

**BOARD OF EDUCATION RETIREMENT SYSTEM  
OF THE CITY OF NEW YORK**



**REQUEST FOR PROPOSAL**

**RFP #2023-02**

**Unified Communications as a Service and Contact Center as a Service**

**This Request for Proposal is issued on 06-01-23 by:**  
NYC Board of Education Retirement System  
55 Water Street, 50<sup>th</sup> Floor  
New York, NY 10041

**Proposals will be received via email to:**  
**[BERSProcurement@bers.nyc.gov](mailto:BERSProcurement@bers.nyc.gov)**

**Emailed responses must be received by no later than 5PM EDT, Friday June 23, 2023.**

**NO LATE PROPOSALS WILL BE ACCEPTED**

**EACH EMAIL RESPONSE MUST BE LABELED WITH RFP #2023-02: UCaaS and CCaaS**

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**FOR PURPOSES OF THIS RFP, “WE,” “US” OR “OUR” SHALL MEAN THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM, AND “YOU” OR “YOUR” MEANS THE ENTITY SUBMITTING THE PROPOSAL TO NYCBERS.**

# 1. INSTRUCTIONS TO PROPOSERS

## 1.1 Contact for This RFP

This Request for Proposals (RFP) is issued by the NYC Board of Education Retirement System (BERS or the Agency).

Proposers are advised that from the date this RFP is issued until the award of the contract, NO contact with agency personnel related to this solicitation is permitted, except via the e-mail designated below. All comments, questions, and correspondence regarding this RFP should be submitted via email to:

BERSProcurement@bers.nyc.gov

Questions must be received by no later than 5PM on Friday, 06-09-23; after this date/time, no further inquiries will be accepted. The subject line of email inquiries regarding this RFP must read: "RFP #2023-02: UCaaS and CCaaS".

Responses by BERS to all substantive inquiries will be made via email as well as posted on BERS' website ([www.nycbers.org](http://www.nycbers.org)) no later than 06-16-23. Overall, the agency shall issue responses to inquiries related to substantive questions received plus any other corrections or amendments to the RFP it deems necessary prior to the RFP response Due Date.

## 1.2 RFP Submission Requirements

Proposers must provide one and only one RFP response to this RFP. Proposals must be in PDF format transmitted via email with the email subject line "RFP #2023-02 UCaaS and CCaaS". Emails shall be directed to:

New York City Board of Education Retirement System  
Email at BERSProcurement@bers.nyc.gov

BERS must **receive** RFP responses by **no later than 5PM EDT 06-23-23** (the "Deadline"), regardless of postmarked date. Responses will not be publicly opened. RFP responses received by BERS after this Deadline will not be accepted.

## 1.3 Modified RFP Responses

A proposer may submit a modified RFP response to replace all or any portion of a previously submitted response up until the Due Date and Time.

BERS shall consider only the latest timely version of any vendor's RFP response.

## 1.4 Additional Information for Proposers

Except as noted, there shall be no communication between any responding vendor or prospective responding vendor and:

1. Any member of BERS' Board of Directors or their staff members;
2. Any employee of BERS (except as outlined herein); or

3. Any persons in a perceived position to influence decisions of BERS at any time during the process, and until the agency makes its decision, except at times specified for oral presentations by selected firms, if any.

Direct communication with those persons referenced above, either in person, writing, or by phone in regard to these specifications, the RFP response, or the eventual awarding of the contract (should a contract ultimately be awarded), shall result in the disqualification of the respondent.

BERS reserves the right, without prejudice, to reject any or all RFP responses submitted. BERS will not reimburse proposers for any expenses incurred in preparing their responses to this RFP.

BERS expects that a single vendor will possess the full breadth of resources and skill sets to provide all aspects of the scope of services and products as described in this RFP. However, BERS will entertain RFP responses which propose collaboration of multiple vendors and evaluate such proposals on their merits. RFP responses entailing more than a single vendor must clearly establish one vendor as the prime vendor and any other vendor(s) as subcontractor(s).

## **2. SUMMARY OF THE REQUEST FOR PROPOSALS**

### **2.1 BERS Overview**

The Board of Education Retirement System is an approximately 160-person agency responsible for providing pension services to designated employees of the NYC Department of Education who are not eligible to participate in the New York City Teachers' Retirement System (NYCTRS). In addition, BERS is open to certain other covered employers, such as the New York City School Construction Authority and others. BERS was chartered in 1921 and is one of five municipal pension systems within the City of New York.

BERS has approximately 50,000 active members and over 100,000 unique membership case files. BERS manages approximately \$6 billion in member assets through various investment instruments under the supervision of the New York City Office of the Comptroller and the evaluation of the New York City Actuary. BERS offers both a defined benefit (traditional pension) plan called the Qualified Pension Plan (QPP) and a defined contribution plan known as the Tax Deferred Annuity (TDA).

### **2.2 Background and Purpose of RFP**

The NYC Board of Education Retirement System (BERS) is interested in partnering with a cloud-based contact center service platform for its Call Center operation and Unified Communication as a Service (UCaaS). BERS is looking to upgrade/migrate its existing on-premise Cisco Voice over Internet Protocol (VoIP) implementation to cloud solution with better availability and flexibility to support its members' community.

BERS currently has 20 licenses for use by call center agents, including 3 supervisory seats and an additional 130 seat licenses for UC. As an upgrade/migration for an existing implementation, services should also include initial deployment configuration based on the current operation, as well as initial on-board training for current user base.

Vendors responding to this RFP must provide a technical and cost proposal to achieve the goals and objectives set forth in Section 3, Scope of Services.

### 2.3 Summary of Key Dates

- RFP Issuance: 06-01-23.
- Questions will be accepted via email from vendors through 5PM EDT on 06/09/23.
- BERS will answer vendor questions by 5PM EDT on 06/16/23.
- Proposals due at BERS by no later than: 5PM EDT on 06/23/23.

### 2.4 Anticipated Contract Term

Should this RFP process result in BERS selecting and engaging a vendor, the term of a contract awarded pursuant to this RFP will be negotiated.

### 2.5 Mandatory Minimum Qualification Requirements

BERS is seeking a qualified vendor to migrate BERS telephone systems to a suitable Unified Communications as a Service (UCaaS) and Contact Center as a Service (CCaaS) solution. The proposer must offer both UCaaS and CCaaS in their portfolio. It is not acceptable for a UCaaS and different CCaaS vendor to submit a joint proposal. A single vendor must be responsible for both the CCaaS and UCaaS solutions. All requests for information received on or before the proposal due date and time and at the location specified in this RFP will be evaluated to determine whether they meet the following Minimum Qualifications.

RFP respondents must meet all the following Minimum Mandatory Qualification Requirements to be considered by BERS for this contract:

- The proposed solution must be based upon the proposer's existing commercially available UCaaS and CCaaS product offerings.
- Proposer must have a minimum of 5 (five) years' experience in successful implementation of their cloud hosted UCaaS and CCaaS solutions, and in successful migration from on premise to their cloud-based solutions.
- Proposer must have completed at a minimum two fully operational system implementations of similar or larger size and scope, at least averaging 500 contact center incoming calls per day.
- Proposer must demonstrate strong relevant and successful experience in providing similar services/solutions to similar industry organizations, as evidenced by client qualifications and references. The proposer must provide at least 3 references for the work completed with similar requirements as to those described in this RFP.

## 2.6 Proposal Evaluation Criteria

Proposals that meet stated Minimum Mandatory Qualification Requirements will be evaluated pursuant to the following criteria:

Demonstrated Understanding (40%) – Does the vendor have an understanding of BERS' objectives that will allow it to provide the Scope of Services outlined in Section 3 of this RFP and proceed without undue delay?

Relevant Qualifications and Experience of Proposed Project Team Members (30%) – Do the vendor's proposed staff have directly relevant experience?

Cost (30%) – To what extent does the vendor's proposal provide excellent value to BERS with respect to total fees, hourly rate, and resources/hours to be provided?

## 3. SCOPE OF SERVICES TO BE PROVIDED

This section outlines the scope of work for vendors to respond to in providing Unified Communication as a Service and Contact Center as a Service.

The selected vendor will have the following characteristics for:

### **Contact Center as a Service (CCaaS)**

- Flexibility and ease of use (by supervisory role) in making updates to the Queue (Ex: Open/Close times, Announcements, Available Queues, Change Music, Statuses etc.)
- Ability to announce position in Queue and approximate wait time.
- IVR integration for SaaS with CRM data.
- Simple UI for application interface
- Greater Queue bandwidth
- Omni channel communication required.
  - Should handle social media such WhatsApp, FB messenger, etc.
- Log all agent's activity and queue performance with details. Minimal 2 years of log retention, including call recordings.
- Customizable real time dashboard with:
  - Queue status
  - Agents status
  - Configurable KPI for calls
  - Drill down details
  - Configurable alerts based KPIs
  - Support different views for regular agents and supervisors
- Customizable on-demand/scheduled operational reports with:
  - The ability to determine, with configurable criteria, on true dropped calls.

- Support for templates and multiple output formats, i.e. PDF and CSV, and reporting interval up to full retention period of activity log.
- Ability to chat within system, to individual as well as in a group setting.
- Ability to hold, transfer, conference with call in-progress, also including direct to voicemail.
- Ability for supervisory agent to monitor on a call while call is in progress without caller knowing, ability to take over a call and with conference option.
- Call Recording (ability to listen to historical calls), configurable either globally or per call session. Ability to download/export recording, ability to do transcription and speech analytics.
- Ability to import scripts/institutional knowledge into system (ideal but not a deal breaker).
- Ability to assign users with different roles and permissions, as well as providing some level of workforce management interface.

