

ATTACHMENT 2

GENERAL TERMS AND CONDITIONS FOR QUEENS BOROUGH PUBLIC LIBRARY CONTRACTS

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ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

- A. "Agreement" or "Contract" shall mean the various documents that constitute the agreement between the Consultant and the Library.
- B. "City" shall mean the City of New York.
- C. "Consultant" or "Contractor" shall mean the entity entering into this Agreement with the Library.
- D. "Days" shall mean calendar days unless otherwise specifically noted to mean business days.
- E. "Law" or "Laws" shall mean the Constitutions of the United States and the State of New York; a statute of the United States or of the State of New York; the New York City Charter; the New York City Administrative Code; a local law of the City of New York; and any ordinance, rule or regulation having the force of law.
- F. "Library" shall mean the Queens Borough Public Library.
- G. "Project" shall mean the Project for which the Consultant or Contractor's services are required, as specified by the Library.
- H. "State" shall mean the State of New York.

ARTICLE 2 - REPRESENTATIONS, WARRANTIES AND AFFIRMATIONS

Section 2.01 Performance and Deliverables

Consultant warrants that: (a) Consultant has the proper skill, training, and background so as to be able to perform in a competent and professional manner and that all work shall be performed in accordance with the requirements delineated in this Agreement; (b) the Library shall receive free, good, and clear title to all materials and Deliverables developed under this Agreement; (c) each and every Deliverable shall conform to the Deliverable specifications set forth in this Agreement; and (d) during the term of this Agreement, Consultant shall, at no charge to the Library, correct any defects in the Deliverables in the Library's possession.

Section 2.02 Procurement of Agreement

- A. The Consultant represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the Parties. The Consultant makes such representations and warranties to induce the Library to enter into this Agreement and the Library relies upon such representations and warranties in the execution of this Agreement.
- B. For a breach or violation of such representations or warranties, the Library shall have the right to annul this Agreement without liability, entitling the Library to recover all monies paid hereunder and the Consultant shall not make a claim for, or be entitled to recover, any sum or sums due

under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the Library for falsity or breach, nor shall it constitute a waiver of the Library's right to claim damages, refuse payment or to take any other action available to it.

Section 2.03 Conflicts of Interest

A. The Consultant represents and warrants that neither it, nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Consultant represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by or connected with the Consultant. No trustee, officer or employee of the Library shall participate in any decision relating to the Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

Section 2.04 Fair Practices

A. The Consultant, and each person signing on behalf of the Consultant, represents, warrants, and certifies, under penalty of perjury, that to the best of its, his or her knowledge and belief:

1. The prices in this Agreement have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any competition;

2. Unless otherwise required by law, the prices that have been quoted in this Agreement and on the bid or proposal submitted by the Consultant have not been knowingly disclosed by the Consultant prior to the proposal opening, directly or indirectly, to any competitor; and

3. No attempt has been made or will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Consultant: (i) has published price lists, rates, or tariffs covering items being procured; (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items; or (iii) has sold the same items to other customers at the same prices being bid, does not, in itself, constitute a disclosure within the meaning of this Section.

Section 2.05 Vendor Responsibility

A. The Consultant represents and warrants that it and its principals have duly completed, executed, and submitted to the Library its Vendor Responsibility Questionnaire. The Consultant understands that the Library's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

B. The Consultant affirms that: (1) it has not been declared not responsible, or disqualified, by any agency of the City of New York or the State of New York; and (2) there is no action pending against it relating to its responsibility or qualification(s) to receive public contracts.

Section 2.06 Bankruptcy and Reorganization

In the event that the Consultant files for bankruptcy or reorganization under Chapters Seven or Eleven of the United States Bankruptcy Code, the Consultant shall disclose such action to the Library within seven (7) days of filing for bankruptcy or reorganization.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Consultant shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Library. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Consultant shall submit a written request for approval to the Library giving the name and address of the proposed assignee. Upon the request of the Library, the Consultant or the proposed assignee shall provide the proposed assignee's Vendor Responsibility Questionnaire and any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Library shall make a final determination in writing, either approving or disapproving the proposed assignee, after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance or other disposition may result in the revocation and annulment of this Agreement, at the sole option of the Library. The Library shall thereupon be relieved and discharged from any further liability and obligation to the Consultant, its assignees or transferees, who shall forfeit all monies earned under this Agreement.

