

August 14, 2012

ADDENDUM No. 4

To

REQUEST FOR PROPOSALS

For

ELECTRONIC BOARD BOOK SERVICES

CONTRACT NO.: PW1202

ISSUE DATE: June 14, 2012

By

THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

PLEASE TAKE NOTICE:

PROPOSAL PACKAGES ARE TO BE SUBMITTED by Tuesday, August 21, 2012, at the offices of the New Jersey Schools Development Authority located at 1 West State Street (Wells Fargo Bank Building), 1st Floor, Trenton, New Jersey 08625-0991, and must be delivered in the manner set forth in the RFP.

Firms wishing to submit Technical Proposals and Fee Proposals must agree to comply with all relevant Contract provisions, including the Scope of Services set forth in Attachment A, any addenda thereto, and the Terms and Conditions set forth in Attachment C of the RFP. No additional Terms and Conditions which conflict with the RFP will be considered.

The following "*Data Turnover at Termination*" section is to be incorporated as part of RFP / Attachment C - Terms and Conditions:

Data Turnover at Termination-

At the time of termination of the Agreement, either by termination or by expiration of the Term of the Agreement, Vendor/Consultant agrees to promptly provide NJSDA's data to NJSDA in a commonly used and readily accessible format that can be easily accessed by NJSDA or a successive Vendor/Contractor using only common publicly available software. Text-based documents shall be provided as Formatted Text files, Adobe Acrobat files, or Microsoft Word files. Any user data or other non-text-based information shall be provided as Microsoft Excel files. Such turnover of NJSDA data shall occur within 15 days of the termination of the Agreement.

For clarification purposes the following submittals and NJSDA responses are provided as attachments to the RFP.

Attachment 1- NJSDA agrees with the proposed revisions to Terms and Conditions submitted by Diligent Board Books, with the following exceptions contained herein.

Attachment 2 - Diligent Service Agreement:

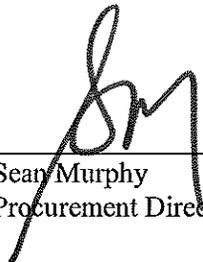
NJSDA agrees with the additional Terms and Conditions as set forth in the "Diligent Service Agreement" document, with the following exceptions contained herein.

Attachment 3 - NASDAQ OMX Solutions – "Legal Terms" Document

NJSDA agrees with the additional Terms and Conditions as set forth in NASDAQ OMX "Legal Terms" document, with the following exceptions contained herein.

Any bidder attempting to contact government officials (elected or appointed), including NJSDA Board members, NJSDA Staff, and Selection Committee members in an effort to influence the selection process may be immediately disqualified.

Issued by:



Sean Murphy
Procurement Director

Issued: August 14, 2012

<Addendum #4>

NJSDA
1 West State Street
Trenton, NJ 08625
Phone: 609-292-8775
Fax: 609-656-4642

Date: August 14, 2012

PROJECT DESCRIPTION: ELECTRONIC BOARD BOOK SERVICES

Addendum No. 4

Acknowledgement of Receipt of Addendum

Contractor must acknowledge the receipt of the Addendum by signing in the space provided below and returning via fax (609-656-4642) or E-mail (djohnson@njsda.gov). **Signed acknowledgement must be received prior to the Bid Due Date. Acknowledgement of the Addendum must also be made in the Proposal Submission.**

Signature

Print Name

Company Name

Date

Attachment 1

NJSDA agrees with the proposed revisions to NJSDA Terms and Conditions submitted by Diligent Board Books, with the following exceptions.

Section 2.3 INSURANCE

Commercial General Liability

NJSDA agrees to amend the Commercial General Liability Limit to \$1,000,000 for each occurrence, \$2,000,000 aggregate limit for products/completed operations and \$2,000,000 general aggregate limit along with umbrella insurance in the amount of \$4,000,000 aggregate limit.

Right to Remedy

NJSDA will not agree to the deletions specified.

Additional Insurance

NJSDA will not agree to this change in the event that additional insurance is required.

Section 3.1.1 Termination For Convenience

NJSDA will not agree to the change noted. NJSDA reserves the right to terminate the Contract for its convenience at any time.

Section 3.2 SUBCONTRACTING OR ASSIGNMENT

NJSDA will not agree to the change noted.

Section 3.3.2 MERGERS, ACQUISITIONS

NJSDA agrees with the deletion of (iii).

Section 3.3.3

NJSDA agrees with the added language.

Section 4.1 PRICE FLUCTUATION DURING CONTRACT

NJSDA will not agree with the change noted.

REQUEST FOR PROPOSALS

For

ELECTRONIC BOARD BOOK SERVICES

CONTRACT NO.: PW1202

ISSUE DATE: June 14, 2012

**MANDATORY ELECTRONIC NOTICE OF INTENT TO PARTICIPATE:
June 21, 2012 by 5:00 PM Eastern Time**

PROPOSAL DUE DATE: July 9, 2012 by 5:00 PM Eastern Time

At the

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

PREPARED BY

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
ONE WEST STATE STREET
PO BOX 991
TRENTON, NEW JERSEY 08625-0991

**REQUEST FOR PROPOSALS
FOR
ELECTRONIC BOARD BOOK SERVICES**

INTRODUCTION

The New Jersey Schools Development Authority ("NJSDA") is seeking to engage an "Electronic Board Book" solution provider. The term of the engagement shall be three (3) years, unless otherwise terminated by the NJSDA. The term may be extended for one (1) additional year at the sole discretion of the NJSDA.

This RFP consists of the following:

1. Request for Proposals
2. Attachment A: Scope of Services
3. Attachment B: Fee Proposal
4. Attachment C: NJSDA Standard Terms and Conditions
5. Attachment D: Moral Integrity Questionnaire

NOTICE OF INTENT TO PARTICIPATE

All firms wishing to submit a proposal **must** sign in electronically by sending a mandatory e-mail Notice of Intent to Participate to Daryl Johnson at djohnson@njsda.gov no later than **5:00 PM on June 21, 2012**.

Firms may submit questions to the NJSDA by sending them by e-mail to Daryl Johnson at djohnson@njsda.gov no later than **5:00 PM on June 21, 2012**. The questions and NJSDA answers will be provided electronically to each firm that submitted a timely e-mail Notice of Intent to Participate.

PROPOSAL SUBMISSION

The Firm must submit one (1) unbound original and three (3) bound copies of a Technical Proposal, one (1) original of the corresponding Fee Proposal (in a separate envelope, which is sealed and then placed in the same package with the Technical Proposal), and one (1) original, completed Moral Integrity Questionnaire (in a sealed envelope separate from the package containing the Technical and Fee Proposals). **Proposal Packages** must be received by the NJSDA no later than **5:00 PM on July 9, 2012**, as follows:

If submitting by hand or overnight delivery, at the:

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
1 West State Street
Trenton, New Jersey 08625-0991
Attention: Daryl Johnson, Division of Procurement
Subject: Electronic Board Book Services Proposal PW1202**

If submitting by U.S. Mail, address packages to:

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
P.O. Box 991
Trenton, New Jersey 08625-0991
Attention: Daryl Johnson, Division of Procurement
Subject: Electronic Board Book Services Proposal PW1202**

Submissions received after the date and time indicated on the RFP cover sheet will not be considered. Faxed and e-mailed proposals will not be accepted.

INSTRUCTIONS FOR SUBMITTING A TECHNICAL PROPOSAL

Firms responding to the RFP shall thoroughly familiarize themselves with the RFP to ensure responsiveness in their submission. The submission is to consist of the following:

1. Cover Letter
2. User-Friendliness
3. Training / Implementation
4. Communication With/Among Users
5. Security – System and User
6. Technical Support
7. Relevant Experience
8. Other Features
9. Moral Integrity Questionnaire
10. Business Registration

The Firm's Proposal must be organized and presented in the foregoing order. Each Proposal will be ranked using the Evaluation Criteria listed in this RFP, with information contained in a Proposal verified as may be necessary.

The items that must be addressed in the Technical Proposal that must be submitted are further described below.

Cover Letter

Present a brief recital of the Firm's understanding of the purpose of this engagement as detailed in the Scope of Services set forth in Attachment A of this RFP. Include in the cover letter information relevant to the Firm's qualifications not set forth elsewhere in its Proposal.

User-Friendliness

What factors make this system more "user friendly" than those of its competitors? Is the system easy to access?

Training / Implementation

What is the service providers approach toward ensuring that all users are thoroughly trained in its use? What is the timeframe within which such training is accomplished? How will users be trained (hands on or remote) depending upon location?

Communication With/Among Users

How does this system provide for communication (pre-meeting and otherwise) among users who wish to share questions or comments regarding the materials? How are users notified when previously posted materials are revised or replaced?

Security – System and User

What is this provider's approach towards protecting the confidentiality of the meeting materials?

Technical Support

What is this service provider's approach to technical assistance and support? What will be required of NJSDA's MIS team to implement and support the system?

Relevant Experience

What is the experience of the Firm in providing services to other agencies similar in size and nature to the NJSDA?

Other Features

From time of execution of a contract between NJSDA and provider, how long will it take before users are trained and system is fully functional?

What additional materials, in addition to meeting materials, is system equipped to archive/make available? How extensive is the system's storage capability, i.e. how far back will the system allow for archiving purposes?

Moral Integrity Questionnaire

At the same time as a Proposal is submitted, the Firm must also submit to NJSDA one (1) original completed Moral Integrity Questionnaire for submission to the New Jersey State Police, in the form attached as Attachment D to this RFP. NJSDA will hold all submitted Questionnaires, unopened, until after all Firms have been ranked, unless special circumstances warrant otherwise. Thereafter, NJSDA staff will forward the Questionnaires of the top-ranked Firms to the New Jersey State Police for review. **Moral Integrity approval is a prerequisite to engagement of the Firm.**

Business Registration

Pursuant to N.J.S.A. 52:32-44(b), as amended by P.L. 2004, c. 57, each proposing firm must provide proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury (the "Division of Revenue") in its Proposal.

Any subcontracted firm must provide a firm selected as a Contractor with a copy of its business registration, which the Contractor must forward to the NJSDA. No firm selected as a Contractor may enter into any subcontract with a firm that has not provided proof of valid business registration to the selected firm, for forwarding to the NJSDA. The NJSDA shall duly file all business registrations with the other procurement documents relating to the contract. **Business registrations of proposed subcontractors, if any, are NOT required to be included in a firm's Proposal.**

Firms may obtain New Jersey Business Registration assistance by going on-line to www.state.nj.us/treasury/revenue/gettingregistered.shtml or by calling the New Jersey Department of Treasury at (609) 292-9292. Please be advised, however, that business registrations are mailed generally within seven to ten days, so firms should plan accordingly.

INSTRUCTIONS FOR SUBMITTING A FEE PROPOSAL

The Firm must submit its Fee Proposal based on a lump sum annual fee for the requested services. The Firm should include pricing for the term, including the initial three (3) year term and potential one (1) year extension. The Fee Proposal Form is included as Attachment B to this RFP.