### **General Functional and Technical Requirements**

The following questions are required for this RFP.

#### ***Platform Resiliency***

1. How many data centers do you utilize, and where are they located?
2. Provide a description and diagram of your platform architecture, including the inherent reliability and high availability design.
3. What level of redundancy do you provide for the connectivity and software components of the platform? Please describe it in detail.
4. What happens in the event of an outage?
5. How long does it take for the platform to failover, and what functionality is lost?  
Who manages the failover in the event of a service disruption or platform issue?

#### ***CCaaS Capabilities***

1. Who is the developer and manufacturer of the proposed CCaaS solution?
2. How many years has the company offered the specific CCaaS services proposed within this RFP?
3. Provide a brief overview of your proposed CCaaS solution, including the communication channels supported.
4. Describe the scalability of the CCaaS solution. Are there any system limits?
5. Are remote/at-home agents, supervisors, and administrators supported? If yes, please describe how this is accomplished globally.
6. Describe the capabilities available within the agent interface and include sample screenshots.
7. Describe the capabilities available within the supervisor interface and include sample dashboard screenshots.
8. Is the CCaaS solution integrated with and on the same platform as the UCaaS solution? Please provide details.
9. Do you offer an outbound dialing solution? Please describe, including all dialing modes available.
10. Describe your Recording / Quality Monitoring capabilities.

11. Do you offer Speech Analytics? If so, please describe.
12. Provide details on your Workforce Management capabilities.
13. Describe your solution’s IVR and self-service capabilities.
14. Describe your third-party integration capabilities. Which Integrations are out-of-the-box, and which require professional services/custom work?
15. Does your CCaaS solution support MS Teams? Please describe. Is the integration certified by Microsoft?
16. Please provide an overview of your solution’s system administration capabilities. Does the system provide configurable, role-based access?
17. Provide an overview of the real-time and historical reporting capabilities, including types of reports, format, and delivery/export capabilities.

**CCaaS Features – Cloud Business Phone**

For each feature listed below, please indicate if this is supported by your solution (Y/N) and provide a brief description.

| Contact Center Features   | Y / N | Feature Description |
|---|-------|---------------------|
| Agent and Supervisor user interface   |       |                     |
| Skills-based routing  |       |                     |
| Queued callback   |       |                     |
| Web callback  |       |                     |
| Interactive voice response (IVR)  |       |                     |
| Advanced IVR with automatic speech recognition and natural language understanding |       |                     |
| Outbound preview campaign dialer  |       |                     |
| Outbound predictive AI dialer   |       |                     |
| Omnichannel routing of voice, chat, email, SMS, social media, and messaging apps  |       |                     |
| Graphical call-flow reports   |       |                     |



| Contact Center Features                   | Y / N | Feature Description |
|---|-------|---------------------|
| Non-contact center subject matter experts |       |                     |
| Post-call survey                          |       |                     |
| Native CRM                                |       |                     |
| Knowledge Base                            |       |                     |
| Co-browse                                 |       |                     |
| Voice recording                           |       |                     |
| Media storage (hot/cold)                  |       |                     |
| Contact center agent outbound port        |       |                     |
| Contact center VoIP softphone             |       |                     |
| Quality Management                        |       |                     |
| Screen recording                          |       |                     |
| Speech Analytics and transcription        |       |                     |
| Workforce Management                      |       |                     |
| PCI/HIPAA Compliant                       |       |                     |

### ***Unified Communication as a Service (UCaaS)***

- Implement soft and hard phones with existing CISCO hardware if possible
- Unified communication integration with email and voicemail
- Screen sharing, audio transcription, and audio/video conferencing
- Web conferencing, virtual meeting spaces and interactive whiteboards
- Calendars, scheduling, and other personal assistant functions; and enterprise social networking and collaboration platforms
- Text messaging, persistent chat, and mobility
- Office 365 integration

**UCaaS Features – Cloud Business Phone**

For each feature listed below, please indicate if this is supported with your solution (Y/N) and provide a brief description.

| <b>Cloud Business Phone Features</b>       | <b>Y / N</b> | <b>Feature Description</b> |
|--|--------------|----------------------------|
| Unlimited calling for business phone       |              |                            |
| Tier 1 phone number and extension          |              |                            |
| HD quality voice                           |              |                            |
| Secure voice calls (TLS and SRTP)          |              |                            |
| Financially backed SLA across the platform |              |                            |
| IP agnostic access                         |              |                            |
| PSTN access                                |              |                            |
| Geo routing                                |              |                            |
| Voicemail with transcription               |              |                            |
| UC call recording                          |              |                            |
| Web browser click-to-dial                  |              |                            |
| Power keys (Busy Lamp Field – BLF)         |              |                            |
| Desktop and Mobile apps                    |              |                            |
| Citrix Certification                       |              |                            |
| Web app                                    |              |                            |
| Highlight-to-dial phone numbers            |              |                            |
| Barge-Monitor-Whisper                      |              |                            |
| Hot desking                                |              |                            |
| Caller ID                                  |              |                            |
| Number porting: self-service or managed    |              |                            |

| Cloud Business Phone Features  | Y / N | Feature Description |
|--|-------|---------------------|
| Call waiting   |       |                     |
| Call transfers - including blind and warm transfers                    |       |                     |
| Extension-to-extension calling   |       |                     |
| Personal and Public Call Park  |       |                     |
| Multi-party calls  |       |                     |
| Blacklist calls at the user level                                      |       |                     |
| Add new contacts   |       |                     |
| Integration with Google and Outlook contact lists                      |       |                     |
| Flip calls to another device   |       |                     |
| Country and local time displayed on dial pad (for international calls) |       |                     |
| Call quality indicator   |       |                     |
| Filter call recordings and voicemails                                  |       |                     |
| Notifications are disabled when the “DND” status is on                 |       |                     |
| Transfer calls directly from the chat roster                           |       |                     |
| Phone paging   |       |                     |
| Music-on-hold  |       |                     |
| 911 service  |       |                     |
| Geo-redundancy   |       |                     |
| UC media – hot storage   |       |                     |

| <b>Cloud Business Phone Features</b>          | <b>Y / N</b> | <b>Feature Description</b> |
|---|--------------|----------------------------|
| UC media – cold storage                       |              |                            |
| Ring Groups / Hunt Groups / ACD Groups        |              |                            |
| Call queues                                   |              |                            |
| AI-driven analytics for conversation insights |              |                            |

### ***UCaaS Features – Video and Audio Conferencing***

For each feature listed below, please indicate if this is supported by your solution (Y/N) and provide a brief description.

| <b>Video and Audio Conferencing Features</b> | <b>Y / N</b> | <b>Feature Description</b> |
|--|--------------|----------------------------|
| HD audio and video conferencing              |              |                            |
| Join from a desktop web browser              |              |                            |
| Join from mobile devices                     |              |                            |
| Join from a mobile browser                   |              |                            |
| Flip meeting to another device               |              |                            |
| Virtual backgrounds                          |              |                            |
| Emoji reactions                              |              |                            |
| Polls  |              |                            |
| Raise your hand                              |              |                            |
| Join with a passcode or join anonymously     |              |                            |
| Calendar integration                         |              |                            |
| Participant controls                         |              |                            |
| Moderation controls                          |              |                            |

| Video and Audio Conferencing Features | Y / N | Feature Description |
|---------------------------------------|-------|---------------------|
| Advanced moderation                   |       |                     |
| Personalized virtual spaces           |       |                     |
| Controller mode                       |       |                     |
| Remote desktop control                |       |                     |
| Screen sharing                        |       |                     |
| Breakout rooms                        |       |                     |
| Meeting live streaming                |       |                     |
| Tile view                             |       |                     |
| Set availability status               |       |                     |
| Group or private chat                 |       |                     |
| Push-to-talk mode                     |       |                     |
| Bandwidth controls                    |       |                     |
| Bandwidth and networking optimization |       |                     |
| Collaborative Spaces                  |       |                     |
| Shareable cloud recordings            |       |                     |
| Conference call-in                    |       |                     |
| Conference call-out                   |       |                     |
| End-to-end encryption                 |       |                     |
| Audio sharing                         |       |                     |
| Meeting analytics                     |       |                     |
| Closed captions                       |       |                     |
| Transcriptions                        |       |                     |
| Branding                              |       |                     |
| YouTube video sharing                 |       |                     |
| Instant Meetings                      |       |                     |

| <b>Video and Audio Conferencing Features</b> | <b>Y / N</b> | <b>Feature Description</b> |
|--|--------------|----------------------------|
| Meeting summary                              |              |                            |

### ***UCaaS Features – Team Messaging***

For each feature listed below, please indicate if this is supported by your solution (Y/N) and provide a brief description.

| <b>Team Messaging Features</b>                   | <b>Y / N</b> | <b>Feature Description</b> |
|--|--------------|----------------------------|
| 1-on-1 instant messaging                         |              |                            |
| Team messaging                                   |              |                            |
| Set availability status                          |              |                            |
| Threaded messages                                |              |                            |
| Ability to open multiple chat windows            |              |                            |
| Cross-platform team messaging                    |              |                            |
| 1:1 Business SMS/MMS                             |              |                            |
| Presence detection                               |              |                            |
| Snooze conversations                             |              |                            |
| Room avatars                                     |              |                            |
| Attach files, GIFs, and emojis                   |              |                            |
| Search past conversations with deactivated users |              |                            |

### ***Deployment***

1. Explain your deployment/implementation project methodology and plan.
2. What tools are used for deployment tasks, and how are these provided to the Customer?
3. What is the average length of time required to implement the proposed scope?
4. Describe the project team members and key deliverables the team typically provides.

