Integrated Hiring Operations and Personnel (IHOP) Human Resources Access (HRAccess) program, ***pan*** systems have been hardened to DHS and NIST standards.

pan's production systems are hosted in the TALX (***pan's*** parent company) data center in St. Louis, MO which meets and exceeds the Telecommunications Industry Association *TIA-942 Telecommunications Infrastructure Standards for Data Centers* definition of a Tier 1 facility. The facility is staffed 24x7x365 by Network Operations Center (NOC) personnel who monitor both the systems and the facility security. Access to the data center is controlled by a two-factor proximity card requiring both card and PIN for entry. The TALX facilities are also equipped with burglar alarm keypads, as well as 24-hour monitoring, by a third-party vendor. The alarm systems have interior motion sensors and magnetic proximity switches that protect exterior openings.

Daily incremental and weekly full data backups are performed. Backup jobs are monitored for completion. Test restores of critical data are conducted on at least a quarterly basis to verify the integrity of the off-site tapes. All backup tapes are encrypted using the AES-256 algorithm. Backup tapes are stored off site at a secure third-party storage facility. The vendor performs

pickup and delivery Monday through Friday. At the third-party storage facility, the tapes are stored in a secure vault.

All candidate data exchanged within our solution is transmitted over HTTPS will use SSL 3.0/TLS 1.0 encryption. Any other data transmissions will be encrypted using a FIPS 140-2 approved algorithm.

All candidate fee collection is conducted through a PayPal account. PayPal adheres to PCI (payment card industry) compliance standards for data security; PAN is PCI compliant.

■ Question #25 – *Updated 3/7/12*

Maintain database of registration/scheduling and test score information.

The ***pan*** system utilizes a centralized enterprise database (Microsoft SQL) that is hosted by ***pan***. Candidate data, test session data, and exam results are all stored in the database. As described previously, the Port Authority can use ***pan's*** out-of-box reporting module to export this data on an as-needed basis. This functionality will allow the Port Authority to store candidate information on their servers to meet any of their data retention requirements.

Unless otherwise specified in a contract, ***pan*** retains said records for a period of 7 years.

■ Question #26 – *Updated 3/7/12*

Provide assistance to the Port Authority to allow for computer-based test administration at the Port Authority's computer facility(s).

pan can work with the Port Authority to add PA facilities into the available locations the candidate can select when scheduling their session. In this situation, ***pan*** still requires any PA proctors to go through our proctor training processes and each facility will have to upload their testing schedule into the ***pan*** system.

The Port Authority will also have to adhere to ***pan's*** minimum system requirements for computers used for exam delivery.

- Internet Explorer (IE) 7.0 is currently supported for all aspects of the platform, except for forms authoring, which requires IE 8.0 or above. IE 9.0 is supported when used in "Compatibility Mode". System requirements, such as supported browsers, are subject to change. (Note that forms authoring is not part of the Port Authority's initial solution.)
- Minimum 1024x768 screen resolution
- Windows XP service pack 2 or above
- Broadband internet connection
- Pentium 4 processor or above, minimum 1GB RAM

(Note that the Port Authority systems used for exam delivery would need to have a web camera in order to capture the candidate photo during the check-in process.)

Question #27

Provide training.

pan follows a "train the trainer" model in educating clients on use of our platform. In this, ***pan*** will provide training (typically by phone or webinar) to key Port Authority personnel (typically <15 people). These key users are then responsible for training other users within the organization. These training sessions are conducted by those most familiar with the solution requirements, usually either the ***pan*** account manager or the project manager. ***pan*** does not charge for the "train the trainer" sessions. Should the Port Authority desire on-site training, related travel/materials expenses would be the responsibility of the Port Authority.

■ Exam Information – *Updated 3/7/12*

The following are the current exams the Port Authority desires to have available through the ***pan*** solution. This list may be amended at any time through an Amendment to the Agreement.