SELECTION PROCEDURES

Each Proposal will be reviewed to determine responsiveness. Non-responsive Proposals will be rejected without evaluation. Responsive Proposals will be evaluated by a Selection Committee ("Committee") established for this purpose. Evaluations of the Proposals will be made based upon the information provided by the Firm in response to this RFP, and any necessary verification thereof. The Selection Committee members will independently score each Firm's Proposal in accordance with the following evaluation criteria:

Evaluation Criteria	Maximum Points
User-Friendliness	20
Training / Implementation	20
Communication With/Among Users	15
Security - System and User	10
Technical Support	15
Relevant Experience	10
Other Features	10
Total Points	100

The Selection Committee will consist of three (3) NJSDA staff members. Firms will receive a technical score and/or ranking based on the above-described evaluation process, except that, at its sole option, the NJSDA may conduct interviews. Following the interviews, if any, the final technical scores and/or rankings shall be determined, based on the evaluation criteria.

Following the final technical ranking, the Fee Proposals will be opened and reviewed by the NJSDA. Using the Fee Proposals as a guideline, the NJSDA may negotiate compensation that the NJSDA determines to be fair and reasonable.

Notwithstanding anything to the contrary in the above, the NJSDA has no obligation to make an award and reserves the right to waive any non-material defects, reject all Proposals for any reason and terminate the selection process at any time.

Any Firm attempting to contact government officials (elected or appointed), including NJSDA Board members and NJSDA Staff, in an effort to influence the selection process may be immediately disqualified.

PRE-AWARD REQUIREMENTS

After determination of the successful Firm, the NJSDA shall request the following information prior to the award of the contract:

(a) **Political Contributions.** P.L. 2005, c. 51 amended and supplemented N.J.S.A. 19:44A-20.1 *et seq.*, and superseded Executive Order 134 (2004), addresses the effect of political contributions on State contracting. Additionally, Executive Order 117 (2008), which is designed to enhance New Jersey's efforts to protect the integrity of government contractual decisions and increase the public's confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 ("Chapter 51"), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors. Accordingly, a selected Firm will be required to respond in a timely fashion to certification and disclosure requirements that will be stated in the Notice of Award issued by the NJSDA.

Requirements for Selected Firm. The Firm shall receive a Notice of Award that will, among other things, notify the Firm that it must submit a Certification and Disclosure of Political Contributions form and Business Entity Disclosure form as provided by NJSDA. Failure to submit these forms in a timely fashion shall be cause for rejection of the Firm.

Firm's Continuing Obligation to Comply with P.L. 2005, c. 51. The Firm shall be required on a continuing basis to disclose and report to NJSDA any contributions made during the contract term by the Business Entity on forms provided by NJSDA, at the time it makes the contribution.

(b) **Political Contributions Disclosure.** Firms are advised of their responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission ("ELEC"), pursuant to N.J.S.A. 19:44A-20.18 and 20.19 (P.L. 2005, c. 271, section 3), in the event they receive contracts in excess of \$50,000 from a public entity in a calendar year. It is a Firm's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

(c) **Outsourced Services Special Provisions.** Under P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), the NJSDA shall not award a contract to a bidder that submits a bid proposal to perform services, or to subcontract with a firm to perform services, outside the United States, unless certain conditions is met. If, during the term of the contract, the Contractor or subcontracted firm, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside of the United States, the Contractor shall be deemed in breach of the Agreement, unless the Director of the NJSDA Division of Procurement shall have first determined in writing that extraordinary circumstances

require a shift of services or that a failure to shift the services would result in economic hardship to the NJSDA or the State.

(d) **Anti-Discrimination Requirements.** In addition, the Contractor shall not discriminate in employment and shall abide by all anti-discrimination laws including those contained within N.J.S.A. 10:5-1 et seq. and all rules and regulations issued there under, including N.J.A.C. 17:27-1.1 et seq. **Accordingly, a firm shall be required to submit to the NJSDA, with its executed Agreement, one of the following three documents:**

- (1) appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program;
- (2) a certificate of employee information report approval issued in accordance with N.J.A.C. 17:27-4.2; or
- (3) an initial employee information report (Form AA302) provided by the NJSDA and completed by the contractor in accordance with N.J.A.C. 17:27-4.2.

(e) **Insurance and Indemnification.** The successful Firm shall be required to provide evidence of the insurance coverages required by this document, at the time of execution of the Agreement. In addition, proposing Firms should take note of the provisions for indemnification of the NJSDA. Please ensure that the NJSDA (the "Authority"), the New Jersey Economic Development Authority (the "NJEDA"), the State of New Jersey, and their respective directors, officers, members, employees and agents shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Consultant may also be required to name other parties as additional insureds prior to the initiation of Services. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

ATTACHMENT A

SCOPE OF SERVICES

Electronic Board Books

- Secure web-based portal hosted by solution provider including individual password protection
- Intuitive and easy-to-use
- Ability to print a complete collated book
- Online viewing
- Customizable and flexible
- Customizable workflow/features (e.g. Meeting Calendar, Member contact information)
- Archiving capable (e.g. Board Books, minutes, etc.)
- Search feature
- Alert to users when Board/Committee materials are available for review
- Ability to make notes on particular items and send notes to other users
- 24/7/365 service and support
- Complete installation and setup, including any backend integration required
- Complete upfront training for users
- Ongoing training as needed
- Full IT support and troubleshooting (including network and firewall issues)
- Remote diagnostics
- Free software upgrades
- Hosting for 1 Board (12 meetings per year)
- Hosting for 3 Committees (36 meetings per year)
- Online access for approximately 20 users
- Administrative access for 3 users

ATTACHMENT B

EEE PROPOSAL

Electronic Board Books

Year 1 - Lump Sum Setup/Installation Fee*: \$ _____

Year 1 - Lump Sum Annual Fee*: \$ _____

Year 2 - Lump Sum Annual Fee*: \$ _____

Year 3 - Lump Sum Annual Fee*: \$ _____

Year 4 (Optional) - Lump Sum Annual Fee*: \$ _____

*** Additional charges, if any, shall be detailed on a separate page and attached to this Fee Proposal.**

I am duly authorized to sign this Fee Proposal on behalf of the named firm.

Firm: _____

Signature: _____

Print Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

Date: _____

ATTACHMENT C

NJSDA STANDARD TERMS AND CONDITIONS

Electronic Board Books

- I. The following terms and conditions will apply to the contract made with by New Jersey Schools Development Authority ("NJSDA") to which these terms and conditions are annexed.
- II. All of the following terms and conditions will become a part of the contract. In the event the vendor's terms and conditions conflict, these terms and conditions will prevail.
- III. The statutes, regulations, laws or codes cited are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- IV. The vendor's status shall be that of an independent principal and not as an employee of the State of New Jersey or NJSDA.

1. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL VENDORS

- 1.1 **BUSINESS REGISTRATION** – Effective September 1, 2004, pursuant to an amendment to N.J.S.A. 52:32-44, State and local entities are prohibited from entering into a contract with an entity unless the vendor has provided a copy of its business registration certificate or interim registration as part of its bid submission. Submission of a copy of the Business Registration Certificate is a contractual requirement.
- 1.2 **SALES AND USE TAX** - The vendor, contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.)" on all their sales of tangible personal property delivered into the State. This requirement shall apply to all contracts awarded on and after September 1, 2004. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ_REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.htm>.
- 1.3 **NON-DISCRIMINATION AND AFFIRMATIVE ACTION** – All parties to any contract with NJSDA agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-38, and all rules and regulations issued thereunder. The vendor and its subcontractors shall abide by affirmative action rules established by the New Jersey Department of the Treasury at N.J.A.C. 17:27-1.1 et seq. under P.L. 1975, c. 127, the small business set-aside rules for the procurement of goods and services established by

the Commerce and Economic Growth Commission at N.J.A.C. 12A:10-1.1 *et seq.* and by Executive Order No. 71 (2003), and the affirmative action program established by the NJSDA pursuant to Section 48 of the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72, and any rules and regulations associated therewith. The Consultant shall comply with the *MacBride* principles of nondiscrimination in employment, or have no business operations in Northern Ireland, under N.J.S.A. 52:34-12.2.

- 1.4 **PREVAILING WAGE ACT** – The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 *et seq.* is hereby made part of every contract entered into on behalf of NJSDA, except those contracts which are not within the contemplation of the Act. The vendor hereby guarantees that neither he nor any subcontractors he might employ to perform the work covered by the contract has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act.
- 1.5 **PUBLIC WORKS CONTRACTOR REGISTRATION ACT** – The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractors who bid on or engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464 or <http://www.nj.gov/labor/lsse/lspubcon.html>.
- 1.6 **AMERICANS WITH DISABILITIES ACT** – The vendor must comply with all provisions of the Americans With Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 *et seq.*
- 1.7 **THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** – The provisions of N.J.S.A. 34:5A-1 *et seq.* which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to NJSDA must be labeled by the vendor in compliance with the provisions of the Act.
- 1.8 **OWNERSHIP DISCLOSURE** – Contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of bid submission, the bidder has disclosed the names and addresses of all its owners holding 10% or more of the corporation or partnership's stock or interest. Refer to N.J.S.A. 52:25-24.2.
- 1.9 **COMPLIANCE – LAWS** – The vendor must comply with all local, state and federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.
- 1.10 **COMPLIANCE – STATE LAWS** – It is agreed and understood that any contracts entered into with NJSDA shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

- 1.11 COMPLIANCE – CODES** – The vendor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The vendor will be responsible for securing and paying all necessary permits, where applicable.
- 1.12 POLITICAL CONTRIBUTIONS** – The vendor shall, on a continuing basis, disclose and report to the NJSDA any “contributions,” as that term is defined in P.L. 2005, c. 51 (formerly Executive Order No. 134 (2004)), made during the term of the contract by it or any “Business Entity,” as that term is defined in P.L. 2005, c. 51, associated with the vendor, on the “Disclosure of Political Contribution” form provided by the Authority, at the time such contribution is made. As part of this obligation, the vendor shall comply with Executive Order No. 117, which was issued to enhance New Jersey’s efforts to protect the integrity of government contractual decisions and increase the public’s confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 (“Chapter 51”), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors.
- 1.13 POLITICAL CONTRIBUTIONS DISCLOSURE.** The vendor shall comply with its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (“ELEC”), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3), in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the vendor’s responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.
- 1.14 OUTSOURCING OF SERVICES.** In accordance with P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), the vendor shall have a continuing duty to comply with the provisions of P.L. 2005, c. 92, as applicable. If, during the Term, the vendor or a subcontracted firm, who had on contract award declared that Services would be performed in the United States, proceeds to shift the performance of the Services outside of the United States, the vendor shall be deemed in breach of the Agreement, which shall be subject to termination for cause, unless the Senior Director of the NJSDA’s Division of Procurement & Contract Services shall determine in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the NJSDA or the State.

2. LIABILITIES

- 2.1 LIABILITY – COPYRIGHT** – The vendor shall hold and save NJSDA and the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of his contract.
- 2.2 INDEMNIFICATION** – The vendor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless NJSDA and the State of

New Jersey and their respective directors, officers, members, employees and agents, from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.

2.3 INSURANCE – Prior to undertaking any work under this Agreement, the Consultant, at no expense to the Authority, shall obtain and provide to the Authority evidence of a policy or policies of insurance as enumerated below.