5. Identify and describe the role of any third parties that your company plans to utilize to implement all or specific parts of the proposed solution.
6. What support and resources will customer be expected to provide during implementation?
7. Do you perform a network assessment prior to implementation? Please describe and identify any additional charges for this service.
8. What are the internet and network requirements, including bandwidth needed per call?
9. What codecs are supported?
10. In how many countries do you provide full PSTN replacement services?
11. How many countries can you provide local and toll-free numbers?
12. Describe the process of porting telephone numbers and providing Telco services.
13. What type of testing do you perform, and what are the acceptance criteria?
14. Describe how you handle spam and flagging calls.
15. Describe your change management control process.

### ***Training***

1. Provide an overview of your company's customer training program, such as types of training offered, format, etc. Include the initial go-live training and ongoing training as-needed for end users.
2. Please identify any free training services.
3. Who conducts the training, and what is your training methodology?
4. What kind of training materials and documentation are provided?
5. Are product manuals and user guides available on your public website at no cost?

### ***Service and Support***

1. Describe your customer support model.
2. Identify your guaranteed SLA. Do you also offer a voice quality of service commitment? Are there penalties associated if these are not adhered to? Please describe it in detail.
3. Where are your NOCs and customer support/technical support teams located?
4. Do you provide 24/7 customer support?
5. Describe your system's performance management and monitoring tools. How are customers notified of issues or system alarms?
6. Provide a list of standard support features and identify any optional, enhanced support offerings available.
7. Do you have a customer support portal? Please describe.
8. How do customers contact support?
9. How do you handle customer ticketing communication and reporting?
10. How are maintenance and upgrades handled?
11. How often are new software features introduced, and how are these communicated to customers?
12. Describe the quality assurance and testing processes you follow before releasing software into production.
13. Is there a fee for new product releases, upgrades, patches, or updates?

### **Security and Compliance**

1. Describe your overall security approach.
2. Describe how your company’s security policies are compliant with relevant industry standards and list all security compliance standards that your solution adheres to, i.e., HIPAA, GDPR, ISO, NIST, PCI, etc.
3. Describe your software development lifecycle related to security measures taken.
4. How do your systems avoid hacking or malicious attacks?
5. Describe the security measures (physical and logical) in place within your data centers.
6. Describe the standard voice and data encryption provided (at rest and in motion).
7. Do you perform network scanning and monitoring for intrusion detection? Please describe.
8. How do you provide data segregation in the cloud between clients?
9. What type of security monitoring is performed?
10. Describe how your system supports different access security levels. (both for end-users and system administrators)
11. Does your system support Single Sign On (SSO) capability? Is MFA available? Please describe.
12. How do you report security compliance to your customers?
13. Describe the communication process for cyber incidents.

## **4. DELIVERABLES**

Listed below are the deliverables that are required to be provided upon the completion of the scope of services described in Section 3 Scope of Services to be Provided.

- Ongoing Support & Maintenance Materials: Detailed plans for selected vendor’s ongoing maintenance and system administration plan and materials, including system backup / recovery, disaster recovery services, and security
- Service Management Materials: Document Service Level Agreements (SLAs) plan between the post production support vendor and BERS. This plan should include roles and responsibilities and define reporting and reporting frequency. The plan should also define reporting, communications, and escalation procedures for outages and incident management.

## **5. CONTENT AND FORMAT OF RFP RESPONSE**

Proposals must provide all information outlined below. Vendor proposals should be concise and succinct and omit any extraneous and/or non-relevant materials. Responses will be evaluated on the basis of content and quality, not length.

### **5.1 Response Packaging**

Vendors will submit its RFP response in electronic (pdf) format by email to [BERSProcurement@bers.nyc.gov](mailto:BERSProcurement@bers.nyc.gov) with “RFP #2023-02: UCaaS and CCaaS” in the subject line.



## 5.2 Response Content

### 5.2.1 Cover Page/Letter

Proposer shall submit a Proposer's Cover Sheet (Attachment A), an Acknowledgement of Addenda (Attachment B), and a completed Doing Business Data form (Attachment H) with the proposal package to the Board of Education Retirement System. Both shall be signed and dated by an authorized individual

### 5.2.2 Mandatory Minimum Qualification Requirements

Each RFP response will first be reviewed for compliance with the RFP's minimum requirements as stated in RFP section 2.5. For ease of evaluation, the page(s) of the vendor's submission following the cover page/letter must be vendor's response to this RFP's minimum requirements. This section should list each requirement followed by the vendor's response. Again, as these are minimum requirements, any vendor not meeting all requirements will have its proposal deemed non-qualifying and will be excluded from further consideration. BERS reserves the option of requesting vendors to submit follow-up, supporting, or missing information with respect to minimum requirements and/or to seek clarification of any issues deemed incomplete.

### 5.2.3 Qualifications and Experience

The responding vendor should describe

- its company, organization, and experience as well as how the company's business qualifies it for responding to this particular RFP.
- Vendors must describe their relevant experience in successfully conducting leadership workshops and providing the types of services solicited in this RFP.

The responding vendor's relevant experience and projects should be clearly listed and described. For at least two of the projects listed, the proposer should provide references, including the following information: name of the reference entity, a brief statement describing the nature of the services performed and when, and the name, title and telephone number of a contact person at the reference entity.

Note that the vendor's overall qualifications notwithstanding, the key criterion for BERS in evaluating proposals received will be the experience and qualifications of the specific individual proposed by the vendor to be assigned to the BERS project.

### 5.2.4 Pricing

Proposals must include a pricing section that itemizes all costs relating to the vendor's submission. Please provide a detailed line-item quote identifying all pricing associated with your proposal, separated by recurring and non-recurring (one-time) charges. Clearly identify all software, licensing, hardware, deployment, training, and ongoing support costs. Also, include all applicable costs including fees and surcharges and include any assumptions made and items excluded.

BERS reserves the right to request that vendors provide additional cost information should that be required for BERS' evaluation of proposals received.

### **5.2.5 Assumptions, Dependencies, and Other Considerations**

Respondents should clearly document any and all assumptions or dependencies underlying their technical and cost proposals, as well as any other considerations that BERS should be aware of in contracting for this assistance.

## **6. GENERAL INFORMATION TO VENDORS**

### **6.1 Requests for Clarification and Addenda**

Any inquiry regarding this solicitation shall be made via email by 5PM EDT on Friday, 06-09-23. To be considered, all written inquiries must be addressed to the authorized contact person as follows:

**Karina Chang**  
**New York City Board of Education Retirement System**  
**E-mail:** BERSProcurement@bers.nyc.gov

Only written responses should be considered official responses of BERS. Proposer's questions (unidentified as to sources) and their respective answers will be mailed to all recipients of the RFP and will be posted on the BERS website. Proposers should not rely on any representations, statements, or clarifications not made in either this RFP or a formal addendum.

### **6.2 Incurring Costs**

BERS shall not be held liable for any pre-contract activity or costs incurred by Proposers in the preparation of their proposals, or during any negotiations on proposed contracts, or for any work performed or materials provided in connection therewith.

### **6.3 Negotiations**

BERS reserves the right to: (i) reject all proposals submitted; (ii) accept any proposal or alternate as submitted without negotiations; (iii) accept or negotiate with all proposals submitted which fall within a competitive range; (iv) require revisions to, corrections of, or other changes to any proposal submitted as a condition to its being given any further consideration; (v) select for negotiations only the overall best proposal or alternate submitted, as determined by BERS; (vi) negotiate with one or more Proposers in any manner it deems fit, (such negotiations may be concurrent or sequential as BERS determines); (vii) following the conclusion of any such negotiations solicit Best and Final Offers (BAFO) utilizing an appropriate procedure; (viii) re-open negotiations after the BAFO procedure, if it is in BERS' best interest to do so. No proposer shall have any rights against BERS arising at any stage of the solicitation from any negotiations that take place, or from the fact that BERS does not select a proposer for negotiations.

### **6.4 Terms and Conditions**

All contracts resulting from this RFP shall be subject to the attached General Terms and Conditions (Attachment C - BERS, Terms and Conditions).

## **6.5 Contract Award**

The New York City Board of Education Retirement System reserves the right to award a contract to other than the proposer offering the lowest overall cost. The contract resulting from this solicitation shall be awarded to the qualified proposer whose proposal the New York City Board of Education Retirement System has determined to be the most advantageous, based on the evaluation criteria set forth in the Request for Proposals.

All contracts resulting from this RFP shall be signed by the proposer within a reasonable time upon receipt, which period shall not exceed 30 days. Thereafter the proposer is deemed delinquent, at BERS' option, the contract may be voided. The contract award shall be subject to the following conditions, where applicable. They are not required to be part of your proposal submission.

- A. Completion and submission of an appropriate Office of Equal Opportunities form.
- B. Completion and submission of the appropriate VENDEX Questionnaires.
- C. Completion and submission of the Affirmation Sheet (Attachment E)
- D. Submission of an appropriate Certificate of Insurance.

## **6.6 Termination of Contract**

Any contract resulting from this RFP may be terminated at any time upon thirty (30) days written notice, by the Executive Director. No claim for damages will be made by, or allowed to, the Contractor because of such termination.