Position	Exam Duration	Proctored Session Duration	Test Format	# Items%	Reference Materials?
Building Construction/General Maintainer	2 hours	2 hours 30 min	Multiple Choice	75	No
Passenger Information Agent	2 hours 15 min	2 hours 45 min	Multiple Choice	50	Yes
Toll Collector	1 hour 45 min	2 hours 15 min	Multiple choice	60	Yes
Security Guard	1 hour	1 hour 30 min	Multiple choice	60	Yes
HVAC/Utility Systems Maintainer	2 hours	2 hours 30 min	Multiple choice	105	No
Stationary/Watch Engineer	2 hour 30 min	3 hours	Multiple choice	115	No
Electrician	2 hour 30 min	3 hours	Multiple choice	100	No
PATH Entry Level Maintenance*					
Police Officer#	2 hour 25 min	3 hours	Multiple choice	80	No

Considering using **pan catalog tests for this position. If so, the duration/format/reference answers are unknown.*
#This assessment is currently under revision. Estimated testing for this is April 2013.
%These are the number of items completed by the candidate, not necessarily the number of items in the exams' item bank (if applicable).

Exam Score Reports

All score reports for the Port Authority proprietary exam content share a similar layout. They indicate if the candidate passed or failed and provide a breakdown of scores by test section, and indicate next steps.

If ***pan*** catalog assessments are used, the standard score reports will be generated and will not be in the same format as the Port Authority proprietary exam reports nor will be combined with Port Authority proprietary exam data.

■ Estimated Timeline Information – *Updated 3/7/12*

pan's delivery/implementation dates are dependent upon the current project queue when the contract is fully executed.

Private Label Setup
pan will work with the Port Authority to get the private label site configured with the appropriate logos, colors, etc. This should take between 1-2 weeks and can be done after contract execution.

Workflows Setup
pan will work with the Port Authority to get the workflows setup for the exams outlined in the table above (excluding the Police Officer test as that is a future need). This should take between 1-2 weeks (can be started after contract execution) and then can be finalized once exams/reports are available.

Test Builds
Either the Port Authority or ***pan*** can conduct the work needed for the initial implementation. Below is a recap of both scenarios and the options for each. Note that the underlying reason for the options is due to the fact that the ***pan*** authoring tool does not support item randomization.

- ***Scenario 1: Test Builds Done by the pan Development Team***

The ***pan*** development team builds the exams with randomization. The Port Authority cannot make future changes to the exam content; ***pan*** can make future changes through our standard development cycle.

- ***Scenario 2: Test Builds done by the Port Authority***

The Port Authority implements the exams using the ***pan*** authoring tool; however the exams must be in a fixed form format (no randomization). This option allows the Port Authority to make future changes to the exams (including changes to the pass/fail cut score) at any time using the ***pan*** authoring tool.

Score Report Builds
Creation of the exam score reports must be done by ***pan*** as the authoring tool does not provide this functionality. ***pan*** can make future changes through our standard development cycle (subject to a separate SOW).

■ *pan* Assumptions

- All ***pan*** services are provided in U.S. English only.
- All proctored test session durations will include an additional 30 minutes for the candidate check-in/out process.
- ***pan*** will not provide fingerprinting services.
- ***pan*** will not provide a stamped/embossed/sealed score report, nor use special paper for them to be printed on.
- A paper copy of the score report will be provided to the candidate during the check-out process. ***pan*** will not provide immediate feedback on-screen at the completion of the exam. This applies to both PA proprietary tests and ***pan*** catalog tests.
- Exam sessions will be offered on an on-going basis.
- Candidate information guides will be created by the PA (with input from ***pan*** as needed) and will be available to candidates from the PA website.
- When candidates are loaded into the ***pan*** system, only the following values can be added: first name; last name; email; login ID; alternate ID; postal code; password.
- ***pan*** will assist the PA as needed to set up workflows for the different positions, but the PA will be responsible for assigning candidates to the appropriate workflow (internal vs. external candidates, fee waivers, etc).
- ***pan*** will have retest functionality implemented as of 4/1/12. ***pan*** will work with the PA to best determine how to manage retest rules for all candidates (considering that ***pan*** does not have historical candidate data).
- The candidates' login IDs and passwords can be set by the PA during the candidate upload process. The ***pan*** system will not utilize an additional candidate verification/validation method (such as confirming a PeopleSoft ID) upon their logging into the ***pan*** system.
- If ***pan*** catalog tests are utilized, the PA is responsible for determining the score values that determine the pass/fail result. Additionally, the ***pan*** catalog tests will only generate the off-the-shelf score reports. Custom output reports for ***pan*** catalog tests could be accomplished through a separate statement of work.
- ***pan*** will not have background checks conducted for its employees nor for any test center personnel.
- ***pan*** has no involvement in the practical exam portion of the PA hiring process.
- ***pan*** will not import any historical candidate/exam data (from the existing provider) into the system, nor will it provide a method for the PA to do so.
- ***pan*** will not integrate with PeopleSoft for this solution, nor will provide any automated data file feeds. Either of these functions could be accomplished through a separate statement of work.