The Consultant shall maintain, and/or cause their subconsultants to maintain, at their own cost and expense, the following insurance coverages/policies insuring the Consultant, its employees, subconsultants and agents. The Consultant shall obtain this insurance from insurance companies that are authorized to transact the business of insurance in the State of New Jersey and that are "A- VII" (or better) rated, as determined by A. M. Best Company. In each policy, the Consultant shall have incorporated a provision, in accordance with the laws of the State of New Jersey, requiring written notice to the Authority at least thirty (30) Days prior to cancellation or non-renewal of any insurance coverage required under this Section. The Consultant warrants that if the insurer or coverage is not subject to the provisions requiring (30) day prior notification, that it will notify the Authority in writing of any cancellation or non-renewal of any insurance coverage required under this Section. Any and all deductibles shall be paid by the Consultant. The Consultant warrants that its insurance carriers are accurately informed regarding the business activities of the Consultant and intend to cover those business exposures. All insurance policies, exclusive of Professional Liability and Workers' Compensation, shall name the Authority as Primary Additional Insured and will include a Waiver of Subrogation. In addition, the Consultant may also be required to name other parties as Additional Insureds prior to the initiation of such work, and shall comply with all laws, ordinances, rules and regulations of Federal, State, county and municipal authorities in the performance of said work. The types and minimum amounts of insurance required are as follows:

Professional Liability Insurance (Errors & Omissions). The Consultant shall maintain Professional Liability Insurance with coverage retroactive to the Effective Date, sufficient to protect the Consultant from any liability arising from the Services and professional obligations performed pursuant to this Agreement in an amount not less than \$2,000,000 per claim and \$2,000,000 in the aggregate for all operations conducted. The Consultant warrants they will notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) days. The Consultant warrants that coverage shall not be circumscribed by any endorsements excluding coverage arising out of services performed pursuant to this Agreement.

Commercial General Liability Insurance. The Consultant shall maintain Commercial General Liability Insurance (CGL), and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$15,000,000 for each occurrence,

Comment [DJ1]: NJSDA agrees to amend the Commercial General Liability Limit to \$1,000,000 for each occurrence, \$2,000,000 aggregate limit for products/completed operations and \$2,000,000 general aggregate limit along with umbrella insurance in the amount of \$4,000,000 aggregate limit.

\$25,000,000 aggregate limit for products/completed operations and \$25,000,000 general aggregate limit along with umbrella insurance of \$4,000,000 aggregate limit. CGL insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include liability arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract in connection with Services performed under this Agreement.

The NJEDA, the Authority, the State of New Jersey, and their respective directors, officers, members, employees and agents shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Consultant may also be required to name other parties as additional insureds prior to the initiation of Services. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

Worker's Compensation Insurance. The Consultant shall, at its own cost and expense, maintain Workers' Compensation and Employers' Liability insurance prescribed by the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Consultant while engaged in the performance of the Services under this Agreement. Workers' Compensation coverage shall be statutory and the Employers' liability limits (including Umbrella coverage) shall not be less than \$1,000,000 per accident for bodily injury by accident and \$1,000,000 for each employee for bodily injury by disease and \$1,000,000 policy limit for bodily injury by disease.

Business Automobile Liability Insurance. The Consultant shall, at its sole cost and expense, maintain Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any automobile, including coverage for all owned, non-owned and hired vehicles. The Business Automobile coverage shall be written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage). If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Certificates of Insurance. Attached to this Agreement shall be valid insurance certificates, executed by a duly authorized representative of each insurer, in form and substance satisfactory to the Authority, evidencing compliance with the insurance requirements. An insurance certificate must be submitted to evidence each insurance renewal required by this Section. Failure of the Authority to demand such certificates or other evidence of full compliance with the insurance requirements set forth herein or failure of the Authority to identify a deficiency in the insurance provided shall not be construed as a waiver of the Consultant's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this Agreement at the Authority's sole option. The Consultant shall provide certified copies of all insurance policies, including any and all amendatory endorsements, within ten (10) Days of the Authority's written request for such policies.

Liability in Excess of Coverage. By executing this Agreement, the Consultant expressly agrees that any insurance protection required herein or by the Consultant's Documents shall in no way limit the Consultant's obligations under this Agreement or the Consultant's Documents and shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of this Agreement or the Consultant's Documents or otherwise in law or equity. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect the Consultant, and such coverage and limits shall not be deemed as a limitation on the Consultant's liability under this Agreement.

Right to Remedy. If the Consultant fails to obtain and/or maintain the insurance as required in this Section, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: ~~(i) purchase insurance at the Consultant's solo expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make payments due or coming due under other agreements between the Consultant and the Authority; (iv) suspend performance by the Consultant under this Agreement; or (v) terminate this Agreement. Any funds retained pursuant to this Section may be used, at the Authority's discretion, to renew or purchase the Consultant's insurance for the periods and amounts as set forth in this Agreement. In the event the Authority purchases said insurance the Authority may, at its discretion, reduce the Consultant's Compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees.~~

Comment [DJ2]: NJSDA will not agree to the deletions specified.

Additional Insurance. ~~The Consultant shall also provide such additional types of insurance in such amounts as the Authority shall reasonably require. In the event that any such additional insurance is required, the Consultant shall deliver certified copies of each policy to the Authority within ten (10) days of the Authority's written request for such insurance.~~

Comment [DJ3]: NJSDA will not agree to this change in the event that additional insurance is required.

Waiver of Subrogation. The Consultant waives all rights of subrogation and recovery against the Authority, agents or employees of the Authority to the extent these damages are covered by the CGL, Business Automobile Liability or Commercial Umbrella Liability Insurance obtained by the Consultant. If the policies of insurance purchased by the Consultant as required above do not expressly allow the insured to waive rights of subrogation prior to loss, the Consultant shall cause them to be endorsed with a waiver of subrogation as required herein.

Any deductible or self-insured retention (SIR) applicable to the aforementioned insurance shall be declared to and approved by the Authority and written using ISO endorsement CG 03 00 (or a substitute providing equivalent terms and conditions). The Consultant shall not be permitted to have a SIR larger than \$100,000 unless it obtains the express, written consent of the Authority to the larger SIR. FAILURE TO COMPLY WITH SECTION 5.1.8 IS A MATERIAL BREACH OF CONTRACT.

If any of the aforementioned insurance is written on a "claims made basis," the Consultant warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years after the date of Final Payment by the Authority and the Consultant will provide Certificates of Insurance evidencing continuance of coverage with the original claims made retroactive date. Within the Certificate of Insurance, in the blocks designated "Policy Number," in addition to the policy number, the Consultant shall insert a note "claims made retroactive date ___/___/___" (with the date inserted).

3. **OTHER TERMS**

3.1 **TERMINATION OF CONTRACT**

3.1.1 Termination for Convenience of the NJSDA. Beginning one year from the Effective Date of the Agreement, and Notwithstanding any provision or language in the contract to the contrary, the NJSDA, in its sole discretion, may terminate at any time, in whole or in part, the contract entered into for the convenience of NJSDA. Any such termination shall be effected by delivery of a "Notice of Termination" specifying the extent to which the contract is being terminated and the date upon which the termination becomes effective.

If so terminated, the vendor shall be entitled only to that proportion of the compensation that the goods and/or services actually and satisfactorily provided by the vendor bear to the total goods and/or services required to be rendered under the contract, less payments previously made.

3.1.2 Termination for Cause. Without prejudice to any other remedy, the NJSDA may terminate this contract if the vendor: (i) disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction; (ii) refuses or fails to supply enough properly skilled workers or proper materials; (iii) fails to make payments to subcontractors for materials or labor; (iv) fails to maintain or produce any records required by the contract or purchase order to be so maintained or produced; (v) fails to cooperate with the NJSDA where such cooperation is deemed necessary by the NJSDA for the implementation of the contract or purchase order; (vi) fails to obtain and properly maintain the level of insurance coverage required; (vii) assigns or transfers its obligations, privileges or rights under the contract or purchase order without the prior written consent of the NJSDA; (viii) makes any misrepresentation or conceals any material fact; or (ix) commences or has commenced against it any action under the United States Bankruptcy Code or any state or federal insolvency law, the commencement of which, in the NJSDA's judgment, may effectively impair the ability of the vendor to perform its obligations under the contract; or (x) violates or breaches the contract or any provision or material term thereof. For all such causes of termination except those contained in subsections (viii) and (ix), the NJSDA may choose to retract its Notice of Termination in writing if, within seven (7) calendar days of Notice of Termination, the vendor, to the NJSDA's satisfaction, cures or commences to cure its default, neglect or violation, with diligence and promptness. Absent issuance of written retraction of the Notice of Termination within seven (7) calendar days of Notice of Termination, the contract or purchase order shall be deemed terminated.

Comment [DJ4]: NJSDA will not agree to the change noted. NJSDA reserves the right to terminate the Contract for its convenience at any time.

Comment [JVA5]: We typically require that clients commit to a year of services.

3.1.3 In the event that this contract is terminated for cause, the NJSDA reserves the right not to make any further payments to the vendor and may require the vendor to repay all or a portion of the monies already paid.

3.1.4 No action withholding of action by the NJSDA shall operate to waive or release any claim it may have against the vendor.

3.2 **SUBCONTRACTING OR ASSIGNMENT** – The contract may not be subcontracted or assigned by the vendor, in whole or in part, without the prior written consent of notice to NJSDA. ~~The contract may not be assigned by the vendor, in whole or in part, without the prior written consent of NJSDA.~~ Such consent, if granted, subcontracting shall not relieve the vendor of any of his responsibilities under the contract. The NJSDA, in its sole discretion, may assign this contract to any other State agency, authority or instrumentality, or any local or municipal instrumentality, and, in such case, the vendor shall continue to perform all of its obligations under this contract. Nothing contained herein shall be construed as creating any contractual relationship between any subcontractor and NJSDA. Nothing contained in this contract shall be construed to create a cause of action in favor of a third party against either party. No individual, firm, entity, or any combination thereof, which supplies materials, labor, services or equipment to the vendor shall become thereby a third party beneficiary under the Agreement.

Comment [DJ6]: NJSDA will not agree to the change noted.

Comment [JVA7]: We gave all our clients on the same platform, so if we were to subcontract, we couldn't have it held up by the lack of consent of one client. However, it is highly unlikely that we will subcontract.

3.3 **MERGERS, ACQUISITIONS** – If, subsequent to the execution of the contract, the vendor proposes to merge with or be acquired by another firm or in the event of a proposed dissolution by the vendor, the vendor shall immediately notify the NJSDA and shall submit documentation to the NJSDA describing the proposed transaction.

3.3.1 The NJSDA, in its sole discretion, may approve the continuation of the contract following the proposed transaction or terminate the contract for cause. The NJSDA will notify the vendor of its decision within thirty (30) days of receipt by the NJSDA of documentation from the vendor describing the proposed transaction.

3.3.2 If the NJSDA approves a merger or acquisition, the vendor shall submit to the NJSDA: (i) corporate resolutions prepared by the vendor and the new entity ratifying acceptance of the contract; (ii) information necessary to ensure that the new entity satisfies the NJSDA's pre-qualification policies and procedures, where applicable; (iii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of its stock or interest; (iv) ~~(iii)~~ any new or changed Federal Employer Identification Number(s); (v) acknowledgment of the assumption of the contract by the new entity; and (vi) any other information the NJSDA may reasonably require.