Section 3.02 Subcontracting

A. The Consultant shall not enter into any subcontract for the performance of its obligations, whether in whole or in part, under this Agreement without the prior written approval by the Library.

B. Prior to entering into any subcontract, the Consultant shall submit a written request for the approval of the proposed subcontractor to the Library giving the name and address of the proposed subcontractor and the portion of the services that the subcontractor is to perform and furnish. Upon the request of the Library, the Consultant or the proposed subcontractor shall provide the proposed subcontractor's Vendor Responsibility Questionnaire and any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Library shall make a final determination in writing, either approving or disapproving the subcontractor, after receiving all requested information.

C. All subcontracts must be in writing and shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the Agreement between the Library and the Consultant;

2. Nothing contained in the agreement between the Consultant and the subcontractor shall impair the rights of the Library; and

3. Nothing contained in the agreement between the Consultant and the subcontractor, or under the Agreement between the Library and the Consultant, shall create any contractual relationship between the subcontractor and the Library.

D. The Consultant agrees that it is as fully responsible to the Library for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

F. The Library may revoke the approval of a subcontractor granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the Library. If revoked, the Library will submit its revocation in writing on no less than ten (10) days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Consultant shall cause the subcontractor to cease all work under the Agreement. The Library shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The Library shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

G. The Library's approval of a subcontractor shall not relieve the Consultant of any of its responsibilities, duties, and liabilities under this Agreement. At the request of the Library, the Consultant shall provide the Library a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

Consultant acknowledges that it is solely an independent contractor and that nothing in this Agreement shall be construed to create an employment, agency, partnership or any type of relationship other than that of an independent contractor with the Library. Consultant further acknowledges that Consultant is not an employee of the Library, and is not entitled to any of the Library employment rights or benefits. The Library shall not be responsible for payment of workers' compensation, disability benefits, or unemployment insurance, or for withholding or paying employment-related taxes for Consultant. In the event that any federal, state or local government agency, any court or any other applicable entity determines that Consultant hereunder is an employee of the Library for any purpose, Consultant agrees to indemnify and hold harmless the Library from all liabilities, costs, and expenses (including, but not limited to, attorneys' fees) associated with such determination.

Section 4.02 Employees

All persons who are employed by the Consultant and all consultants or independent contractors who are retained by the Consultant to perform services under this Agreement are neither employees of the Library nor under contract with the Library. The Consultant, and not the Library, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the Library for the acts, omissions, liabilities or obligations of the Consultant, or any officer, employee, or agent of the Consultant, or for taxes of any nature, or for any right or benefit applicable to a trustee, officer or employee of the Library, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the Library to any person or entity.

Section 4.03 Removal of Individuals Performing Work

The Consultant shall not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which he or she shall be employed. Whenever the Library shall inform the Consultant, in writing, that any individual is, in the Library's opinion, incompetent, unfaithful or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Consultant that an individual shall no longer perform work under this Agreement, the Library shall provide the Consultant an opportunity to be heard on no less than five (5) days' written notice. The Library may direct the Consultant to remove the individual from the worksite under the Agreement pending the opportunity to be heard and the Library's determination.

Section 4.04 Working Hours and Rules

Consultant, including its employees and any consultants or independent contractors retained by it, shall observe the working hours, working rules, holiday schedules, and policies of the Library while working on the Library premises.

ARTICLE 5 - RECORDS, AUDITS, AND REPORTS

Section 5.01 Books and Records

The Consultant agrees to maintain accurate books, records, documents, and other evidence, and to utilize appropriate accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

Section 5.02 Retention of Records

The Consultant agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six (6) years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim or audit. Any books, records, and other documents that are created in an electronic format in the

regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Consultant agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in section 5.02, the Library and any other persons duly authorized by the Library shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Consultant pursuant to this Article.