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■ *pan* Solution Costs – Scenario #1 – *New 3/7/12*

Scenario 1: Exam Builds Done by the pan Development Team

Services	Description	Year 1 Cost	Year 2 Cost	Year 3 Cost
Startup Costs	Configure testing platform, self-scheduling module, candidate communications, and project management. Year 2 and 3 costs are for project management and annual platform maintenance fees.	$17,700	$9,000	$9,000
Exam Publication	Web-enable the following 8 exams/score reports for online delivery: Building Construction/General Maintainer; Passenger Information Agent; Toll Collector; Security Guard; HVAC/Utility Systems Maintainer; Stationary/Watch Engineer; Electrician; and Police Officer.	$22,250	$0	$0
Exam Administration	Exam Session: Deliver the exam online in ***pan*** testing centers. Up to a 3 hour exam session (including 30 minutes for candidate check-in/out).	$63.00 (Attended) $31.50 (Unattended)	$63.00 (Attended) $31.50 (Unattended)	$63.00 (Attended) $31.50 (Unattended)
Exam Changes	Adding/deleting/editing questions on the Port Authority proprietary exams. Up to 50 changes per contract year.	$2,500	$2,500	$2,500
Additional Services Subject to a Separate Statement of Work				
New Exams/Score Reports	Web-enabling additional Port Authority proprietary exams/score reports at a future date will be subject to a separate mutually-agreed upon statement of work. If the exams are similar to the ones identified in the "Exam Publication" section, the exam publication fee will be utilized (on a per-exam basis).			
pan Catalog Assessments	The use of any existing ***pan*** catalog assessments will be billed at the then-current ***pan*** list price.			
New ***pan*** Catalog Assessments	Adding new, commercially-available assessments to the ***pan*** catalog will be subject to a separate mutually-agreed upon statement of work.			
ATS Integration	An integration to PeopleSoft or another ATS provider will be subject to a separate mutually-agreed upon statement of work.			

■ *pan* Solution Costs – Scenario #2 – *New 3/7/12*

- ***Scenario 2: Exam Builds done by the Port Authority (no randomization)***

Services	Description	Year 1 Cost	Year 2 Cost	Year 3 Cost
Startup Costs	Configure testing platform, self-scheduling module, candidate communications, and project management. Year 2 and 3 costs are for project management and annual platform maintenance fees.	$17,700	$9,000	$9,000
Exam Publication	Web-enable the following 8 score reports for online delivery: Building Construction/General Maintainer; Passenger Information Agent; Toll Collector; Security Guard; HVAC/Utility Systems Maintainer; Stationary/Watch Engineer; Electrician; and Police Officer.	$7,500	$0	$0
Exam Administration	Exam Session: Deliver the exam online in ***pan*** testing centers. Up to a 3 hour exam session (including 30 minutes for candidate check-in/out)	$63.00 (Attended) $31.50 (Unattended)	$63.00 (Attended) $31.50 (Unattended)	$63.00 (Attended) $31.50 (Unattended)
Exam Changes	Adding/deleting/editing questions on the Port Authority proprietary exams. Up to 50 changes per contract year.	$2,500	$2,500	$2,500
Additional Services Subject to a Separate Statement of Work				
New Score Report	Web-enabling additional Port Authority proprietary exam score reports at a future date will be subject to a separate mutually-agreed upon statement of work. If the score report is similar to the ones identified in the "Exam Publication" section, the exam score report publication fee will be utilized (on a per-exam basis).			
pan Catalog Assessments	The use of any existing ***pan*** catalog assessments will be billed at the then-current ***pan*** list price.			
New ***pan*** Catalog Assessments	Adding new, commercially-available assessments to the ***pan*** catalog will be subject to a separate mutually-agreed upon statement of work.			
ATS Integration	An integration to PeopleSoft or another ATS provider will be subject to a separate mutually-agreed upon statement of work.			