Comment [JVA8]: Seems like overkill

Comment [DJ9]: NJSDA agrees with the deletion of (iii).

3.3.3 If the NJSDA approves the continuation of a contract following a dissolution, the vendor shall submit to the NJSDA: (i) a copy of the corporate resolution, or the written statement of the partnership, general partner, receiver or custodian thereof, or the written agreement of the principal parties of a joint venture to dissolve the NJSDA, partnership or joint venture, respectively; (ii) information necessary to ensure that the new entity satisfies the NJSDA's pre-qualification policies and procedures, where applicable; (iii) any new or changed Federal Employer

Comment [DJ10]: NJSDA agrees with the added language.

Identification Number(s); (iv) acknowledgment of the assumption of the contract by the new parties; and (v) any other information the NJSDA may reasonably require.

3.4 MAINTENANCE OF RECORDS – The vendor shall maintain records for products and/or services delivered against the contract for a period of three (3) years from the date of final payment. Such records shall be made available to the State upon request for purposes of conducting an audit or for ascertaining information regarding dollar volume or number of transactions.

3.5 ASSIGNMENT OF ANTITRUST CLAIM(S) – The vendor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the vendor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the vendor;

- a. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It will advise the Attorney General of New Jersey:
 1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- c. It will notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the vendor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the vendor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

4. TERMS RELATING TO PRICE

4.1 **PRICE FLUCTUATION DURING CONTRACT** – Unless otherwise noted by NJSDA, all prices quoted shall be firm through issuance of contract and shall not be subject to increase during the period first year of the contract.

~~In the event of a manufacturer's or vendor's price decrease during the contract period, NJSDA shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. NJSDA must be notified, in writing, of any price reduction within five (5) days of the effective date.~~

~~Failure to report price reductions will result in cancellation of contract for cause.~~

Comment [DJ11]: NJSDA will not agree with the change noted.

4.2 **DELIVERY COSTS** – All prices for items must be F.O.B. delivery point. Regardless of the method of quoting shipments, the vendor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to NJSDA's designated delivery point.

F.O.B. destination does not cover "spotting" but does include delivery on the receiving platform at any destination in the State of New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at vendor's convenience when a single shipment is ordered. The weights and measures of NJSDA shall govern.

4.3 **C.O.D. TERMS** – C.O.D. terms are not acceptable.

4.4 **TAX CHARGES** – The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

4.5 **PAYMENT TO VENDORS/NEW JERSEY PROMPT PAYMENT ACT** – Within thirty (30) Days after receipt of the vendor's properly supported invoice, the NJSDA, pursuant to New Jersey's Prompt Payment Act, N.J.S.A. 52:32-32 and 2A:30A-2, will make payment of the approved amount of such invoice, unless within twenty (20) days of receipt the NJSDA issues a notice in accordance with the Prompt Payment Act indicating that funds will be withheld, the amount of the funds to be withheld and the reason for such withholding. The twenty (20) day period for providing notice to the vendor that the NJSDA will withhold funds shall be extended if authority for payment by the NJSDA's Board of Directors is required. The thirty (30) day payment requirement shall be extended if the vendor fails to provide complete and sufficient documentation in support of the amounts claimed and the NJSDA reserves the right to refuse payment as a result.

5. **AUDIT** – The contract and any subcontract of the obligations thereunder is subject to audit by NJSDA at NJSDA's sole discretion and by the Unit of Fiscal Integrity of the New Jersey State Police.

6. **MODIFICATIONS** – No contract may be modified except by written instrument signed by an authorized officer of NJSDA.

7. **CLAIMS** – The parties agree that this contract shall be deemed to be governed in accordance with the New Jersey Tort Claims Act, N.J.S.A. 59:1.1, et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. and the New Jersey False Claims Act, N.J.S.A. 2A:32, et seq. (collectively "the Acts"), such that a claim against the NJSDA shall be treated in the same manner as a claim against the State of New Jersey under the Acts. All notice, claims and limitations periods set forth in the Acts shall apply to claims by the vendor against the NJSDA.

8. **STANDARDS PROHIBITING CONFLICTS OF INTEREST** – The following prohibitions on vendor activities shall apply to all contracts or purchase agreements made with NJSDA and/or the State of New Jersey, pursuant to Executive Order No. 189 (1988).
 - 8.1 The vendor shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to: (i) an NJSDA officer or employee with which the vendor transacts, or offers or proposes to transact, business; or (ii) any member of the immediate family (defined by N.J.S.A. 52:13D-13i) of any such NJSDA officer or employee; or (iii) any partnership, firm or authority with which such NJSDA officer or employee is employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
 - 8.2 The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any NJSDA officer or employee from the vendor shall be reported in writing forthwith by the vendor to the State Attorney General and the State Ethics Commission.
 - 8.3 The vendor shall not directly or indirectly undertake any private business, commercial or entrepreneurial relationship (whether or not pursuant to employment, contract or other agreement, express or implied) with, or sell any interest in the vendor to, any NJSDA officer or employee having any duties in connection with the purchase, acquisition or sale of any property or services by or to the NJSDA; and shall not undertake any such relationship with, or sell any such interest to, any person, firm or entity with which such NJSDA officer or employee is employed or associated, or in which such NJDA officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationship subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the officer or employee and upon a finding that the present or proposed relationship presents neither an actual conflict of interest, nor the potential for, or appearance of, such a conflict of interest.
 - 8.4 The vendor shall not influence, attempt to influence, or cause to be influenced any NJSDA officer or employee in such officer's or employee's official capacity in any manner that might tend to impair the objectivity or independence of judgment of said officer or employee.
 - 8.5 The vendor shall not cause or influence or attempt to cause or influence, any NJSDA officer or employee to use or attempt to use such officer's or employee's

official position to secure unwarranted privileges or advantages for the vendor or any other person.

- 8.6 Under N.J.S.A. 52:34-19, it is a misdemeanor to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the NJSDA. It is the policy of the NJSDA to treat the offer of any gift or gratuity by the vendor, its officers or employees, to any person employed by the NJSDA as grounds for debarment or suspension from submitting proposals and providing work or materials to the NJSDA.
- 8.7 These provisions shall not be construed to prohibit an NJSDA officer or employee from receiving gifts from or contracting with the vendor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines that the State Ethics Commission may promulgate.

9. **NOTICE TO ALL VENDORS SET-OFF FOR STATE TAX NOTICE**

Please be advised that, pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c. 184 (N.J.S.A. 52:32-32 et seq.), to the taxpayer shall be stayed.

10. **APPLICABLE LAW** – This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.

CONTACT PERSON

Name: _____ Title: _____

Telephone: _____ Fax: _____ E-Mail Address: _____

NOTE: Accurate, truthful and complete information will help speed the review of your questionnaire and expedite action on your Business Concern's application to be FISC Bureau approved. If there is not enough space on this form to give a complete answer, attach additional sheets of paper. Please be sure that each additional sheet includes the Applicant Business Concern's name and Federal Tax ID Number to identify the page as yours and that you clearly identify the question you are answering. This application will not be sufficient to merit prequalification if you fail to provide additional information if requested to resolve questions about any of the disclosures made in this questionnaire.

FOR CORPORATIONS, LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIPS ONLY

Name of Registered Agent in New Jersey: _____

Address of Registered Office in New Jersey: _____

If the Applicant Business Concern is a corporation, provide the following:

Date Incorporated: _____ State in which incorporated: _____

NJ Corporate ID: _____

IF NOT A N.J. CORPORATION, SUBMIT A COPY OF THE CERTIFICATE OF AUTHORITY TO PERFORM WORK IN N.J. AS ISSUED BY THE N.J. DEPARTMENT OF THE TREASURY, DIVISION OF REVENUE, COMMERCIAL RECORDING.

1. How long has the Applicant Business Concern done business under its present name? _____ years
2. List each other name the Applicant Business Concern has done business under in the past ten (10) years:
D/b/a: _____ Dates Name
Used: _____
D/b/a: _____ Dates Name
Used: _____
D/b/a: _____ Dates Name
Used: _____

3. At any time during the past five (5) years, has the Applicant Business Concern shared office space, warehouse space, yard, plant or shop facilities, staff, equipment, telecommunications or other assets with any other business concern? (If yes, disclose the name of the other business concern and provide a description of the sharing arrangement, including the location of the facilities.)
 Yes No

DISCLOSURE OF OWNERS AND KEY PERSONS

“Key Person” means any individual employed by the Applicant Business Concern in a supervisory capacity or empowered to make discretionary decisions with respect to bids and/or contracts within the State of New Jersey. “Key Person” also means any person who owns a beneficial interest of 10% or more in the business concern, and the managing members of limited liability companies and corporate directors and officers (e.g., president, vice presidents, secretary and treasurer).

For purposes of this questionnaire, “supervisory capacity or empowered to make discretionary decisions” means able to bind the Applicant Business Concern to New Jersey bids and/or contracts of \$50,000 or more and/or authorized to sign checks to make payments of \$50,000 or more in connection with New Jersey contracts.

4. Use this table to enter identifying information for each individual who is a “Key Person” of the Applicant Business Concern. Identify any entity or business concern that owns a beneficial interest of 10% or more as well. For entities or business concerns, disregard birth date and provide federal tax identification number instead of social security number.

Name (Last, First, Middle)	Address	Birth Date (MM/DD/YYYY)	Social Security Number*	Position	Ownership %

*Disclosure of Social Security Number is voluntary. However, disclosure will help speed review and action on your application to be prequalified.

AT ANY TIME DURING THE PAST TEN (10) YEARS, HAS THE APPLICANT BUSINESS CONCERN:

5. Been indebted to an individual or entity, other than a bank or other commercial lending institution, in the cumulative amount of \$100,000 or more? (If yes, give details, including the name of each party to the transaction, the date and the amount of indebtedness.) Yes No
6. Loaned monies generated by this business concern, in the cumulative amount of \$100,000 or more, to another business concern or individual? (If yes, give details, including the name of each party to the transaction, the date and the amount of the indebtedness.) Yes No

7. Had an injunction, order or lien entered against it in favor of any government agency including, but not limited to, judgments or liens based on taxes assessed or fines and penalties imposed by any government agency? (If yes, give details, including name of the government agency, caption, date, case number or docket number, and disposition. Be sure to note any judgments or liens that have not been fully satisfied.) Yes No
8. Been a party in any civil litigation or administrative proceeding alleging violation of any of the following: antitrust statutes; racketeering statutes; environmental laws; laws banning workplace discrimination; laws governing wages, hours or labor standards; laws governing the conduct of occupations, professions or regulated industries; or any other law indicating a lack of business integrity or honesty? (If yes, give details, including the nature of the claims and defenses, the caption, date, case number or docket number, and name of the court or agency before which the case is pending or before which it was heard and current status.) Yes No
9. Paid a fine or otherwise paid to settle any of the allegations listed in Question 8, whether with or without an admission of responsibility? (If yes, give details, including the caption, date, case number or docket number, and name of the court or agency before which the case was brought.) Yes No
10. Been denied any license, permit or other similar authorization required to engage in the business concern's trade(s) or professional discipline(s), or has any such license, permit or similar authorization been suspended or revoked by any agency of federal, state or local government? (If yes, give details, including name of the licensing or permitting agency, caption, date, case number or docket number, and disposition.) Yes No
11. Been suspended, debarred, disqualified, denied a classification rating or prequalification or otherwise been declared not responsible to bid on or to perform work on any public contract or subcontract? (If yes, give details, including name of the contracting agency, caption, date, case number or docket number, and disposition.) Yes No
12. Been required by an agreement or settlement with any governmental agency (including any school board) to refrain from bidding or proposing on any public contract? (If yes, describe the agreement and give the name of the government agency, date, caption and case number or docket number, if any.) Yes No
13. Been required to engage a monitor or independent private sector inspector general (IPSIG) as a condition of being classified or prequalified, or as a condition of any contract award, or as a condition for being permitted to complete a contract? (If yes, describe the agreement and give the name of the government agency, date and the name of the monitor or IPSIG.) Yes No
14. Been indicted or otherwise charged as a defendant, or named as an unindicted co-conspirator, alleged to have committed any crime or offense other than a motor vehicle offense? (If yes, give details, including the conduct alleged, the caption,