**ATTACHMENT A**

**PROPOSER'S COVER SHEET  
RFP #2023-02: UCaaS and CCaaS**

Company Name: \_\_\_\_\_

Address: Administrative Office:  
\_\_\_\_\_  
\_\_\_\_\_

Federal Tax Identification #: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Address: Service/Operations for New York City:  
\_\_\_\_\_  
\_\_\_\_\_

Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

Year Firm Founded: \_\_\_\_\_

Year firm began serving institutional clients: \_\_\_\_\_

Proposer's Name: \_\_\_\_\_

Proposer's Signature: \_\_\_\_\_

**ATTACHMENT B**

**ACKNOWLEDGMENT OF ADDENDA  
RFP #2023-02: UCaaS and CCaaS**

Directions: Complete Part I or Part II, whichever is applicable

**PART I:**

Listed are the dates of issue for each addendum received in connection with the RFP:

Addendum #1, Dated \_\_\_\_\_

Addendum #2, Dated \_\_\_\_\_

Addendum #3, Dated \_\_\_\_\_

Addendum #4, Dated \_\_\_\_\_

**PART II**

\_\_\_\_\_ No addendum was received in connection with this RFP.

Proposer's Name: \_\_\_\_\_

Proposer's Signature: \_\_\_\_\_

## ATTACHMENT C

### BERS TERMS AND CONDITIONS

#### 1. Captions

The headings in this Agreement, the paragraphs, and subparagraphs of this Agreement, and of any attachments, are included solely for convenience and reference, and they shall not be used in any way to interpret this Agreement.

#### 2. Compliance With Laws

In connection with the performance of this Agreement, the Contractor shall comply with all applicable laws, rules and regulations. The parties hereto agree that every provision of law required to be inserted herein be deemed a part hereof. It is further agreed that if any such provision is not inserted or is incorrectly inserted, through mistake or otherwise, this Agreement shall be deemed amended so as to comply strictly with the law.

#### 3. Unlawful Provisions Void

If this Agreement contains any unlawful provision or portions thereof, they shall be deemed deleted from the Agreement and the remainder of the Agreement shall remain in full force and effect. If the deletion of such provision frustrates the purpose of this Agreement, either party may make application to the Evaluation Committee for relief.

#### 4. Religious Activity Prohibited

There shall be no religious worship, instruction, proselytizing, or other religious activity in connection with the performance of this Agreement.

#### 5. Political Activity Prohibited

No BERS property provided to the Contractor hereunder for the purpose of this Agreement shall be used for any political activity or to further the election or defeat of any candidate for public office. As used herein the term "BERS property" shall include, but not be limited to, supplies, work sites, funds advanced and services.

#### 6. Publication And Publicity

The Contractor or anyone employed by the Contractor may not publish the results of its participation or findings in the performance of this Agreement without the prior written approval of the Chair of the BERS Board of Trustees or his/her designee. All approved publications shall acknowledge that the program is supported by funds from BERS. Ten (10) true copies of each approved publication shall be furnished to BERS without charge.

#### 7. Copyright

If the Contractor or anyone employed by the Contractor shall write, record or otherwise produce copyrightable material within the scope or in furtherance of this Agreement, BERS shall be considered the author for purposes of copyright, renewal of copyright, and termination of copyright and, unless expressly waived in a written instrument signed by the Chair of the Board of Trustees or her designee, the owner of all of the rights comprised in the copyright.

## 8. Patents

Any invention or discovery arising out of or developed in furtherance of this Agreement shall be promptly and fully reported to BERS. BERS shall have the exclusive right to apply for patent protection on such invention or discovery and to determine how the rights in said invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered.

## 9. Accounting for Property

If any property is acquired by the Contractor with funds provided by BERS under this Agreement, the property shall be deemed purchased by BERS for the use of the Contractor during the term of the Agreement and shall be permanently embossed "Property of New York City Board of Education Retirement System" and shall be returned to BERS, at the Contractor's expense, within thirty (30) days after the end of said term, unless the Contractor is otherwise notified in writing by the Executive Director or his designee.

## 10. Non-Reimbursable Expenses

The following items may not be claimed as a direct or indirect cost of the services provided under this Agreement:

- A. rental expenses of apartments;
- B. interest on loans;
- C. penalties for delinquent filing of tax returns;
- D. political or charitable contributions;
- E. advertising and promotions;
- F. legal expenses;
- G. key-man life insurance premiums;
- H. federal, state and city income tax; state and city franchise taxes; and costs for the preparation of such tax returns;
- I. expenses incurred in preparing for operations;
- J. cost of employee meals and lodging except when traveling outside the city and pursuant to the specifications of the contract;
- K. entertainment, gratuities, and any other items of a personal nature;
- L. long distance telephone calls unless directly related to the services provided under the terms of this Agreement;
- M. any expense not ordinary, necessary or reasonable in the performance of the Agreement.

## 11. No Extra Compensation

The Contractor shall not seek, ask for, demand, sue for or recover, as extra compensation or otherwise, any sum for labor, materials or services other than the compensation agreed upon and fixed.

## 12. Invoices And Payments

The Contractor shall furnish proof with each invoice, and shall comply with all BERS requirements concerning the manner in which invoices are to be submitted. The Contractor shall not be entitled to demand or receive full or partial payment, until each and every one of the provisions of this Agreement is complied with, and the Executive Director or his designee shall have given written certification to that effect. Nothing contained herein shall be construed to affect the right hereby reserved by BERS to reject the whole or any portion of the performance, should said certification be inconsistent with the terms of this Agreement, or otherwise erroneously given.

## 13. No Estoppel

BERS shall not be precluded or estopped by a statement or document issued by or on behalf of BERS, from indicating the true value of services performed by the Contractor or by any other person pursuant to or as a result of this Agreement.

#### 14. Acceptance of Final Payment

Receipt and negotiation by the Contractor, or by any person claiming under this Agreement, of the Final Payment hereunder, notwithstanding whether such payment be made pursuant to any judgment or order of any court, shall constitute a general release of BERS from any and all claims and liability for anything done, furnished, or relating to the labor, materials or services provided, or for any act of omission or commission of BERS or its agents and employees. Said release shall be against the Contractor, the Contractor's representative, heirs, executors, administrators, successors and assigns.

#### 15. Claims -Limitation of Action

No action at law or equity shall be maintained by the Contractor, its successors, against BERS on any claim based upon or arising out of this Agreement, or out of anything done in connection with this Agreement, unless such action shall be commenced within six (6) months after the date of filing of the voucher for final payment hereunder, or within six (6) months of the required completion date for the services performed hereunder, whichever is sooner. None of the provisions of Article 2 of the Civil Practice Law and Rules shall apply to any action against BERS arising out of this Agreement.

#### 16. Notices

The Contractor's address stated on Page 1 of this Agreement is hereby designated as the place where all notices, letters or other communications directed to the contractor shall be served, mailed or delivered. Any notice, letter or other communication directed to the Contractor and delivered to such address, or sealed in a post-paid wrapper and deposited in any post office box regularly maintained by the United States Postal Service, shall be deemed sufficient service thereof upon the Contractor. Said address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the Executive Director's designee. Nothing herein contained shall be deemed to preclude or render inoperative personal delivery of any notice, letter or other communication, written or oral, to the Contractor. Whenever it shall be necessary or required to prove the delivery of any notice, an affidavit describing such delivery shall be conclusive evidence of such delivery.

#### 17. Amendments and Waivers

A. This Agreement may be amended by a written Instrument signed by an authorized officer for the Contractor, and by the Chair or his/her designee. No amendment materially affecting the substance hereof shall be effective unless approved by a Resolution of the BERS Board of Trustees, and a copy of said Resolution is attached to the amendment and incorporated herein.

B. No waiver by BERS of any terms or condition hereof shall be effective unless in writing and signed by the Chair or his/her designee. Any waiver shall be specifically limited to its terms, and shall not be deemed applicable to subsequent like circumstances.

C. Any purported oral amendment or waiver shall be void.

#### 18. Suspension of Deliveries

The Executive Director or his designee, may postpone, delay, or suspend the delivery of the goods or services, or any part thereof, without additional compensation to the Contractor. In such event, (A) the time established for performance by the Contractor of any duty during the term of this Agreement may, at the Contractor's option, be extended for the number of days the Contractor was delayed by said suspension, postponement, or delay provided the term is not thereby extended; however, (B) the term may, at BERS'



option, be extended for the number of days the contractor was delayed by said suspension, postponement or delay.

#### 19. Cancellation

A. If the Contractor violates any provision of this Agreement, the Executive Director or his designee may pursue any legal or equitable remedies available to BERS. In addition, the Executive Director or his designee may seek to have the Contractor declared in default by the Evaluation Committee. In the event that the Contractor is declared in default, BERS may cancel this Agreement and shall thereafter be relieved of all liability hereunder. Upon a finding of default in violation of this contract, the Contractor shall be deemed not responsible and disqualified from bidding for a period of four years, unless in such finding of default, a lesser penalty is imposed by reason of mitigating circumstances.