B. The Library shall have the right to have its representatives present to observe the services being performed.

C. The Consultant shall not be entitled to final payment until the Consultant has complied with any request for inspection or access given under this Section.

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by the Library and other persons duly authorized by the Library.

C. The Consultant shall submit any and all documentation and justification in support of expenditures or fees under this Agreement, as may be required by the Library.

D. The Consultant shall not be entitled to final payment until the Consultant has complied with the requirements of this Section.

Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Consultant of any Library books, records, documents or data, whether in hard copy or electronic or other format now known or developed in the future, at Library locations, facilities or offices, the Consultant shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such location, facility or office without the prior written approval of the Library’s designated official. Upon the request by the Library at any time during the Agreement or after the Agreement has expired or terminated, the Consultant shall return to the Library any Library books, records, documents or data that has been removed from Library premises.

Section 5.06 Electronic Records

As used in this Agreement, the terms books, records, documents, and other data refer to electronic versions, as well as hard copy versions.

Section 5.07 Confidentiality

A. The Consultant agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information or data, furnished to, or prepared, assembled or used by, the Consultant under this Agreement (“Confidential Information”). The Consultant agrees that such Confidential Information shall not be made available to any person or entity without the prior written approval of the Library. The Consultant agrees to maintain the confidentiality and privacy of such Confidential Information by using no less than a reasonable degree of care. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Consultant shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data.

B. The Consultant shall provide notice to the Library within three (3) days of the discovery by the Consultant of any breach of security of any data, whether such data was encrypted or not, in use by the Consultant that contains social security numbers or other (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Consultant or its employees, subcontractors or agents. Upon the discovery of such security breach, the Consultant shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Library of such steps. In the event of such breach of security, without limiting any other right of the Library, the Library shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The Library shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency or any other commercially reasonable preventive measure. The Library shall provide the Consultant with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the Library’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Consultant shall pay directly for the costs, detailed above, if any.

C. The Consultant shall allow only those persons who have a legitimate work-related basis to access information under this Agreement to access Confidential Information. The Consultant agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all Confidential Information.

D. The Consultant, and its officers, employees, and agents shall notify the Library, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (e.g., print, television, radio, Internet) regarding the services provided or the data collected pursuant to this Agreement, at least twenty-four (24) hours prior to any statement to the press or at least five (5) business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Consultant may not issue any statement or submit any material for publication that includes Confidential Information as prohibited by this Section.

E. At the request of the Library, the Consultant shall return to the Library any and all Confidential Information in the possession of the Consultant or its subcontractors. If the Consultant or its subcontractors are legally required to retain any Confidential Information, the Consultant shall notify the Library in writing and set forth the Confidential Information that it intends to retain and the reasons why it is legal basis for retention. The Consultant shall confer with the Library, in good faith, regarding

any issues that arise from the Consultant retaining such confidential information. If the Library does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section shall constitute a material breach of this Agreement for which the Library may terminate this Agreement pursuant to Article 10. The Library reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

A. Any reports, documents, data, photographs, deliverables or other materials produced pursuant to this Agreement, and any and all drafts or other preliminary materials, in any format, related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the Library.

B. Any reports, documents, data, photographs, deliverables, or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “works-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the Library shall be the sole copyright owner of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “works-made-for-hire”, the Consultant hereby irrevocably transfers, assigns, and conveys exclusive copyright ownership in and to the Copyrightable Materials to the Library, free and clear of any liens, claims or other encumbrances. The Consultant shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Consultant for no purpose other than to perform its duties and obligations under this Agreement without the prior written consent of the Library. The Library may grant the Consultant a license to use the Copyrightable Materials on such terms as determined by the Library and set forth in the license.