- date, case number or docket number, and name of the court before which the case is pending or before which it was heard.) Yes No
15. Been convicted, after trial or by plea, of any crime or offense other than a motor vehicle offense? (If yes, give details, including the crime or offense, the caption, date, case number or docket number, and name of the court before which the case was heard.) Yes No
16. Filed with, or submitted to, a government agency, or to any employee or representative thereof, any document which contained a false statement or false information? Filing or submission could be by any means, including telefax, e-mail, and any other form of electronic communication. (If yes, explain. Your explanation should include a description of the document(s), the date and the name of the government agency.) Yes No
17. Paid anyone other than its own key persons or its own employees commissions or finders fees to obtain contracts or work? (If yes, give details, including a description of the transaction, the name of each party to the transaction, the date and the amount of the commission or finders fee paid.) Yes No
18. Given, or offered to give, money, gifts or anything of value, or any other benefit, to a labor official, public official, public employee or public servant with whom the Applicant Business Concern, or any affiliated entity disclosed in this questionnaire, conducted business? (If yes, give details, including the date(s), location(s), a description of the benefit(s) and the name(s) of the individual(s) to whom the benefits were given or offered.) Yes No
19. Agreed with another business concern or representative thereof to submit identical or complementary bids, prices or proposals or to otherwise not bid competitively or to withdraw or abstain from bidding or proposing? (If yes, give details, including the date(s), location(s), description(s) of the contract(s) that were the subject of the bid(s), who put the contract(s) out to bid and the name(s) of the other individual(s) with whom the Applicant Business Concern or any affiliated entity disclosed in this questionnaire agreed.) Yes No

REQUIRED SUBMITTALS CHECKLIST

- Any additional attachments necessary to support disclosures made in answer to any questions above.
- Notarized affidavit (see page 4 attached) of the individual submitting this FISC Bureau Questionnaire on behalf of the Applicant Business Concern.

AFFIDAVIT

State of _____:

SS

County of _____:

I, _____, hereby represent and state as follows:
(full name)

That I am _____ of _____, that I
am duly authorized to _____,
(title) (business concern name and Federal Tax ID
Number)

submit this FISC Bureau Questionnaire ("Questionnaire") on behalf of the Applicant Business Concern,
and that I have read and understood the nineteen (19) questions asked in the previous three (3) pages..

I represent and state that the information given in response to each question is full, complete and
truthful. Further, I represent and state that truthfully answering this Questionnaire is an event
entirely within my control.

I recognize that all the information submitted is for the express purpose of inducing the State of
New Jersey to award a contract and/or allow the Applicant Business Concern to participate in
school facilities projects financed through the Educational Facilities Construction and Financing
Act as a prime contractor or subcontractor. I understand and agree that the Questionnaire and any
attachments filed with the State of New Jersey shall become the property of the State.

I acknowledge that the State of New Jersey may, by means it deems appropriate, determine the
accuracy, truth and completeness of the statements made in this Questionnaire and any
attachments submitted with it and the statements made in any application or request for
classification or prequalification made to the Department of Treasury, Division of Property
Management and Construction and the attachments thereto. Therefore, I authorize the State of
New Jersey to contact any entity or person named in this Questionnaire for purposes of
determining the accuracy, truth and completeness of the information supplied by me on behalf of
the Applicant Business Concern. If required, a photocopy of this affidavit shall be considered as
effective and valid as the original as evidence of the permission given by the Applicant Business
Concern for others to release information to the State for purposes of verifying the accuracy, truth
and completeness of the information supplied by me.

I represent that the foregoing statements made by me are true. I am aware that if any of the foregoing
statements made by me are willfully false, I am subject to punishment. Further, I am aware that a false
statement or omission made in connection with this application may subject me to civil and criminal
penalties available at law and is sufficient cause for denial of the application, revocation of a prior
approval or termination for cause of any school facilities project contract that may be awarded to the
Applicant Business Concern.

Sworn and subscribed to before me

on this _____ day of _____
20____

(Notary Public: Not an officer of the
firm)

SIGNATURE

Name: _____
(PRINT OR TYPE)

SSN: _____
(or Alien Registration Number or Date of Birth)

Affix Corporate
Seal
if Applicable

Attachment 2 - Diligent Service Agreement:

NJSDA agrees with the addition of the Terms and Conditions contained in Diligent's Service Agreement, with the following exceptions.

Section 3. "Term" shall read in its entirety:

Unless earlier terminated pursuant to Section 8, or Section 3.1 of NJSDA's Terms & Conditions, the term of this Agreement begins on the effective date and will continue for three (3) years thereafter (the "Term").

Section 5. Pricing and Payment

NJSDA does not agree to the second half of this paragraph, starting with "Client is responsible for payment of all applicable value-added, sales, use, license and other taxes...."

Section 6.7 Remedies

Paragraph A. NJSDA does not agree to the last sentence: "This section states DBMS' entire liability...."

Paragraph B NJSDA cannot agree to indemnify any vendor, therefore NJSDA does not agree to the clause in the middle of the sixth (6th) sentence which reads, in its entirety "...and Client will indemnify DBMS against..." Also, NJSDA does not agree to the last sentence of Paragraph B: "This section states DBMS' entire liability...."

Section 8. Termination

NJSDA does not agree to this section, as it conflicts with Section 3.1 of NJSDA's Terms and Conditions.

Section 9. Limitation of Liability

NJSDA does not agree to this section, as it is duplicative and unnecessary.

Section 12. Miscellaneous

Paragraph D. Governing Law

NJSDA does not agree to this paragraph, as it conflicts with Section 1.10 of NJSDA's Terms and Conditions.

Paragraph F. Entire Agreement

NJSDA requires that this paragraph incorporate additional items, including as the RFP, responses to the RFP, any addenda thereto, and NJSDA Terms and Conditions.



Diligent Boardbooks™

SERVICE AGREEMENT

PREPARED FOR:

{LOGO}

PRESENTED TO:

{CompanyContactName}
{CompanyContactTitle}

{CompanyName}
{AddressLine1}
{AddressLine2}

PRESENTED BY:

{SalesPersonName}
Diligent Board Member Services, Inc.



SERVICE AGREEMENT

THIS AGREEMENT made as of the {Day} day of {Month, Year} by and between {CompanyName} (hereinafter referred to as "Client") whose principal place of business is located at {AddressLine1}, {AddressLine2} and Diligent Board Member Services, Inc. (hereinafter referred to as "DBMS"), a Delaware corporation, whose principal place of business is located at 39 West 37th Street, 8th Floor, New York, New York 10018.

DBMS and Client (each, a "Party" and, together, the "Parties") hereby agree as follows:

1. **Definitions.** The following terms, as used herein, will have the meanings set out below.

"**Billing Commencement Date**" means the fifteenth (15th) day after the Effective Date of this Agreement.

"**Boardbooks Site**" means the location in DBMS' system where Client's Data resides and is separately stored.

"**Client's Data**" means the information uploaded by Client and stored by DBMS in encrypted format on Client's Boardbooks Site.

"**Configuration**" means the creation and implementation of a dedicated portal site for Client, and the creation and implementation of User accounts, to enable Client to use the Services.

"**Diligent Product**" means the Services together with the hardware, Configuration, Software and Documentation, which will enable Client to input Board information on to Client's Boardbooks Site and enable Users to access that information through a web-based portal and/or through Client's use of DBMS' Smart Client (One Click).

"**Documentation**" means all of DBMS' marketing and training materials, specifications and technical information offered by DBMS for use by Client and its Users, and all other information and user instructions regarding the capabilities, operation, installation and access to the Software and Services of DBMS, including, but not limited to, all hard-copy and computer-based information furnished by DBMS.

"**Effective Date**" means the date set forth in the Preamble at the beginning of this Agreement.

"**Industry Standards**" means the generally-accepted standards and practices adopted and implemented by software-as-a-service providers.

"**Proprietary Information**" means the Software, interfaces, if any, Configuration and Documentation technical information, financial information, software and source code, business and marketing plans, and trade secrets disclosed by a Party in connection with this Agreement, the notes and analysis created by a Party in connection with the foregoing, the terms and pricing under this Agreement, Client's Data stored within the Software. Proprietary Information shall also include all other information disclosed by Client and/or DBMS and identified as confidential. Proprietary Information, however, will not include information that: (a) is or becomes a part of the public domain through no act or omission of the recipient; (b) was in the recipient's lawful possession prior to the disclosure and had not been obtained by the recipient, either directly or indirectly, from the disclosing Party; (c) is lawfully disclosed to the recipient by a third party without restriction on disclosure or (d) is independently developed by the recipient without reference to the information provided by the disclosing Party.

"**Services**" means those services to be delivered by DBMS through access of the Diligent Product by Client, which services are described in the Specifications set forth in the attached Exhibit A, including without limitation, the uploading of Client's Data in encrypted format to Client's Boardbooks Site, the provision of remote access to authorized Users over a board portal to the Client's Boardbooks Site, Software and Client's

Data, and any other services identified in this Agreement.

"**Software**" means individually each, and collectively all, of the DBMS computer software systems, System Upgrades and interfaces made available by DBMS to Client under this Agreement.

"**Specifications**" means the Diligent® Boardbooks Service Specifications set forth in Exhibit A, attached hereto and made a part hereof.

"**Subscription Fee**" means the fee due as provided in Exhibit C for the right to access and use the Diligent Product.

"**System Upgrades**" means corrections, bug fixes, patches, improvements, new releases, new versions, updates, enhancements or other modifications to the Software and/or Documentation.

"**User(s)**" means Client and its affiliates, employees, directors, agents, representatives, consultants and independent contractors authorized by Client to access Client's Boardbooks Site and use the Services by means of a User name and an assigned password. An authorized User is any person identified as such by Client and for whom the requisite fees pursuant to Exhibit C have been paid.