B. In the event of breach of this Agreement by the Contractor, the Contractor shall have thirty (30) days time to cure the breach before being in default. BERS shall have the right to cancel and terminate said Agreement, and the Contractor shall be liable to BERS for any additional cost of completion of the within services, BERS' other cost in connection with the termination, reletting and completion of the services. All such costs, along with any liquidated damages for delay provided herein, may be assessed by BERS against the Contractor and deducted by BERS from payment to be made to the Contractor under this or any other Agreement at any time between the Contractor and BERS or the City. In the event that said cost exceed all sums owed at the termination date of the Agreement, the Contractor shall pay the amount of such excess to BERS upon notice from BERS of said amount, and in the event that said costs and liquidated damages are less than the sum payable under this Agreement, as if same had been completed by the Contractor, the Contractor shall forfeit all claims to the difference to BERS. If BERS undertakes to secure the services or any part thereof under this section of the Agreement, the certificate of the Executive Director or his designee indicating the amount of services secured, the cost and excess cost, if any, of completing this Agreement, and the amount of liquidated damages hereunder, shall be conclusive and binding upon the Contractor, its assigns and all other claimants.

#### 20. BERS Determination

The Executive Director or his designee shall in all cases determine the acceptability of the labor, materials, or services which are delivered pursuant to this Agreement, including but not limited to their quality, delivery, and condition, and shall in all cases decide every question which may arise relative to the performance of this Agreement. The Contractor may not rely upon, and BERS shall not be bound by, any explanations, determinations or other statements by or from BERS which are not in writing and signed by the Executive Director or his designee.

#### 21. Investigations

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

B (a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath

concerning the award of, or performance under, any transaction, agreement, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

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

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

(b) If any non governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination to paragraph E below without the City and BERS incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

I. The disqualification for a period not to exceed five (5) years from the date of the adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or obtaining any contract, lease, permit or license with or from the City or BERS; and /or

II. The cancellation or termination of any and all such existing City and BERS contracts, leases, permits or license that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City and BERS incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the Board.

E. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraph I and II below. He or she may also consider, if relevant and appropriate, the criteria established in paragraph III and IV below in addition to any other information which may be relevant and appropriate:

I. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

II. The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

III. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with city and BERS.

IV. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in paragraph C, part I above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. The term “license” and “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

The term "entity" as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, licenses, leases or permits from or through the City or BERS or otherwise transacts business with the City or BERS.

The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

G. In addition to and notwithstanding any other provisions of this agreement, the commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of Investigations of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or BERS, or any other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor or affecting the performance of this agreement.

## 22. Reports, Inspection and Records

A. The Contractor shall promptly provide all reports required by BERS, including without limitation, financial, program, statistical, analytical, narrative and progress reports. Unless otherwise provided herein, the final payment hereunder shall not be made until all reports have been submitted and approved by BERS.

B. The Contractor shall, until six (6) years after completion of its services hereunder or six years after date of termination of this Agreement, whichever is later, maintain and retain complete and correct books and records relating to all aspects of the Contractor's obligation hereunder. Records must be maintained separately, so as to identify clearly the hours charged to this Agreement and be distinguishable from all other hours charged which are not related to this Agreement.

C. The Contractor shall make its staff, and premises, books, records, operations, and services provided under this Agreement, and those of its subcontractors, available to BERS and to any person, agency or entity designated by BERS, at any time, for program audit, fiscal audit, inspection, observation, sampling, visitation and evaluation, and shall render all assistance and cooperation for said purposes. The Contractor agrees to attend, upon demand, any investigation conducted by BERS to produce any records and other documents required by BERS at that investigation, to cooperate with BERS, and to give sworn testimony pertaining to those documents or the subject of the investigation; provided only that the investigation, testimony, records and documents relate to the subject of the Contractor's relationship with BERS. If a corporation, partnership or government agency, the Contractor agrees to require its officers, employees and partners to comply with the forgoing.

D.1n its' record keeping the Contractor shall also comply with all federal, state and local laws and regulations pertaining to such records, including, without limitation, the regulations of the Comptroller, and shall require its subordinates to do likewise.

E.1n the event that any federal, state or local government agency, or other public or private agency conducts an audit of any of the Contractor's operations which pertains directly or indirectly to the goods and services provided pursuant to this Agreement, within five (5) working days after the receipt by the Contractor of notice of the commencement of such audit, the Contractor shall give notice of such commencement to BERS; and within five (5) working days after receipt by the Contractor of a copy of any resulting interim or financial audit report, the Contractor shall supply on copy thereof to BERS.

### 23. Non-Assignment Of Contract

The Contractor shall give its personal attention to the faithful performance of this Agreement. The Contractor covenants that it will not assign, transfer, convey, sublet or otherwise dispose of this Agreement or its right, title or interest therein or its power to execute such Agreement, to any other person or corporation without the previous written consent of the Executive Director or his designee. If the Contractor in any way violates the terms of this provision, BERS shall have the right to cancel and terminate this Agreement, and BERS shall thereon be relieved from all liability thereunder. Nothing contained herein shall be construed to effect an assignment by the Contractor for the benefit of its creditors made pursuant to the statutes of the State of New York. No right under this Agreement, or to any monies due to become due hereunder, shall be asserted against BERS or the City in law or in equity by reason of a purported assignment of this Agreement, or any part thereof, or any monies due or to become due hereunder, unless authorized as aforesaid.

### 24. Contractor's Staff

The Contractor shall employ or contract for the service of only competent workmen, consultants, independent contractors and other employees as are, or reasonably may be, necessary for the performance of the Services hereunder.

The Contractor warrants that it shall be solely responsible for its employees' work, direction, safety and compensation.

The Contractor agrees to replace immediately any employee, and not engage such employee in the performance of this Agreement, if the Contractor is notified in writing that, in the opinion of either the Executive Director, or his designee, such employee is incompetent or otherwise impedes the performance of the services hereunder.

### 25. Confidentiality Of Records

All personally identifiable member and staff information obtained by or furnished to the Contractor by BERS, and all reports and studies containing such information prepared or assembled by the Contractor, are to be kept strictly confidential by the Contractor and shall not be provided or disclosed to any third party without the express written permission of the Executive Director or his designee. The Contractor shall limit access to such material in its control to those of its employees performing services pursuant to this Agreement strictly on a need to know basis. The Contractor shall restrict its use of the information to its performance under this Agreement and shall return all such material to BERS upon the completion of the services herein.

### 26. Testimony

If the project which is the subject matter of this Agreement at any time becomes involved in a proceeding, to which BERS or the City is a party, before any court, board, tribunal, panel, arbitrator, referee or agency, the Contractor shall provide such knowledgeable witnesses as BERS shall require, free of additional compensation of any kind. Nothing herein shall require the Contractor to provide testimony in any proceeding in which it is a party with interests opposed to those of BERS.

## 27. No Personal Liability

Neither the members of BERS nor the Executive Director nor any officer, employee, agent or representative of BERS or of the City shall be personally liable, based upon any theory of law or equity, to the Contractor or to any party claiming on behalf of or through the Contractor, under this Agreement, or by reason of any individual's actions or failure to act in any way connected with this Agreement, whether or not the action shall have been within or without an individual's scope of authority. The scope of this provision includes personal injury to any personal interest (commercial or otherwise), physical injury (including death), property damages, and any pecuniary damages where such injuries or damages result from or arise out of negligence. The Contractor further waives any and all rights to make a claim or commence an action or special proceeding, in law or equity, against any of the aforementioned individuals, and the Contractor hereby assigns its complete right, title, and interest in any such claim, action, or special proceeding to BERS.

## 28. Conflict Of Interest

A. Except in accordance with applicable provisions of law and regulations governing such conduct, the Contractor may not have on its Board of Directors (or comparable body), employ, or contract for the services of I) any present employee of BERS, or II) any person who is presently on leave from employment with BERS, or III) any former employee of BERS.

B. The Contractor warrants that, other than a bona fide employee or contractor regularly working as a sales representative for the Contractor, no person, selling agency, or other entity has solicited or secured this Agreement, or has been employed or retained to do so, for a commission, percentage, brokerage fee or contingent fee.

C. The Contractor shall not give, and warrants that it has not given or promised to give, any gift or thing of value to any officer, employee or other person whose salary is payable in whole or part from BERS or City funds, or other funds under this Agreement. The phrase "gift or thing of value" shall include, without limitation, money, tangible goods, services, loans, promises or negotiable instruments.

D. If the Contractor violates any provision of this paragraph, BERS may, at its option, I) cancel and terminate this Agreement and be relieved of all liability hereunder, II) deduct all amounts paid by the Contractor or other value given by the Contractor in violation of this paragraph, from payments made or to be made to the Contractor under this or any other Agreement at any time, III) require the refund of any funds paid hereunder, or IV) any combination of the foregoing. Any breach of the warranties or violation of the provisions of this paragraph shall be grounds to preclude the Contractor or its principals as a responsible bidder on other BERS or City contractors.

## 29. Antitrust

The Contractor assigns to BERS its right, title and interest in and to any claim or cause of action arising under the antitrust laws of New York State or the United States relating to the goods or Services purchased or procured by BERS pursuant to this Agreement.

## 30. Merger and Choice Of Law

This written Agreement constitutes the entire agreement of the parties, and not other prior or contemporaneous agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto, or to vary any of the terms contained herein. This agreement shall be governed and construed in accordance with the laws of the State of New York without regard to its conflict of law rules.

## 31. Participation In An International Boycott

A. The Contractor agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States that the Contractor or a substantially-owned affiliated company thereof, participated, or is participating, in an international boycotting violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Executive Director or his designee may, at his option, render forfeit and void this contract.

### 32. No Discrimination

A. The Contractor will strictly comply with all applicable Federal, State and Local laws pertaining to the subject of discrimination on any ground, as they may now read or as they may hereafter be amended.