C. The Consultant acknowledges that the Library may, in its sole discretion, register the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Consultant shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to the Library in order to successfully apply for copyright registration in and to the Copyrightable Materials.

D. The Consultant represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or an invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, on the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Consultant represents and warrants that it has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the Library upon execution of this Agreement.

E. If the Consultant publishes a work dealing with any aspect of performance under this Agreement or with the results of such performance, the Library shall have a royalty-free, non-exclusive, irrevocable license to reproduce, publish or otherwise use such work for Library purposes.

Section 6.02 Patents and Inventions

The Consultant shall promptly and fully report to the Library any discovery or invention arising out of or developed in the course of performance of this Agreement.

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Consultant from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

The Consultant hereby assigns, sells, and transfers to the Library all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the Library under this Agreement.

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Consultant shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

Section 7.02 Commercial General Liability Insurance

A. The Consultant shall maintain Commercial General Liability Insurance covering the Consultant as Named Insured and the Queens Borough Public Library and its Trustees as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the Library, its trustees, and the Consultant from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be “occurrence” based rather than “claims-made.”

CGL Limits / Coverages:

(1) Each Occurrence Limit:	\$1,000,000
(2) General Aggregate:	\$2,000,000
(3) Products / Completed Operations Aggregate:	\$2,000,000
(4) Personal / Advertising Injury Liability:	\$1,000,000
(5) Fire Damage Legal Liability:	\$ 100,000
(6) Medical Expense:	\$ 5,000

Except as otherwise required by the Library, the General Aggregate shall apply separately to the subject matter or the project under this Agreement and the Insurer shall provide an appropriate subject matter or project endorsement, using the latest ISO Form CG 25 03 or its equivalent.

B. Such Commercial General Liability Insurance shall name the Queens Borough Public Library and its Trustees as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or its equivalent.

Section 7.03 Commercial Umbrella Liability Insurance

A. The Consultant shall maintain Commercial Umbrella Liability Insurance with no less than the following limits: \$2,000,000 each occurrence. Coverage should follow form under the Commercial General Liability and Auto Policies.

Section 7.04 Professional Liability Insurance

A. At the Library's direction, if professional services are provided pursuant to this Agreement, the Consultant shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate. The policy or policies shall include an endorsement to cover the liability assumed by the Consultant under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Consultant or anyone employed by the Consultant.

B. All subcontractors of the Consultant providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Consultant shall provide to the Library, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Library.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Consultant shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 7.05 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance

The Consultant shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.06 Unemployment Insurance

To the extent required by Law, the Consultant shall provide Unemployment Insurance for its employees.

Section 7.07 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Consultant shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 7.08 General Requirements for Insurance Coverage and Policies

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy in the State of New York and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Library.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the Library.

C. The Consultant shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the Library is an insured under the policy. The Library has the option to accept or reject the Deductibles or Self Insured Retentions ("SIRs"), or to impose additional security or other requirements, in view of the Library's preference that insurance policies utilized for the Library's projects have no Deductibles or SIRs.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Library. Any such self-insurance program shall provide the Library with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The Library's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Consultant as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.09 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Consultant shall file one of the following within ten (10) Days of award of this Agreement.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);

4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the Library.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Consultant shall file a Certificate of Insurance with the Library within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the Library and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Consultant's general liability policy by which the Library and its trustees have been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Library prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Consultant shall provide the Library with a copy of any policy or declarations pages required under this Article upon the demand for such policy by the Library within 20 days.

E. Acceptance by the Library of a certificate or a policy does not excuse the Consultant from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so. Failure of the Library to demand such certificates, policies, endorsements, or other evidence of full compliance with these insurance requirements, or failure of the Library to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of the Consultant's obligation to maintain such insurance.

F. In the event the Consultant receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Consultant shall immediately forward a copy of such notice to Library, Attn: Risk Management Department, Queens Borough Public Library, 89-11 Merrick Blvd. Jamaica, NY 11432, with a copy to Office of the General Counsel, Queens Borough Public Library, 89-11 Merrick Blvd. Jamaica, NY 11432.