2. **Acceptance of Product and Services.** DBMS hereby offers to provide, and Client hereby accepts DBMS' offer of, access to the Diligent Product with respect to Client's Data as provided in Exhibit A. Client shall provide DBMS with all necessary and reasonable cooperation to enable DBMS to perform its obligations under this Agreement. Client initially will receive access to the Services for the number of boards and committees and individuals specified in Exhibit C, attached hereto and made a part hereof. The individual Users will be identified by name and will be assigned a unique User ID and password. Client may, by written notice to DBMS, add (i) additional boards and committees, thereby granting access to the Diligent Product and (ii) individuals as Users, in which event DBMS shall invoice Client, and Client shall pay, the additional charges due in accordance with Exhibit C. Client may, on a permanent basis, substitute an individual for any single User without incurring any additional fees.

Client agrees not to permit access to, or use of, the Diligent Product by persons who are not authorized Users pursuant to this Agreement. No User shall permit access, through user ID and password sharing or otherwise, to the Diligent Product to anyone who is not an authorized User.

3. **Term.** Unless earlier terminated pursuant to Section 8, or Section 3.1 of NJSDA's the term of this Agreement begins on the Effective Date and will continue for three years thereafter (the "Term"). The term of this Agreement will automatically renew for consecutive one year terms (each an "Extended Term"), unless either Party provides the other written notice of termination no later than thirty (30) days prior to the expiration of the initial Term or any Extended Term. DBMS may implement revised pricing for any Extended Term by giving written notice of such price changes to Client at least sixty (60) days prior to the expiration of the then-current Term, which pricing will take effect unless Client elects to terminate this Agreement in accordance with the preceding sentence. As used throughout this Agreement, the word "Term" will include the Initial Term and any Extended Term(s).

Comment [A1]: Section 3 "Term" shall read in its entirety:
Unless earlier terminated pursuant to Section 8, or Section 3.1 of NJSDA's Terms & Conditions, the term of this Agreement begins on the effective date and will continue for three (3) years thereafter (the "Term").

4. **Grant; Restrictions.**

A. **Grant of Rights.** Subject to Client's compliance with this Agreement, DBMS grants during the Term to Client, its affiliates, boards and committees the right to remotely access and use, through their authorized Users, the Diligent Product for access to Client's Boardbooks Site and Client's Data for Client's internal business purposes.

B. **Restrictions on Grant; Obligations.** Subject to Section 4A above, Client does not acquire any intellectual property or other rights, express or implied, in or relating to the Diligent Product. DBMS reserves title, ownership, and all other rights to the Diligent Product, except for the limited access rights expressly granted herein, and Client shall not have any ownership rights therein. Client may not, and represents and warrants it will not: rent, lease or sublicense the Diligent Product, provide third parties (other than Users) with access to the Diligent Product, whether directly or through a service bureau, commercial time-sharing arrangement, or ASP arrangement; use the Diligent Product to provide outsourcing or training services to third parties (other

than Users); or otherwise market the Diligent Product to third parties. Client also may not, and represents and warrants it will not, directly or indirectly, reverse engineer, disassemble, decompile, or attempt to imitate, derive or discover, the Diligent Product including without limitation, the Software or source code of the Software. Client shall disclose to DBMS, and update as necessary, the identity of all Users.

C. **Client's Property.** DBMS will not obtain any rights in Client's Data, which shall remain the property of Client at all times hereunder.

5. **Pricing and Payment.** Client shall pay the amounts set forth in Exhibit C. For the Initial Term, Client will be invoiced on the Billing Commencement Date and shall pay within thirty (30) days of invoice. Applicable charges for additional boards and committees and authorized Users are set forth in Exhibit C. All payments to DBMS will be due within thirty (30) days of the date of each invoice. For balances more than thirty (30) days past due, DBMS may charge a 1.5% per month finance charge or, if lower, the maximum amount allowed by law. Client must reimburse DBMS for its costs incurred (including reasonable attorney's fees) in the collection of Client's past due amounts. ~~Client is responsible for payment of all applicable value-added, sales, use, license and other taxes and all applicable export and import fees, customs duties, and similar charges (other than taxes based on DBMS' net income) arising from the payment of the Subscription Fee and other fees by Client or the delivery and implementation of Services to Client or Client's access to the Software. All pricing is in United States (US\$) dollars unless otherwise set forth in Exhibit C. Client will be responsible for all travel, accommodation and meal expenses incurred in connection with any on-site training or instruction or attendance at board meetings at the request of Client.~~

Comment [A2]: Section 5 Pricing and Payment
NJSDA does not agree to the second half of this paragraph, starting with "Client is responsible for payment of all applicable value-added, sales, use, license and other taxes..."

6. **Representations, Warranties and Covenants of DBMS.**

6.1 **Software and Services.** During the Term, DBMS represents and warrants that the Software will materially conform to its Documentation and all Services will be performed in a workmanlike and professional manner consistent with Industry Standards and in accordance with the requirements of this Agreement.

6.2 **Viruses.** DBMS will take reasonable precautions to protect against any person acting by, under or through DBMS from introducing any software virus, worm, "back door," "Trojan horse" or similar harmful code into the DBMS hardware or Software used to fulfill DBMS' obligations under this Agreement.

6.3 **Authority to Grant Rights.** DBMS represents and warrants that it has full power and authority to grant the access rights granted by this Agreement to Client and that no consent of any other person or entity is required by DBMS to grant such rights.

6.4 **No Infringement.** DBMS represents and warrants that the grant of the right to, and the access and use by Client and its Users of, the Diligent Product will not infringe the trademark, copyright, patent rights or other proprietary rights of a third party.

6.5 **Security; Data Integrity.** DBMS will take commercially reasonable security measures, consistent with commercially available technology and Industry Standards, to protect against unauthorized access to Client's Proprietary Information and to maintain the integrity of any of Client's Data stored in any server of DBMS. Each year during the term hereof, DBMS will engage an independent third party to conduct an SSAE 16 audit of DBMS and will resolve any issues raised in such audit as expeditiously as possible.

6.6 **Conditions and Exclusions.** All representations and warranties of DBMS set forth in this Agreement are subject to the following continuing conditions: (a) Client and its Users or representatives must not have altered the Diligent Product without the prior written consent of DBMS and (b) Client must not have used the Diligent Product for a purpose not authorized herein. DBMS does not represent or warrant that Client's access and use of the Diligent Product will be uninterrupted or error-free.

6.7 Remedies.

A. Remedy for Breach of Section 6.1. If notified in writing of a valid warranty claim under Section 6.1, DBMS will, at its option, use commercially reasonable efforts to correct the defect or replace the defective Software. If DBMS is unable, within a reasonable period, to provide a correction or replace the defective Software with a substitute having equivalent functionality, DBMS will notify Client and Client will be entitled to a refund of the paid Subscription Fee attributable to the period from the date the defect arose and this Agreement shall terminate. ~~This section states DBMS' entire liability for warranty claims under Section 6.1.~~

Comment [A3]: Section 6.7 Remedies Paragraph A. NJSDA does not agree to the last sentence: "This section states DBMS' entire liability...."

B. Remedy for Breach of Section 6.4. DBMS will defend, indemnify and hold harmless the Client from and against any loss, cost, liability and/or expense (including reasonable attorney's fees) arising as a result of a third-party claim against Client alleging that the grant of a right to, or the access and use by, Client and its Users of the Diligent Product, infringes the trademark, copyright, patent rights or other proprietary rights of a third party. DBMS will pay defense costs incurred by or for counsel retained by DBMS, as well as DBMS-negotiated settlement amounts or damages finally awarded against Client by a court in connection with any such infringement claim; provided, however, that Client shall pay the fees and expenses of any separate counsel retained by it in connection with such claim if DBMS is defending such claim of infringement. Client will not admit liability or otherwise attempt to settle any claim or action without the express written consent of DBMS. If, in DBMS' opinion, an infringement claim may have validity, then DBMS may modify the Diligent Product to make it non-infringing, procure any necessary license, or replace the affected item with one that is at least functionally equivalent and of equivalent performance. If DBMS determines that none of these alternatives is reasonably available, then Client must discontinue using the allegedly infringing Diligent Product and DBMS will issue Client a refund equal to the amount previously paid by Client for the Diligent Product for the period it could no longer use it, and this Agreement will terminate. DBMS has no obligation for any claim of infringement arising from, ~~and Client will indemnify DBMS against,~~ any third-party claim to the extent arising from: (i) DBMS' compliance with Client or its representatives' designs, specifications, instructions, or technical information provided to DBMS by Client and/or its representatives; (ii) modifications to the Diligent Product made by Client or any third party acting by, through or under Client; (iii) Client's non-compliance with applicable Documentation; (iv) use of the Diligent Product for purposes not permitted by this Agreement (including, without limitation, distribution to third parties); or (v) Client use or combination of the Diligent Product with software or services that are not provided or approved by DBMS. ~~This section states DBMS' entire liability for claims of a breach of Section 6.4.~~

Comment [A4]: Paragraph B NJSDA cannot agree to indemnify any vendor, therefore NJSDA does not agree to the clause in the middle of the sixth (6th) sentence which reads, in its entirety "...and Client will indemnify DBMS against..." Also, NJSDA does not agree to the last sentence of Paragraph B: "This section states DBMS' entire liability...."

6.8 Warranty Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, DBMS MAKES NO EXPRESS OR IMPLIED WARRANTIES CONCERNING THE DILIGENT PRODUCT. DBMS FURTHER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DBMS MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF ANY DATA ACCESSED BY OR STORED WITHIN THE SOFTWARE, WHETHER THE DATA IS SUPPLIED BY CLIENT OR A THIRD PARTY, AND DBMS SPECIFICALLY DISCLAIMS ANY LIABILITY DUE TO ERRORS, OMISSIONS, DELAYS OR LOSSES RESULTING FROM THE ACCESS OR USE OF SUCH DATA OR THE LACK OF ACCURACY OR COMPLETENESS OF SUCH DATA. TO THE EXTENT THAT A PARTICULAR JURISDICTION DOES NOT ALLOW FOR THE EXCLUSION OF IMPLIED WARRANTIES, ANY SUCH IMPLIED WARRANTIES ARE LIMITED TO 90 DAYS WITHOUT AFFECTING ANY OTHER LIMITATION CONTAINED IN THIS AGREEMENT.