B. The Contractor is, and will remain, an Equal Opportunity Employer. In addition to the other requirements of this paragraph 32, the Contractor shall provide equal opportunity for all qualified persons, and shall not discriminate in employment because of race, creed, gender, color, age, sexual orientation, national origin, handicapping condition, marital status, or religion and shall promote the full realization of equal opportunity.

C. Pursuant to the provisions of the New York State Labor Law, the Contractor agrees, in its operations performed within the State of New York:

I. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, not any person acting on behalf of such contractor or subcontractor, shall by origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

II. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin;

III. That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

IV. That this contract may be canceled or terminated by the state or municipality, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract;

V. The aforesaid provisions of this section covering every contract for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York; and

VI. That BERS is, for purposes of this subparagraph C., a "state or municipality."

### 33. Equal Employment Opportunity Requirements For Professional Contractors

A. Definition of Terms for the Implementation of a Program of Affirmative Action.

The following terms, when used in this paragraph, shall have the meanings given for them

I. "Employee": Any person employed full or part-time in any capacity by the Contractor or sub-contractor.

II. "Minority Groups and Affected Classes": Blacks, Hispanics (Non-European), Asian Americans, American Indians, females and individuals with handicapping conditions.

III. "Program of Affirmative Action": A detailed, result-oriented set of written procedures submitted by a Contractor or sub-contractor which when implemented with conscious effort

results in compliance with the Equal Opportunity Policy herein, through full utilization and equal treatment of minorities, women and individuals with handicapping conditions at all levels and in all segments of the Contractor's or sub-contractor's work force. An effective Program of Affirmative Action shall include but not necessarily be limited to, the following elements:

- a. Development or reaffirmation of the Contractor's or sub-contractor's Equal Opportunity Policy;
- b. Dissemination of the Policy;
- c. Responsibility for implementation;
- d. A survey and analysis of employment at all levels and in all categories and aspects of the Contractor's or sub-contractor's work force, which determines if and at which levels, categories, and aspects there is an under-utilization of minority and female employees;
- e. Establishment of goals and timetables toward the attainment of which the Contractor's or subcontractor's good faith effort must be directed to remedy any identifiable underutilization of minorities and women;
- f. An analysis of employment policies and practices, including but not limited to seniority system, recruitment, training, promotion, insurance and job benefits and their effects upon minorities, women and individuals with handicapping conditions;
- g. Corrective actions taken, or to be taken, toward the elimination of any employment policy or practice having a discriminatory effect on minority group members and women; and
- h. Description of the Contractor's efforts to engage, as sub-contractors, bona fide minority business enterprises and female enterprises.

IV "Goals and Timetables": Projected levels of achievement resulting from an analysis by the Contractor or sub-contractor of its deficiencies, and of what it can reasonably do to remedy them within a specified time period.

V. "Underutilization": Having fewer minorities, women and individuals with handicapping conditions in a particular job classification than would reasonably be expected by their availability in the appropriate labor force.

VI. "The Office": The Office of Equal Opportunity of BERS.

## B. Required Program of Affirmative Action

I. The Contractor is required to identify and eliminate overt and covert discriminatory practices and implement the Program of Affirmative Action. Upon demand of the Office the Contractor shall submit to the Office a detailed written Program of Affirmative Action (hereinafter referred to as a "P.A.A."). In the event the Contractor submits a P.A.A. not acceptable to the Office, the Office will require the correction or revision of the P .A.A. to its satisfaction.

II. In the event the Contractor fails to submit such an acceptable P .A.A. within the time specified in the demand, the Contractor may be declared in default. The Director shall be the sole judge of the P.A.A.'s acceptability.

The P.A.A. shall:

- a. Apply to all Board of Education professional services contracts with the Contractor;
- b. Encompass all phases of the employment process, including evaluation of job classification to ensure job relatedness, recruitment, selection, validity of

examinations, retention, layoffs, seniority, assignments, training, promotion, salary and benefits;

c. Fulfill the following requirements:

i. Include measurable goals, reasonable timetables and specific programs to be implemented by the contractor to identify and eliminate deficiencies in employment practices with respect to the manifest underutilization of members of minority groups and members of affected classes;

ii. Include a statement of the present utilization of minority group members and women in the Contractor's work force and a projection of the minority utilization in the Contractor's work force for the life of the Contract and for at least a one-year period succeeding its completion. This statement and projection shall include present and project 1) rates or hiring and promotion or minority group members and women in specific job categories at each wage rate within each level of employment and according to major organizational unit, and (2) percentages of minority group and women utilization in specific job categories at each wage rate within each level of employment, and according to major organizational work force;

iii. Include all of the Contractor's facilities within New York City as well as those facilities located elsewhere within the continental limits of the United States;

iv. Specify the union(s) or other employee organizations to which the Contractor's employees belong, and shall include commitments to good faith efforts to effect Equal Opportunity changes directly or indirectly, in programs by such unions or organizations to recruit, train, qualify or otherwise select members, if such changes are deemed necessary. The P.A.A. shall also include a copy of any agreement with an employee association which affects employment policies and practices;

v. Be submitted in such format as shall be specified by the Director of the Office; vi. Include a commitment to submit to the Director a separate P.A.A., of the form (i) to (v) hereof, for each subcontractor prior to approval of the subcontractor by BERS;

vii. Include a written evidence or proof which shows that minority entrepreneurs have been solicited and given an equal opportunity to submit proposals and that such proposals have been given equal consideration for award;

viii. Contain commitments as to goals for minority and affected classes employment and adoption of equal employment practices not less strict than the commitments contained in the Contractor's most recent P.A.A. which was approved by the Office.

### C. Compliance Inspection Report

Upon demand of the Office, the Contractor shall, within the specified time, submit to the Office a Compliance Inspection Report. The completed Compliance Inspection Report must be returned to the Office within such time as is specified in the requisition for information accompanying the report form.

### D. Conferences

The Contractor shall attend such conferences as shall be required by the Office for the purpose of acquainting it with the statutory and contractual requirements and what specific measures shall constitute an acceptable P.A.A..



E. Implementation of P.A..A.

During the Term of the Contractor, the Contractor shall successfully implement the P.A..A. approved by the Office. F. Board of Review

If, in the opinion of the Office, the Contractor has breached any of the requirements of paragraphs 31 or 32 hereof, it may seek to have the Contractor declared in default by the Evaluation Committee as provided elsewhere herein.

For further information concerning these rules, regulations or procedures, contractors may consult with the Office of Equal Opportunity of BERS.

34. MacBride Principles Provisions for Board of Education Contractors

**ARTICLE I. MACBRIDE PRINCIPLES PART A**

In accordance with section 6-115.1 of the Administrative Code of the City of New York, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contract either 1) have no business operations in Northern Ireland, or 2) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

**PART B**

For purposes of this section, the following terms shall have the following meanings:

1. "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

- a. increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- b. take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- c. ban provocative religious or political emblems from the workplace;
- d. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- e. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- f. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- g. develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;

- h. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- i. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

## **ARTICLE II. ENFORCEMENT OF ARTICLE I.**

The Contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

### **35. Non-Collusive Bidding**

If this Agreement was awarded by BERS based upon the submission of bids or proposals, Contractor warrants under penalty of perjury, that its bid or price quotation was arrived at independently and without collusion aimed at restricting competition.

### **36. Set-Off Rights**

The BERS shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Board's option to withhold for the purposes of set-off any moneys due and owing to the BERS with regard to this agreement, any other agreement with the BERS, including any agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the Board for any other reason. The BERS shall exercise its set-off rights in accordance with normal BERS practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the BERS, its representatives, or the State or City Comptroller.

### **37. Fair and Ethical Business Practices**

Fair and Ethical Business Practices shall be strictly adhered to during the term of this Agreement. During the term of this Agreement, Contractor shall not:

- A. File with a government office or employee, a written instrument which intentionally contains a false statement or false information;
- B. Intentionally falsify business records;

- C. Give, or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official or public servant;
- D. Give or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant for any reason;
- E. Give, or offer to give, money, gifts or other benefit(s) to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices;
- F. Knowingly participate in the criminal activities of any organized crime group, syndicate or “family,” nor shall any person employed by or associated with any such organized crime “family,” syndicate or group participate through criminal means in any of the business affairs of Contractor.

### 38. Indemnification

The Contractor shall defend, indemnify and hold BERS and the City harmless from and against any and all claims, suits, damages, judgments, liabilities, costs, and expenses, including reasonable attorneys’ fees, to which they may be subject because of or related to any claim that the Copyrightable Materials or their use constitutes an infringement by the Contractor or a violation by the Contractor of the copyright, patent, trademark, or any other property or personal right of any third party. For the purposes of this provision, “Copyrightable Materials” shall include any reports, documents, data, photographs, software, and/or other materials provided pursuant to this agreement, regardless of whether the copyright in such materials is or shall be owned by BERS, the Contractor, or third parties. This indemnification shall survive the termination or expiration of this Agreement. This indemnification provision shall not be limited in any way by the Contractor’s obligations to obtain insurance as provided under this Agreement. Furthermore, Contractor shall defend and settle at its sole expense all suits or proceedings brought against Contractor arising out of the foregoing. However, in cases involving software, no such settlement shall be made that prevents BERS from continuing to use the software without BERS’ prior written consent, which consent shall not be withheld unreasonably.