G. The Consultant shall provide a copy of the Library's Basic Insurance Requirements to its insurance producer(s) and insurance carrier(s).

Section 7.10 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Consultant shall provide the insurer with timely notice thereof on behalf of the Library. Such notice shall be given even where the Consultant may not have coverage under such policy (for example, where one of Consultant's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the Queens Borough Public Library and its Trustees as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Consultant shall simultaneously send a copy of such

notice to the Library, Attn: Risk Management Department, Queens Borough Public Library, 89-11 Merrick Blvd. Jamaica, NY 11432, with a copy to Office of the General Counsel, Queens Borough Public Library, 89-11 Merrick Blvd. Jamaica, NY 11432.

Notice to the Library shall specify the name of the Project, name of Library Representative or Designee, the identification number of the Agreement, the date of the incident, the location of the incident (street address and borough), the identity of the persons or things injured, damaged or lost, and the name of the insurance carrier that issued the commercial liability insurance policy pursuant to the Agreement.

If the Consultant fails to comply with the requirements of this paragraph, the Consultant shall indemnify the Library and its trustees 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 the Library and/or its trustees.

B. The Consultant's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the Library at any time.

C. By requiring insurance, the Library does not represent that certain coverage and limits will necessarily be adequate to protect the Consultant, and such coverage and limits shall not be deemed a limitation on the Consultant's liability under the indemnities granted to the Library under any provision of the Agreement.

D. Insurance coverage in the minimum amounts required in this Article shall not relieve the Consultant or its subcontractors of any liability under this Agreement, nor shall it preclude the Library from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law. The Library reserves the right to adjust insurance requirements.

E. The Consultant waives all rights against the Library and its trustees and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Consultant and/or its subcontractors in the performance of this Agreement.

F. In the event the Consultant requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Consultant as an additional insured under such insurance, the Consultant shall ensure that such entity also name the Library and its trustees as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 10 or its equivalent.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

The Consultant shall take all reasonable precautions to protect all persons and the property of the Library and of others from damage, loss or injury resulting from the Consultant's and/or its subcontractors' operations under this Agreement.

Section 8.02 Protection of Library Property

The Consultant assumes the risk of, and shall be responsible for, any loss or damage to Library property, including property and equipment leased by the Library, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Consultant, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

The Consultant shall defend, indemnify, and hold harmless the Library and its trustees, officers, employees, affiliates, and assigns from and against any and all liability, loss, damages, claim, or action, to the extent permissible by law, arising out of the operations performed or the services provided by the Consultant under this Agreement. Insofar as the facts and law relating to any claim would preclude the Library from being completely indemnified by the Consultant, (a) the Library shall be partially indemnified by the Consultant, or (b) where the claim arises from an injury to the Consultant's employee(s), the Consultant shall be liable to the Library under this Agreement for partial or complete indemnification and/or contribution to the fullest extent provided by law.

Section 8.04 Infringement Indemnification

The Consultant shall defend, indemnify, and hold harmless the Library, its trustees, and employees from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the Library or its trustees or employees may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Consultant of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Consultant and/or its subcontractors in the performance of this Agreement. The Consultant shall defend, indemnify, and hold harmless the Library, its trustees, and employees regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the Library or its trustees or employees from being completely indemnified by the Consultant, the Library, its trustees, and employees shall be partially indemnified by the Consultant to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The indemnification provisions set forth in this Article shall not be limited in any way by the Consultant's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

A. In the event that any claim is made or any action is brought that relates to this Agreement, other than an action between the Library and the Consultant, the Consultant shall diligently render to the Library without additional compensation all assistance that the Library may reasonably require of the Consultant.

B. The Consultant shall report to the Library in writing within five (5) business days of the initiation by or against the Consultant of any legal action or proceeding in connection with or relating to this Agreement.