6.9 Client Security. Client shall be responsible to observe and implement the security practices set forth in Exhibit B.

7. Liability for Direct Damages. DBMS' TOTAL CUMULATIVE LIABILITY FOR DAMAGES, EXPENSES, COSTS, LIABILITY OR LOSSES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO DIRECT, ACTUAL, PROVABLE DAMAGES AND WILL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE TOTAL AGGREGATE ANNUAL SUBSCRIPTION FEES (LESS ALL DISCOUNTS AND CREDITS) PAID BY THE CLIENT FOR THE DILIGENT PRODUCT DURING THE TWO YEAR PERIOD BEFORE THE EVENT GIVING RISE TO THE DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF SPECIAL, INCIDENTAL, PUNITIVE,

INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DOWNTIME COSTS, LOST REVENUE, LOST PROFITS, OR REPLACEMENT GOODS, EVEN IF THE PARTY CAUSING SUCH DAMAGES HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

~~8. **Termination.** Either Party may terminate this Agreement on the expiration date of any Term by providing the other Party at least thirty (30) days prior written notice of its intent to terminate this Agreement. Either Party may terminate this Agreement if the other Party breaches this Agreement and such breach is not capable of remedy or such Party fails to correct the breach within thirty (30) days after receiving the aggrieved Party's written notice specifying the breach. Notwithstanding the foregoing, DBMS may immediately terminate this Agreement and any rights granted under this Agreement upon providing written notice to Client of Client's breach of Section 11 (Confidentiality) or Section 4 (Grant; Restrictions). Client may terminate this Agreement immediately upon providing written notice to DBMS of DBMS' breach of Section 11 (Confidentiality). Termination of this Agreement or any rights granted hereunder will not prevent a Party from pursuing other remedies available to it, including injunctive relief. Termination of this Agreement other than by Client for cause will not relieve Client of its obligation to pay the entire annual Subscription Fee for the then current Term and all other applicable fees, if any, due to DBMS for the use of the Diligent Product. All such fees will immediately become due and payable by Client at termination pursuant to the payment provisions set forth in Section 5 above. Sections 1, 4B, 4C, 6.4, 6.6, 6.7, 6.8, 7, 9, 10 and 11 shall survive termination of this Agreement for any reason. If the rights granted to Client under this Agreement terminate, Client must: (a) immediately cease any and all uses of DBMS' intellectual property and (b) immediately cease accessing and using the Diligent Product; and each Party must (x) return all copies of the other Party's Proprietary Information and all Documentation to the other Party within fifteen (15) days of the date of termination or destroy all copies of such Information; and (y) provide to the other Party within thirty (30) days of termination written certification by an authorized officer that the Party has complied with this requirement.~~

Comment [A5]: Section 8: Termination
NJSDA does not agree to this section, as it conflicts with Section 3.1 of NJSDA's Terms and Conditions.

~~9. **Limitation of Liability.** DBMS will not be liable for loss, corruption or compromise of the confidentiality of Client's Data, unless DBMS has been negligent, engaged in intentional misconduct, or has breached any of its obligations in its provision of the Diligent Product and such negligence, intentional misconduct, or breach of its obligations is the proximate cause of such loss, corruption or compromise.~~

Comment [A6]: Section 9: Limitation of Liability
NJSDA does not agree to this section, as it is duplicative and unnecessary.

10. Compliance with Law. Each Party represents and warrants that it will comply with all laws applicable to it in connection with this Agreement during the Term.

11. Confidentiality. During the Term, either Party may have access to the other Party's Proprietary Information. Each Party will hold the other Party's Proprietary Information in confidence during the Term and thereafter, unless and until the Proprietary Information ceases to be confidential. Neither Party, unless required by law, will make the other Party's Proprietary Information available in any form to any third party, or use the other Party's Proprietary Information for any purpose other than as contemplated under this Agreement. Each Party may disclose Proprietary Information to its employees, agents, consultants, and representatives, who have a need to know in connection with this Agreement, provided that such employees, agents, consultants, and representatives are advised of and acknowledge their obligations under this Section 11. Each Party will take all reasonable steps to ensure that the other Party's Proprietary Information is not disclosed or distributed by its employees, agents, consultants or representatives in violation of the terms of this Agreement. Each Party is responsible for the actions or inactions of its employees, agents, consultants and/or representatives with respect to the other Party's Proprietary Information. This section will not be construed to prohibit disclosure of Proprietary Information to the extent that such disclosure is necessary to enforce a Party's rights under this Agreement or required by law or valid order of a court or other governmental authority; however, such Party must, to the extent it can legally do so, first have given written notice of the required disclosure to the other Party as soon as practicable in order to afford the other Party an opportunity to obtain a protective order or waive compliance with this section, and in any event will disclose only that portion of the other Party's Proprietary Information which it is legally required to disclose. Each Party agrees that any violation or threatened violation of this Section 11 may cause irreparable injury to the other Party, entitling the other Party in such event to seek injunctive relief, without the necessity of posting bond or proving actual damages, in addition to all legal remedies.

12. Miscellaneous.

A. Variation. No amendment or variation of this Agreement will be effective unless it is in writing and signed by each Party.

B. Waiver. All waivers under this Agreement must be in writing to be effective. No waiver by a Party of any default or breach will be deemed a waiver of any subsequent default or breach. No failure or delay by a Party to exercise any right it may have due to the default or breach of the other Party will operate as a waiver of such default or breach or prevent the exercise of any right of such Party, or the enforcement of any obligation of the other Party, under this Agreement.

C. Interpretation of Agreement. If any provision of this Agreement is found to be invalid or unenforceable by any court of competent jurisdiction, such provision will be ineffective only to the extent that it is in contravention of applicable laws, and such invalidity or unenforceability shall not operate to invalidate the remaining provisions hereof.

~~D. Governing Law. The interpretation of this Agreement and all matters related to this Agreement will be construed in accordance with the laws of the State of New York without reference to the choice-of-law provisions of New York law.~~

Comment [A7]: Section 9. Limitation of Liability
NJSDA does not agree to this section, as it is
duplicative and unnecessary.

E. Notices. Any notices required or permitted to be given hereunder by either Party to the other will be given in writing (1) by personal delivery, email or facsimile transmission, (2) by bonded courier or a nationally-recognized overnight delivery company or (3) by prepaid first class, registered or certified mail, postage prepaid, in each case addressed to the other Party at the address set forth on the signature page of this Agreement (or to such other address as the other Party may request in writing by notice given pursuant to this section). Notices will be deemed received on the earliest of: (a) if personally delivered, emailed or sent via facsimile, the same day; (b) if sent by courier or overnight delivery company, on the second working day after the day it was sent; or (c) if sent by mail, five (5) working days following posting.

F. Entire Agreement. This Agreement, together with Exhibits A, B, and C, contains the entire understanding and agreement between DBMS and Client with respect to the subject matter of this Agreement, and supersedes all other prior and contemporaneous proposals, representations, agreements, understandings, and commitments between DBMS and Client with respect to the subject matter of this Agreement. This Agreement supersedes any conflicting terms in Client's purchase order or other ordering document or DBMS' invoices. Any terms of trade stated or referenced in Client's purchase order, or any other terms to which DBMS has not specifically agreed in writing, are not binding on DBMS.

Comment [A8]: Paragraph F. Entire Agreement
NJSDA requires that this paragraph incorporate
additional items, including as the RFP, responses
to the RFP, any addenda thereto, and NJSDA
Terms and Conditions.

G. Force Majeure. Neither Party will be responsible for failure of performance, other than for an obligation to pay money, due to causes beyond its control, including, without limitation: acts of God or nature; labor disputes; sovereign acts of any federal, state or foreign governments; network and/or computer failure or shortage of supplied materials; provided that, the affected Party makes a reasonable attempt to remove the impact of the force majeure occurrence as soon as reasonably possible. Either Party shall have the right to terminate this Agreement if a force majeure occurrence continues to impact performance of the other for more than thirty (30) consecutive days.

H. No Assignment or Delegation. Client may not (i) assign this Agreement, in whole or in part, (ii) assign any of its rights in the Diligent Product nor (iii) delegate its duties, or have another assume its responsibilities or liabilities, under this Agreement, to any third party without the prior written consent of DBMS, which consent shall not be unreasonably withheld. DBMS may not assign this Agreement, in whole or in part, nor delegate its duties, nor have another assume its responsibilities or liabilities, without the prior written consent of Client, which consent shall not be unreasonably withheld.

I. Independent Contractor. DBMS is an independent contractor. Nothing in this Agreement will be construed to create a partnership, joint venture, or agency relationship between the Parties and neither shall have the power to bind the other with respect to third parties.

J. Section Headings. The headings for each section are for convenience of reference only and shall not affect to any extent the interpretation of the Parties' rights and obligations under this Agreement.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date and year first above written.

Please sign below and email to contracts@boardbooks.com or fax to (212) 629-8785 Attn: Contract Dept.

Diligent Board Member Services, Inc.
("DBMS")

{CompanyName}
("Client")

By: _____
Robert E. Norton
Executive Vice President

By: _____
{CompanySignerName}
{CompanySignerTitle}

If to Diligent Board Member Services, Inc.:

GENERAL COUNSEL

General Counsel
Diligent Board Member Services, Inc.
39 West 37th St., 8th Floor
New York, NY 10018 USA
Phone: 212-741-8181
Fax: 212-629-8785
Email: rnorton@boardbooks.com

With copy to:

Contract Management Dept.
Diligent Board Member Services, Inc.
39 West 37th St., 8th Floor
New York, NY 10018 USA
Phone: 212-741-8181
Fax: 212-629-8785
Email: contracts@boardbooks.com

If to {CompanyName):

Name: _____
Title: _____
Address: _____

Phone: _____
Fax: _____
Email: _____

Send Invoices to:

Name: _____
Title: _____
Address: _____

Phone: _____
Fax: _____
Email: _____



EXHIBIT A

DILIGENT BOARDBOOKS™ SERVICES SPECIFICATIONS

Overview

The Diligent Boardbooks™ product provides an internet-based portal that enables a Client to manage its board and other materials through its Boardbooks Site. Client's Boardbooks Site is a secured location on the Diligent Boardbooks system which is designed to be accessed by authorized Users with a unique user name and password. The Client's administrative staff prepares the board materials, which are then uploaded through the Diligent Boardbooks application where they are stored using strong encryption. Those materials are then converted by the Software so that they can be accessed and viewed by board members and other authorized Users electronically, in a format that can be accessed through the Diligent Boardbooks application, standard web browsers and the iPad.

On-Line Systems / Software Access for Administrative Personnel

Allows all designated internal administrative staff, i.e., Company Secretary and administrative personnel, to collate, print, view, approve and publish Client's board and committee documents using the Software.

Implementation of this feature includes:

- Set-up and customization of the Diligent Boardbooks Site for use by administrative staff and Client's Company Secretary, including:
 - Project planning meeting, including review of current work flow and identification of key milestones, leading to development of an implementation plan that fits Client's needs and priorities
 - Collection of User survey information, mapping board and committee membership
 - Creation of dedicated Boardbooks portal
 - Creation and configuration of User accounts
 - Configuration of password policy and security configuration
 - Installation of the Diligent OneClick log-in tool
 - Configuration and installation of off-line feature on the administrative staff's laptop computer
- Training in the use of Boardbooks for administrative staff, either on-site at the request of Client or via web conferencing
- On-going support services to manage Client's Boardbooks Site

On-Line Systems / Software Access for Board Members

Provides secure access for board members, committee members, executives and other designated Users to view the Client's documents using the Software

Implementation of this feature provides:

- Board members, committee members, executives and other designated Users with Boardbooks accounts and access to the Client's Boardbooks Site.
- Access to the Boardbooks portal through the Diligent OneClick application, supported web browsers, the Apple iPad and any other devices as may be subsequently supported by DBMS.
- Configuration and installation of OneClick on the Board members' laptop computers and similar access on Board members' iPads.
- Ongoing training in the use of the Software for board members and executive staff, either on-site or via web conferencing

Off-Line Feature

Allows designated Users to securely download materials from Client's Boardbooks Site via the internet and then view them where the internet is not accessible.

Implementation of this feature provides:

- Board members, committee members, executives and other Users the capability to securely download and store an encrypted version of Client's Board materials to a designated laptop or iPad and view Board materials when not connected to the Internet.