### 39. Notice to Bidders, Proposers, Contractors, and Contract Renewers

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of \$100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act (“WPEA”), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local Law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

#### 40. NYC Earned Safe and Sick Time Act Contract Rider

##### A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 et seq. (“DCWP Rules”).

2. The Contractor agrees to comply in all respects with the ESSTA and the DCWP Rules, and as amended, if applicable, in the performance of this agreement. The Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the ESSTA in performance of this agreement may result in its termination.

3. The Contractor must notify (with a copy to DCWP at [ComplianceMonitoring@dcwp.nyc.gov](mailto:ComplianceMonitoring@dcwp.nyc.gov)) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

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

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

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

1. An employee who works within the City must be provided paid safe and sick time<sup>1</sup>. Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.
2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.
3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:
  - a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
  - b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
  - c. closure of such employee's place of business by order of a public official due to a public health emergency;
  - d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or
  - e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:
    1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
    2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family

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<sup>1</sup> Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

members from future family offense matters, sexual offenses, stalking, or human trafficking;

3. . to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

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

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

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

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

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

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);
2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;
3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;
4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-

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

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.
2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

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

DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

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

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

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



## ATTACHMENT D

### PRICE CERTIFICATION CLAUSE (REVISED 11/13/78)

The proposer certifies that the prices, warranties, conditions, benefits and terms quoted herein are at least equal or more favorable to the Board of Education Retirement System of the City of New York than the prices, warranties, conditions, benefits and terms currently quoted by the proposer to any customers for the same or a substantially similar quantity and type of item(s) or services as described herein. This certification shall not apply to prices, warranties, conditions, benefits and terms under contracts in effect between the proposer and other customers at the date of submission of the proposal within, except as provided herein.

The successful proposer (hereinafter called the “Contractor”) further certifies that during the period between the proposal submission date and the completion of the term of this contract, should subcontractor offer prices, warranties, conditions, benefits, and terms more favorable than those quoted herein, or provide changed prices, warranties, conditions, benefits and terms more favorable than those quoted herein under a contract in effect at the proposal submission date with any customer, for the same or a substantially similar quantity and type of item(s) or services, then the contractor shall immediately thereafter notify the New York City Board of Education Retirement System, Purchasing Management. Regardless of whether such notice is sent by the contractor or received by the New York City Board of Education Retirement System, this contract shall be deemed amended retroactively to the effective date of more favorable treatment, to provide the more favorable prices, warranties, conditions, benefits, and terms. The Board of Education shall have the right and option to decline any such amendment.

If the contractor is of the opinion that an apparently more favorable price, warranty, benefit, condition, and term quoted, offered or provided to a customer is not more favorable treatment, the contractor shall immediately notify the Executive Director, of the Board of Education Retirement System in writing setting forth in detail the reasons why the contractor believes the apparently more favorable treatment is not in fact more favorable treatment. The Director of Purchase, Purchasing Management, after consideration of the written explanation may, in their sole discretion, decline to accept the explanation and thereupon the terms will be at least equal to or more favorable to the Board of Education Retirement System than the prices, warranties, conditions, benefits and terms offered by the contractor to any customer for the same or substantially similar quantity and type of item(s) and/or services as of the effective date of the revision.

The contractor hereby authorizes the inspection, review and copying of contracts and documents that pertain or relate to the performance of this clause of the contract. The contractor shall be obligated to keep the contracts and documents referred to in the above paragraph during the effective period(s) of this contract and for a period of three years after the final payment of this contract.

**ATTACHMENT E**

**AFFIRMATION  
RFP #2023-02: UCaaS and CCaaS**

The undersigned proposer affirms and declares that said proposer is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer to receive public contracts except \_\_\_\_\_

Full Name of Proposer \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**CHECK ONE AND INCLUDE APPROPRIATE NUMBER**

\_\_\_ A: Individual or Sole Proprietorship  
SOCIAL SECURITY NUMBER \_\_\_\_\_

\_\_\_ B. Partnership, Joint Venture or other unincorporated organization  
EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

\_\_\_ C. Corporation  
EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

\_\_\_ Certified Woman Owned Enterprise    \_\_\_ Certified Minority Owned Enterprise

Please submit copy of Certification Letter with RFP

\_\_\_ Certified Locally Based Enterprise    \_\_\_ Certified Non-Profit Enterprise

BY: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

If a Corporation place seal here

Must be signed by an officer or duly authorized representative

Under the Federal Privacy Act the furnishing of Social Security Numbers by proposers on city contracts is voluntary. Failure to provide a Social Security Number will not result in a proposer's disqualification. Social Security Number will be used to identify proposers to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses which seek City Contracts.

## **ATTACHMENT F**

### **MINORITY AND WOMEN OWNED BUSINESS ENTITIES PARTICIPATION**

The New York City Board of Education Retirement System strongly encourages the substantive participation of minority and women owned business enterprises (M/WBE) in this engagement. The proposal will be deemed to be M/WBE participation if the Prime contractor is identified by a governmental agency as a certified M/WBE. No rating points are assigned for M/WBE status.

We strongly advocate participation of Prime contractors who demonstrate a clear and strong commitment to, and support of equal employment opportunity and employee civil rights, as well as, Prime or subcontractors showing a high level of commitment to the principles incorporated in Title VI and Title VII of the Civil Rights Act of 1964, and with all applicable Federal, State and City Laws and for clear demonstration of implementation thereof.

Demonstration of commitment and implementation may consist of, but not be limited to, the following, as documented by supporting data and materials, to be provided by the proposed with its response to this RFP:

- Submit a copy of your M/WBE certification letter from a governmental agency.
- A record of hiring, placement, training and promotional practices which permit access to all levels within the firm's organization by women, minority, disabled and other employee groups covered by the Civil Rights Act of 1964.
- Policies, initiatives and programs which discourage discrimination against individuals on the basis of age, color, sex, national origin, citizen status, religion, sexual orientation, pregnancy or pregnancy-related conditions, and/or promotes the welfare of people with disabilities, including mentally and physically disabled employees and disabled veterans.

Recognition of the efforts above by government agencies, nationally recognized civil rights organizations, or other appropriate groups.

## **ATTACHMENT G**

### **IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS**

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law (“SFL”) §165-a and General Municipal Law (“GML”) §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

- (a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- (b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder’s certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

- (1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or
- (2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

**BIDDER’S CERTIFICATION OF COMPLIANCE WITH  
IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

*[Please Check One]*

**BIDDER’S CERTIFICATION**

- By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
- I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

Dated:

## ATTACHMENT H

### Doing Business Data Form

<http://www.nyc.gov/html/dot/weekendwalks/downloads/pdf/doing-business-data-form-2018.pdf>

## ATTACHMENT I

### INSURANCE REQUIREMENTS

**A. Duty to Maintain Insurance.** The Contractor shall not commence performing services under this Contract unless all insurance required by this Contract is in effect. The Contractor shall ensure continuous insurance coverage in the manner, form, and limits required by this Contract.

**B. Types of Insurance Required.** The Contractor shall maintain the following types of insurance indicated below. Where this Contract requires that insurance be “at least as broad as” a specified form (including forms issued by the Insurance Services Office (ISO)), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form contained in its policy provides coverage at least as broad as the specified form.

(1) *Commercial General Liability Insurance.* The Contractor shall maintain Commercial General Liability Insurance (“CGL”) covering claims for property damage and bodily injury, including death, and personal and advertising injury that may arise from any of the operations under this Contract. Such CGL must:

- a. be in the amount of at least **\$1,000,000** per occurrence for bodily injury, including death, and property damage and at least **\$2,000,000** in the aggregate, unless this is a construction contract and higher limits are required by the Department of Buildings pursuant to 1 RCNY section 101-08, in which case the limits of CGL must meet or exceed those limits required by the Department of Buildings.
- b. provide coverage for personal and advertising injury in the amount of at least **\$1,000,000** unless waived in writing by the Executive Director or his/her designee(s).
- c. provide coverage that is at least as broad as the coverage provided by the latest edition of ISO Form CG 00 01.
- d. be “occurrence” based rather than “claims made.”
- e. list the “the Board of Education Retirement System of the City of New York and the City of New York (the “City”), including their respective officials and employees” as additional insureds with coverage at least as broad as the latest edition of ISO Form CG 20 10 or ISO Form CG 20 26.
- f. not include an exclusion that is not included in the latest edition of ISO Form CG 00 01, unless such exclusion is approved in writing by the Board.

(2) *Workers’ Compensation Insurance, Employers’ Liability Insurance, and Disability Benefits Insurance.* The Contractor shall provide, and shall cause its subcontractors to provide, Workers’ Compensation Insurance, Employers’ Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on

behalf of all employees providing services under this Contract.

- (3) *Commercial Automobile Liability Insurance.* If vehicles are used in the provision of services under this Contract, the Contractor shall provide Commercial Automobile Liability Insurance in a combined single limit of at least **\$1,000,000** for each accident for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the Commercial Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement ISO Form CA 99 48) and MCS-90.
- (4) *Professional Liability Insurance.* Unless waived in writing by the Executive Director or his/her designee(s), if the Contractor is providing professional services under this Contract for which Professional Liability Insurance is commercially available, the Contractor shall maintain Professional Liability Insurance appropriate to the type(s) of such services in the amount of at least **\$1,000,000** per claim.
- a. Unless waived in writing by the Executive Director or his/her designee(s), the Contractor shall cause its subcontractors that provide professional services under this Contract for which Professional Liability Insurance is commercially available to maintain Professional Liability Insurance appropriate to the type(s) of such services in the amount of at least **\$1,000,000** per claim.
  - b. BERS will accept occurrence or claims-made policies for Professional Liability Insurance. Claims-made policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

### C. General Requirements for Insurance.

- (1) *Insurance Policy Deductibles, Self-Insured Retentions, and Self-Insurance Programs.* Any deductibles or retentions in excess of **\$5,000** shall be disclosed by the Contractor and shall be subject to advance written approval by the Executive Director or his/her designee(s). Any deductible or retention amounts elected by the Contractor or imposed by the Contractor's insurer(s) shall be the sole responsibility of the Contractor. The Contractor shall be permitted to provide insurance of any type required under this Contract by means of a self-insurance program (or make use of any self-insured retention)<sup>2</sup> *only* in the event (a) such program provides BERS and the City, including their respective officials and employees, with all rights that would be provided by traditional insurance required by this

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<sup>2</sup> Included here are any combinations, limited partnerships, joint ventures, and/or any other combined activities in which the Contractor and/or any subcontractor(s) may participate.