Section 8.07 Withholding of Payments

A. In the event that any claim is made or any action is brought against the Library for which the Consultant may be required to indemnify the Library pursuant to this Agreement, the Library shall have the right to withhold further payments under this Agreement for the purpose of setting-off in sufficient sums to cover the initiated claim or action.

B. In the event that any Library property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the Library shall have the right to withhold further payments under this Agreement for the purpose of setting-off in sufficient sums to cover such loss or damage.

C. The Library shall not, however, impose a setting-off in the event that an insurance company that provided liability insurance pursuant to Article 7 above, has accepted the Library's tender of the claim or action without a reservation of rights.

D. The Library may, at its option, withhold for purposes of setting-off any monies due to the Consultant under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Consultant or to the amount of any overpayment to the Consultant with regard to this Agreement.

E. The rights and remedies of the Library provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third-Party Rights

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

ARTICLE 9 - CHANGES TO THE AGREEMENT

Section 9.01 Agreement Changes Must be in Writing

Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both Parties. Consultants deviating from the requirements of this Agreement without a duly approved and executed change order document, or written agreement modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Consultant

In the event that any change is required to the data, documents, deliverables or other services to be provided under this Agreement, because of negligence or error of the Consultant, no additional compensation shall be paid to the Consultant for making such change, and the Consultant shall be obligated to make such change without additional compensation.

Section 9.03 Additional Services

A. Consultant may provide services not initially covered under the Agreement (“Additional Services”) without invalidating the Agreement. However, Consultant may not perform such Additional Services without first receiving written authorization from the Library.

B. If Consultant recognizes the need for Additional Services, it shall promptly notify the Library and explain the basis for the need. Consultant shall not proceed with any such Additional Services until it has received written authorization from the Library.

C. Except where such Additional Services are required due to the negligence or error of the Consultant, Additional Services provided by Consultant shall entitle Consultant to compensation pursuant to a schedule to be agreed upon by both Parties (“Additional Services Schedule”).

D. The Library shall have the right to alter the Services, provided however, that if Consultant believes that any work or services it has been directed to perform as a result of such alteration constitute Additional Services, Consultant shall notify the Library within three (3) days of such directive, and the Library shall determine whether such altered services are either (i) within the Scope of Services, or (ii) Additional Services to be billed pursuant to the Additional Services Schedule.

ARTICLE 10 - TERMINATION AND DEFAULT

Section 10.01 Termination by the Library Without Cause

A. The Library shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the procedures set forth below at Section 10.04.

B. If the Library terminates this Agreement pursuant to this Section, the following provisions shall be applicable: (i) the Library shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the Library pursuant to Section 10.04; (ii) the Library shall pay for services provided in accordance with this Agreement prior to the termination date; (iii) any obligation necessarily incurred by the Consultant on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the Library in accordance with the terms of this Agreement; and (iv) in no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Consultant and its landlord.

Section 10.02 Consultant Default

A. The Library shall have the right to declare the Consultant in default:

1. Upon a breach by the Consultant of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Consultant, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation or composition of the Consultant for the benefit of creditors;

3. If the Consultant refuses or fails to proceed with the services under the Agreement when and as directed by the Library;

4. If the Consultant or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City or State vendor.

5. If the Consultant or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Consultant or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive or fraudulent material statement, or fails to make a required material statement in any bid, proposal or application for City, State or other government work.

B. The right to declare the Consultant in default shall be exercised by sending the Consultant a written notice of the conditions of default, setting forth the ground or grounds upon which such default is declared ("Notice of Default"). The Consultant shall have ten (10) days from its receipt of the Notice of Default to cure the conditions giving rise to its default or any longer period, if one is set forth in the Notice of Default. The Library may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Library may declare the Consultant in default pursuant to this Section, in accordance with the provisions of Section 10.04.