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■ *pan* Solution Cost Information – *New 3/7/12*

- Each exam administration session will include at least 30 minutes for the candidate check-in/out process.

- A candidate can cancel their appointment at least 48 hours ahead of time and then reschedule without paying an additional fee.

- Attended sessions are defined as follows:
  - Candidates who complete their testing session (Complete)
  - Candidates who do not provide appropriate photo identification. (Improper ID)
  - Candidates who cannot be positively identified by the ID they provided. (Improper ID)
  - Candidate arrives and chooses not to take or, if started, not to complete test. (Incomplete/Not Excused (Candidate))
  - Candidate is suspected of a Breach in Test Policies and will not be allowed to complete testing. (Incomplete/Not Excused (Candidate))

- Unattended sessions are defined as follows:
  - A candidate who does not show up at all for a scheduled appointment time (No Show).
  - Cancellations received by *pan* 48 hours or less than the scheduled testing session (Late Cancel).
  - A candidate who arrives more than 30 minutes late for their scheduled appointment time (Late Cancel).

- Future project initiatives may include an ATS integration and/or adding new commercial assessment content to the *pan* catalog. A separate statement of work will be mutually-agreed upon for these items since the scope cannot be determined at this time.

■ Appendix 1: SLA

pan is committed to providing you, our valued partner, with superior service and support. Our Service Level Agreement (SLA) provides security, service, support, uptime and performance standards to our customers and partners alike.

Security

pan will never make identifying data about you or your firm available to any third party unless you request it in writing. *pan* ensures the privacy of your data by utilizing industry best-practices for security such as password protection, data encryption, and secure networks.

pan ensures the safety of your data by making regular nightly backups for disaster recovery purposes. Components of the system, where technically feasible, are redundant and fault tolerant.

Service and Support

pan's normal support hours are Monday through Friday, 7 AM to 6 PM, Eastern Time (excluding major US holidays). Support is available via telephone and e-mail to assist in resolving problems, and for reporting of suspected defects or errors in our services. Additionally, *pan* provides telephone-only support, via on-call agents, for issues reported outside our normal support hours.

pan will diligently work for the prompt resolution of defects and errors in our services. *pan* will provide you with a contact telephone number and dedicated e-mail address for reporting issues to us. *pan* will notify your designated Point of Contact (POC) within three business hours of any known and verified unscheduled downtime of our services, and update the status to your POC periodically until the service is restored. In the case of a system outage attributable to *pan*, *pan* may utilize other means of communication for both reporting of errors and conditions.

pan will respond to and complete correction of errors, defects, and malfunctions in accordance with the following severity definitions:

Severity 1:	System outage or impairment preventing you from making effective use of our services or that causes data corruption;
Severity 2:	Feature does not work as documented, no reasonable work around exists and you have a critical need of the feature;
Severity 3:	Feature doesn't work as documented but a reasonable work around exists or you can wait for the next release for a fix;
Severity 4:	Enhancement request.

pan will make an initial response to a Severity 1 support call within two business hours after receipt. Severity 1 issues will be handled on an 8 hour x 5 day a week basis. *pan* will use reasonable efforts to provide a fix, work around, or to patch Severity 1 bugs within twenty-four (24) business hours after issue is replicated and confirmed by *pan*.

Provided that support calls are received within *pan*'s normal support hours, *pan* will make an initial response to Severity 2 support calls within five business hours after receipt. *pan* will make reasonable efforts to provide a fix or work around for Severity 2 issues within three business days.

Provided that support calls are received within *pan*'s support hours, *pan* will make an initial response to Severity 3 support calls within twenty-four (24) business hours after receipt. *pan* will make reasonable efforts to identify a resolution to Severity 3 bugs within thirty (30) days and to incorporate Severity 3 fixes in the next upcoming release of the product.

Provided that support calls are received within *pan*'s support hours, *pan* will make an initial response to Severity 4 support calls within twenty-four (24) business hours after receipt. Severity 4 issues will be dealt with on a case-by-case basis.

Uptime Standard

The portions of our software application services which are operated by *pan* will have at least 99% uptime, as measured monthly, excluding planned downtime. In addition, the portion of our software application services operated by *pan* will not experience more than two outages (unscheduled downtime) lasting longer than two hours in any month. Scheduled downtime will be no greater than four hours bi-weekly and will happen at a regularly scheduled time during off-peak periods.