Contract including, but not limited to, the defense obligations that insurers are required to undertake in liability policies, and (b) such self-insurance program is approved in advance by the Executive Director or his/her designee(s). If the Contractor desires to provide any such insurance by means of a self-insurance program, the Contractor shall submit a statement satisfactory to the Executive Director or his/her designee(s), signed by a party authorized to bind the Contractor and acknowledged by a notary public, by which the Contractor (i) affirms that such self-insurance program provides at least the same level of coverage as required by this Contract, (ii) agrees to assume responsibility for satisfying all obligations of the self-insurance program if such program for any reason fails to do so, and (iii) provides BERS with the name and address of the office or official of its self-insurance program who is responsible for satisfying the self-insurance obligations. The foregoing requirements for advance approval include, but are not limited to, the Contractor's formation of, and/or participation in, any other alternative risk management arrangement(s) as a substitute for a traditional insurance policy(ies). In addition, the Contractor must provide the BERS Contract Manager with a written set of detailed rules and procedures for BERS and/or the City to file a claim(s) and to obtain coverage under any risk retention fund(s) and/or any other alternative risk management arrangement(s) including, but not limited to, any required claim form(s), contact information, and any information required to be submitted with a claim(s). The Contractor's rules and procedures for submitting a claim(s) and obtaining coverage under any risk retention fund(s) and/or any other alternative risk management arrangement(s) shall be subject to approval by the Executive Director or his/her designee(s). Approval of any proposed self-insurance program, other alternative risk management arrangement(s) and the rules and procedures for submitting a claim(s) and obtaining coverage is at the sole discretion of BERS. As determined by the Executive Director or his/her designee(s), any unreasonable failure and/or refusal by the Contractor and/or its agent(s) to accept and process a claim(s) from BERS, the City and/or their agent(s) and/or any unreasonable disclaimer(s) of coverage by the Contractor and/or its agent(s) shall entitle BERS to deduct from any compensation due and owing to the Contractor the amounts, as determined by BERS and/or the City, of any and all resulting losses, damages, expenses (including, but not limited to, reasonable attorney fees), claims, demands, judgments, suits, allegations, liabilities, settlements and/or other costs that BERS and/or the City, including their respective officials and employees, shall incur regarding any affected claim(s) and/or denial of coverage. The foregoing provisions shall apply equally to any subcontractor(s).

- (2) All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-/VII or a Standard & Poor's rating of at least A, unless prior written approval is obtained from the City Corporation Counsel.
- (3) The Contractor shall be solely responsible for the payment of all premiums for all required insurance.
- (4) BERS and the City's limits of coverage for all types of insurance required in this Contract shall be the greater of (i) the minimum limits set forth herein or (ii) the limits provided to

the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

- (5) Policies of insurance provided pursuant to this Contract shall be primary and non-contributing to any insurance or self-insurance maintained by BERS and the City.
- (6) The Contractor may satisfy its insurance obligations under Contract through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.
- (7) In his/her sole discretion, the Executive Director or his/her designee(s), may, subject to the approval of the Comptroller and the City Corporation Counsel, accept letters of credit and/or custodial accounts in lieu of the required insurance.

**D. Proof of Insurance.**

- (1) For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) days of award of this Contract. ACORD forms are not acceptable proof of such insurance.
  - a. Form C-105.2 Certificate of Workers' Compensation Insurance;
  - b. Form U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
  - c. Form SI-12 Certificate of Workers' Compensation Self-Insurance'
  - d. Form GSI-150.2 Certificate of Participation in Workers' Compensation Group Self-Insurance;
  - e. Form DB-120.1 Certificate of Disability Benefits Insurance;
  - f. Form DB-155 Certificate of Disability Benefits Self-Insurance;
  - g. Form CE-200 Affidavit of Exemption;
  - h. Equivalent or successor forms authorized by the New York State Workers' Compensation Board; or
  - i. Other proof of insurance in a form acceptable to BERS.
- (2) For each type of insurance required by this Contract except for Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall submit within ten (10) days of award of this Contract or such other time as may be specified by the Executive Director or his/her Designee(s).
  - a. A Certificate of Insurance on a form acceptable to the Executive Director or Designee, a duly executed Certification of Insurance Broker or Agent and the endorsement or policy provision containing the required coverage as an additional insured and, if applicable, loss

payee.

- i. If the Certificate of Insurance form contains a space to indicate the “certificate holder,” such space shall list: The Board of Education Retirement System of the City of New York, 65 Court Street, 16<sup>th</sup> Floor Brooklyn, NY 11201.
- ii. The Certificate of Insurance form(s) evidencing CGL shall state: “The Board of Education Retirement System of the City of New York and the City of New York, including their respective officials and employees are additional insureds” or similar language acceptable to the Executive Director or his/her Designee(s).

-OR-

- b. A copy of the complete insurance policy(ies) as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time the Contractor shall submit a certified copy of the policy.
- (3) The Contractor shall submit documentation confirming renewals of insurance to BERS prior to the expiration date of coverage of policies required under this Contract. Such documentation shall comply with the requirements concerning proof of insurance in paragraphs (1) and (2) above.
  - (4) The Contractor shall provide BERS and/or the City with a copy of any policy of insurance required by this Contract upon the demand for such policy by the Executive Director or the City Corporation Counsel.
  - (5) Acceptance by the Executive Director of proof of insurance does not excuse the Contractor from maintaining policies consistent with all provisions of this Contract (and ensuring that subcontractors maintain policies that are required under this Contract) or from any liability arising from its failure to do so.
  - (6) In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under Contract shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Board of Education Retirement System, Attn: Legal, 65 Court Street, 16<sup>th</sup> Floor Brooklyn, NY 11201, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

#### **E. Miscellaneous.**

- (1) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under any insurance policy maintained in accordance with this Contract that is required to include BERS and the City as an additional insured and/or loss payee, the Contractor shall provide the insurer with timely notice thereof on behalf of BERS and the City, including their respective officials and employees. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor’s employees was injured). Such notice shall expressly specify that “this notice is being given on behalf of the Board of Education

- Retirement System of the City of New York and the City of New York, including their respective officials and employees as Additional Insured [and, if applicable, Loss Payees]” and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007 and the Legal Department of the Board of Education Retirement System at 65 Court Street, 16<sup>th</sup> Floor, Brooklyn, NY 11201. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify BERS and the City, including their respective officials and employees, for all losses, judgments, settlements and expenses, including reasonable attorneys’ fees, arising from an insurer’s disclaimer of coverage citing late notice by or on behalf of BERS and/or the City, including their respective officials and employees.
- (2) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Contract, the Contractor shall at all times fully cooperate with BERS and the City with regard to such potential or actual claim.
  - (3) The Contractor’s failure to maintain any of the insurance required by this Contract shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by BERS or the City at any time.
  - (4) Insurance coverage in the minimum amounts required in this Contract shall not relieve the Contractor or its subcontractors of any liability under this Contract, nor shall it preclude BERS and/or the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Contract or law.
  - (5) Apart from damages or losses covered by Workers’ Compensation Insurance, Employers’ Liability Insurance, Disability Benefits Insurance, Commercial Automobile Liability Insurance, and Professional Liability Insurance, the Contractor waives all rights against BERS and the City, including their respective officials and employees, for any damages or losses that are covered under any insurance required under this Contract (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Contract.
  - (6) If the Contractor requires any subcontractor to procure insurance with regard to any operations under this Contract and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list BERS and the City, including their respective officials and employees, as an additional insured. For CGL, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

**ATTACHMENT J**

**VENDOR’S ACKNOWLEDGMENT OF THE NEW YORK STATE FREEDOM OF INFORMATION LAW**

**To complete this form, please:**

Section I- check either Claim A or Claim B.

Section II- complete this Section only if Claim B is checked.

Section III- sign and date this form.

.....

**Section I: Check one of the following:**

**Claim A** \_\_\_ The Vendor acknowledges that there are NO Trade Secrets contained in the proposal begin submitted.

**Claim B** \_\_\_ The Vendor acknowledges that there ARE Trade Secrets contained in the proposal beginning submitted.

.....

**Section II: (Use as much space for the section as needed. Separate page accepted)**

**Cite the specific portion(s) of the proposal for which an exemption is being requested.**

**Provide explicit justification for the exemption request**

.....

**Section III**

**Company Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

All such materials so indicated shall be reviewed by NYCBERS and any decision not to honor a request for confidentiality shall be communicated in writing to the vendor. For those proposals which are unsuccessful, all such confidential materials shall be returned to the vendor. Prices makes and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after proposal opening regardless of any designation of confidentiality made by the vendor.