D. The Library, after declaring the Consultant in default, may have the services under this Agreement completed by such means and in such manner as it may deem necessary and in accordance with its purchasing policy. After such completion, the Library shall ascertain the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion exceed the total sum which would have been payable under this Agreement if it had been completed by the Consultant, any excess shall be promptly paid by the Consultant upon demand by the Library. The excess expense of such completion, including any and all related and incidental costs, and any liquidated damages assessed against the Consultant, may be charged against and deducted out of monies earned by the Consultant.

Section 10.03 Force Majeure

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Consultant ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Consultant.

B. In the event that the Consultant cannot comply with the terms of the Agreement (including any failure by the Consultant to make progress in the performance of the services), because of a Force Majeure Event, then the Consultant may ask the Library to excuse its nonperformance and/or terminate the Agreement. If the Library, in its reasonable discretion, determines that the Consultant cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Library shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the Library terminates the Agreement pursuant to this Section, then: (1) the Library shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date; (2) the Library shall pay for services provided in accordance with this Agreement prior to the termination date; (3) any obligation necessarily incurred by the Consultant on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the Library in accordance with the terms of this Agreement; and (4) in no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Consultant and its landlord.

Section 10.04 Procedures for Termination

A. The Library shall give the Consultant written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) days from the date the notice is personally delivered, or fifteen (15) days from the date the notice is sent by recognized overnight express carrier (e.g., Federal Express or UPS), sent by certified mail, return receipt requested, or sent by facsimile or electronic mail and deposited in a post office box regularly maintained by the United States Postal Service in an envelope with the postage having been pre-paid. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such

earlier date as the Library may determine. If the Library terminates the Agreement in part, the Consultant shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Consultant shall comply with the Library close-out procedures, which include but are not limited to:

1. Accounting for and refunding to the Library, within forty-five (45) days of the Termination Date or expiration date, any unexpended funds which have been advanced to the Consultant pursuant to this Agreement;

2. Furnishing within forty-five (45) days of the Termination Date or expiration date an inventory to the Library of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Library directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Library all books, records, documents and material specifically relating to this Agreement that the Library has requested be turned over, within forty-five (45) days of the request;

4. Submitting to the Library, within ninety (90) days of the Termination Date or expiration date, a final statement and report relating to the Agreement; and

5. Providing reasonable assistance to the Library in the transition, if any, to a new consultant or contractor.

C. If, after notice of termination for default of the Agreement under the provisions of this Article, it is determined for any reason that the Consultant was not in default under the provisions of this Article, or that the default was excusable under the provisions of this Article, then the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the termination without cause provisions.

Section 10.05 Miscellaneous

A. The Library, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever, in its judgment, such suspension is required in the best interests of the Library. If the Library suspends this Agreement pursuant to this Section, then the Library shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The Library shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Consultant on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the Library in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Consultant shall not be relieved of liability to the Library for damages sustained by the Library by virtue of the Consultant's breach of this Agreement, and the Library may withhold payments to the Consultant for the purpose of setting-off the amount of damages due to the Library from the Consultant.

C. The rights and remedies of the Library provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

ARTICLE 11 - TIMELY PERFORMANCE AND PROMPT PAYMENT

Section 11.01 Timeliness of Performance

Consultant understands that prompt performance of all Services hereunder is required by the Library in order to meet its schedules and commitments. In the event that any anticipated or actual delays in meeting the Library's deadlines or scheduled completion dates are caused by the unacceptable performance of Consultant, Consultant shall provide additional resources, at no charge to the Library, in order to complete the Services involved in a timely manner.

Section 11.02 Prompt Payment

To receive payment, the Consultant shall submit an itemized and detailed invoice, detailing the Services rendered and Deliverables provided, except where the Parties have agreed otherwise in a signed writing executed by the Parties that the Consultant will be paid at predetermined intervals without having to submit an invoice for each scheduled payment. The Library shall remit payment to Consultant within thirty (30) days after receipt and acceptance of an itemized and detailed invoice for Services rendered by the Consultant. The Library's payment of any invoice shall not preclude the Library from making an adjustment on any item found not to have been in accordance with the general and specific requirements of this Agreement.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Consultant, and shall be governed by and construed in accordance with the Laws of the State of New York (except for the State of New York's choice of law or conflicts of laws principles), and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

Consultant consents and agrees that all legal proceedings relating to the subject matter of this Agreement shall be maintained either in the State Courts located within the County of Queens in the State of New York, or if applicable, within the Federal Courts holding jurisdiction over the County of Queens in the State of New York. Consultant consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts. Consultant hereby expressly waives and relinquishes all rights that it otherwise has to dismiss on grounds of *forum non conveniens*, and to change venue to a New York State Court located outside of the City of New York. Consultant also expressly waives and relinquishes any right it has to transfer a cause of action to a Federal Court located outside of the City of New York..

Section 12.03 No Claim Against Trustees, Directors, Officers, Agents, or Employees

No claim shall be made by the Consultant against any trustee, director, officer, agent or employee of the Library in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

Section 12.04 General Release

The acceptance by the Consultant or its assignees of the final payment under this Agreement, whether by check, wire transfer or other means, and whether pursuant to an invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the Library from any and all claims of and liability to the Consultant, of which the Consultant was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the Library prior to such acceptance of final payment.

Section 12.05 No Waiver

Waiver by either the Library, or the Consultant of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until the same shall be agreed to in writing by the Parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 Severability / Unlawful Provisions Deemed Stricken

If this Agreement contains any unlawful provision that is neither an essential part of this Agreement, nor appears to have been a controlling or material inducement to entering into this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

Section 13.02 Compliance With Laws

The Consultant shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Acceptance of Deliverables

Upon receipt of any Deliverable(s) under this Agreement, the Library shall conduct its own respective acceptance test procedures. In the event that such Deliverable(s) fail to pass the Library's acceptance test procedures, then Consultant shall promptly correct the defects and redeliver the Deliverable(s) to the Library. If after redelivery the Deliverables still fail the Library's acceptance test procedures, then Consultant shall immediately refund all sums previously paid by the Library relating to said Deliverables and the Library may elect to terminate the Agreement for cause.

Section 14.02 Continuity of Services

Prior to the expiration of this Agreement, the Consultant shall fully cooperate with the Library and assist the Library in the transition of services to a successor consultant, as appropriate. Moreover, the Consultant shall, upon the Library's request, (1) furnish phase-in, phase-out services for up to ninety

(90) days after this Agreement terminates; (2) negotiate in good faith a plan with the Library and a successor to determine the nature and extent of phase-in, phase-out services required; (3) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

Section 14.03 Merger

This Agreement contains all of the terms and conditions agreed upon by the Parties, and no other agreement, whether oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the Parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both Parties pursuant to Article 9 of these General Terms and Conditions.

Section 14.04 Complete Agreement and Alterations Clause

This Agreement sets forth the Parties' entire understanding of their relationship for this transaction and may only be modified by a duly executed writing. This Agreement supersedes any and all prior or contemporaneous oral or written agreements

Section 14.05 Counterparts; Fax/Email Signatures; and Copies

This Agreement may be executed in one or more counterparts, all of which collectively shall be deemed to be one instrument. Signature pages for this Agreement transmitted by facsimile or electronic mail (fax or email, respectively), shall be as effective as signature pages containing original signatures. True and correct copies of this Agreement may be used in lieu of the original for all purposes.

Section 14.06 Headings

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

Section 14.07 Interpretation of Agreement

Should any provision of this Agreement require interpretation or construction, it is agreed that the entity interpreting or construing this Agreement shall not apply a presumption against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the document.

Section 14.08 Notice

A. The Consultant and the Library hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions or communications from one party to the other shall be delivered or mailed. Either party may change its notice address at any time by a signed writing, as executed by the party making such change, and delivered to the other party in the manner as specified below.

B. Any notice, direction or communication from one party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by facsimile or electronic mail and, unless receipt of the facsimile or electronic mail is acknowledged in writing by the recipient, deposited in a post office box

regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.