Implementation Process

DBMS' one-on-one approach to the implementation process includes:

- Review of the present board preparation, workflow, and approval processes
- A technical profile of each director
- Recommended implementation strategy for board members based on their individual technical level and Client's objectives
- Ongoing general consulting regarding board material preparation and distribution

The goal is to work directly with Client to streamline the process of preparing, approving and delivering board materials to deliver a system that the board members (regardless of their technical levels) will quickly, easily and enthusiastically embrace and use.



Training

DBMS training for Client personnel includes:

- Separate training session(s) for the Company Secretary and the administrative staff (including uploaders). Training includes: log-in procedures, password usage, creating and building a Boardbooks file/database, editing and making changes, uploading and converting files into the Boardbooks format for easy viewing by board members.
- A separate training session for executives who want to become familiar with the Boardbooks technology prior to the first board meeting
- One-on-one web training sessions with board members
- Ongoing training, including training for new board members, executives and staff members, on-site or via web-conferencing, on an as-needed basis
- Printed User guides for quick, easy reference

Concierge Level Service and Support

DBMS' "Concierge" level of support reflects its understanding of the importance of being available 24/7/365 to assist every Boardbooks User and provide them with the comfort of knowing that DBMS is listening and responding to their needs, concerns and requirements.

- Board members, the Company Secretary, executives, administrative and upload staff have 24/7/365 personal assistance, via a toll-free number, to receive any help they need as well as answers to any Boardbooks-related questions, at **no additional cost**.
- Remote diagnostics and troubleshooting (including network and firewall issues) is provided for each User anywhere, anytime, as needed.

System Upgrades

- System Upgrades are automatically provided at **no additional cost**.

Fallover / Backup

- A fault tolerant system configuration is provided at no additional cost. Client's Data resides on a site specific to Client in a primary data center, which is continually replicated to a secondary center in a different geographic region. Each Boardbooks Site is capable of handling Client's Data independently, in the event of hardware faults, software faults or service unavailability. Availability is continuously monitored and failover is automatically triggered if any service availability issue is detected.
- Off-site data vaulting (back-up) is provided at **no additional cost**.



Security

- DBMS uses strong encryption algorithms, consistent with Industry Standards, designed to provide data privacy. Each Boardbooks User has a unique log-on name and password which is required for him or her to access Client's Boardbooks Site. Password strength and change frequency is enforced according to Client's requirements.
- DBMS uses a layered approach to security architecture, making use of firewalls, intrusion prevention systems, reverse web proxies, and segregation of specific application functions to ensure the security and integrity of the overall environment.
- Upon request more detailed information on DBMS' extensive security measures and protocols can be provided. Technical questions may be addressed to the appropriate salesperson or account management teams, who will engage the appropriate persons from DBMS' Network, Security and Operational departments.

Client Requirements

DBMS is a software-as-a-service Provider (SaaS) and requires minimal IT resource from the Client. To support the application the following requirements must be met:

Administrative Access

- Client access to a high-speed Internet connection with later model, Windows-based PC running Microsoft Windows XP (Service Pack 3 or above), Windows Vista (Service Pack 1 or above) or Windows 7 (except Starter Edition) with a minimum of two GB of memory. The PC must have installed Internet Explorer 7.0 or higher as a web browser and Microsoft .NET runtime V3.0. This is pre-installed on any PC running Windows Vista (or later OS), or can be downloaded from the Microsoft Windows Update Service (Optional Components).

Director / Executive Access

- Client access to a high-speed Internet connection with later model, Windows-based PC running Microsoft Windows XP (Service Pack 3 or above), Windows Vista (Service Pack 1 or above) or Windows 7 (except Starter Edition) with a minimum of two GB of memory. The PC must have installed Internet Explorer 7.0 or higher as a web browser and Microsoft .NET runtime V3.0. This is pre-installed on any PC running Windows Vista (or later OS), or can be downloaded from the Microsoft Windows Update Service (Optional Components). Not all features available on the Diligent OneClick application will necessarily be available on the web browser version.

AND / OR

- Apple iPad model 1, 2 or the model released in 2012 with at least 4GB of spare storage. All subscription costs for wireless and WIFI services must be covered by the Client / User.

AND / OR

- Apple Mac Computer running Safari browser V3 and above.

Apple Mac computers requiring Offline or Administrative Access will need a suitable PC emulation application, such as 'Parallels' or 'VMware Fusion,' together with Windows XP or Windows Vista guest

OS. DBMS Support can assist with the preparation of Macs to run Diligent OneClick or perform a remote installation.

- Both Sender Policy Framework records in DNS Servers and the inclusion of DBMS Mail Server as an SMTP Relay are recommended so that the application can send out e-mail on behalf of Client's domain.

Documentation

DBMS will provide Client with access to the Documentation relating to the Software. If the Documentation is revised or supplemented at any time, DBMS will deliver a copy of such revised or supplemental Documentation to Client within a reasonable time following its first general availability, which delivery may be made by electronic delivery. Client may make copies of the Documentation as reasonably necessary to train and support its Users in their use of the Software; however, Client must retain all DBMS copyright and proprietary notices on each copy of the Documentation made by Client.



IMPLEMENTATION PLAN

Online Access

The proposed implementation schedule below is a sample for planning purposes, and will be further detailed and tailored to Client's discrete requirements as DBMS gains a better understanding of Client's requirements. Implementation and training can begin within one week of our receipt of user surveys.

The implementation process begins with a kick-off meeting at which the Client's team agrees on dates, timelines, and contact persons. DBMS recommends that administrative training be divided into two or three one-hour sessions, over a period of 2 -3 weeks. This ensures that Users have plenty of opportunity to learn at their own pace.

PHASE 1 **SITE LAUNCH**

During Phase 1, Client begins using the site for all boardbook production, realizing an immediate return on investment by streamlining the book assembly and approval process. An electronic platform is established for "rolling out" Diligent Boardbooks to board members during Phase 2.

Week 1 – 2 **Kick-off Meeting**

DBMS introduces the account management team, establishes key milestones and reviews the Client's current board prep workflow and approval process.

Client completes and returns user survey with list of authorized Users, access rights and site configuration requirements including password policy definitions and lists of client contacts.

Boardbooks Site is built and User accounts are created.

Week 2 - 4 **Initial Training Sessions executed for Administrative Team**

Client's first boardbook is produced using material from previous meeting – creating the first archival boardbook.

Production of Client's Information and board calendar begins.

Administrator manuals provided to internal Users.

Production begins for Client's Boardbooks for the first board meeting.

Boardbooks are printed using DBMS' "Print Book" feature and distributed via conventional methods.

Week 3 – 6 **Follow-up Admin Training Sessions Scheduled for Advanced Functionality Training**

The Site Review Meeting is scheduled to determine Client satisfaction and acceptance:

- Boardbooks, book archives, calendar, contacts and resource center are reviewed for completeness and layout. Determination that Diligent Product performs in accordance with this Exhibit A and the Documentation.
- Boardbooks will be produced in accordance with the specifications set forth herein and the Documentation.



IMPLEMENTATION PLAN -- cont'd

PHASE 2

Phase 2 of the implementation process occurs after the administration team has become comfortable with the solution, and is ready to "roll out" the web-viewing tool to board members. This phase generally begins prior to the second meeting at which the board material has been created using the administration tool.

Phase 2 Kick-Off Meeting

DBMS will schedule a kick off meeting for the 2nd phase of the roll-out, to discuss the planning and implementation of the roll-out. This meeting will cover:

- Preparation of the board room for the use of Boardbooks during meetings
- Scheduling of board member trainings
- Board member laptop provisioning / minimum requirements checking
- Planning for 1st paperless board meeting

Board Presentation

Prior to the commencement of the roll-out to the board, upon request, DBMS attends a board meeting, and provides a 30-minute initial introduction and training for board members.

Boardroom Bandwidth Test

If Client intends to provide online access to the Boardbooks portal during board and committee meetings, DBMS will recommend a stress test be performed to verify that sufficient bandwidth is available for all Board members to be able to access the portal without any unacceptable delays or lags.

Director Training

Following the presentation to the board, and in coordination with the administrative team, DBMS arranges a one-on-one web training session with each board member. During this training, the User's credentials are handed over to the User, and it is confirmed that the user can log-in, change their password and access the materials.

1st Paperless Meeting

Once the board has been trained, then Client is ready to execute the first paperless meeting, and receive the full benefits of Diligent Boardbooks implementation.

Meeting Follow Up

Following the first paperless meeting, the DBMS Account Management Team will schedule a meeting to review how the meeting went, and identify any desired changes to the workflow and training or IT Issues that need to be resolved ahead of the next meeting.

Client Configuration Requirements

1. Client is responsible for providing sufficient bandwidth and network connectivity to ensure all users can access and use the portal satisfactorily. DBMS will assist in performing diagnostics and identifying problems where requested.
2. Client is responsible for ensuring its firewalls and proxies permit access to the DBMS-owned URLs / IP Addresses (*.boardbooks.com) through IP Port 443.
3. Client is responsible for determining the security configurations of its systems (e.g. password construction rules and expiration intervals).
4. Client is responsible for ensuring the confidentiality of any User accounts and passwords assigned to them for use with DBMS' systems.
5. Client is responsible for notifying DBMS of assigned User accounts that should be terminated.
6. Client is responsible for immediately notifying DBMS of any actual or suspected information security breaches, of which it becomes aware, including compromised user accounts.
7. Client is responsible for periodically reviewing its security configurations and access rights for appropriateness.
8. Client is responsible for defining the authorized approvers and documentation requirements for changes to its configuration.
9. Client shall retain a hard copy and/or electronic copy of all of Client's Data.
10. Client is obligated to ensure that its authorized Users do not make available or share their User ID and password with employees or others who are not authorized Users. This is a practice that could jeopardize the security of Client's Data.

Attachment 3 - NASDAQ OMX Solutions – “Legal Terms” Document

NJSDA agrees with the additional Terms and Conditions as set forth in NASDAQ OMX “Legal Terms” document, with the following exceptions:

Section 1. Service and Usage.

NJSDA does not agree with the Fourth (4th) and Fifth(5th) sentences of this section, starting with “For certain Services, Customer’s use of the Service and/or data.....” and concluding with “...vendor/exchange data retraction and deletion notifications. In addition,” The referenced sentences and the introductory clause to the sixth (6th) (“In addition,”) should be deleted.

Section 3. Confidential Information

NJSDA does not agree that the Terms of the Agreement are confidential. Accordingly, the words “the terms of this Agreement” should be deleted from the list of Confidential Information enumerated in the first (1st) sentence.

Section 8. Indemnification

NJSDA, as an instrumentality of the State of New Jersey, cannot agree to indemnify any vendor. Accordingly, paragraph 8.1 shall be deleted in its entirety.

Section 9. Term and Termination

The term of the proposed Contract shall be three (3) years, as set forth in the RFP, therefore, Paragraph 9, which sets forth a 12 month term, must be deleted.

Section 11. General

Paragraph 11.1 Arbitration and Governing Law – this paragraph conflicts with the RFP, which states that the Agreement will be governed by New Jersey law. Also, NJSDA will not waive any rights with regards to its right to seek remedies in court. Accordingly, paragraph 11.1 shall be deleted.

Paragraph 11.8. Entire Agreement – This paragraph should be amended to include, among the relevant contract documents, the RFP, any addenda thereto, and NJSDA’s Terms and Conditions.

LEGAL TERMS

CORPORATE SOLUTIONS AND CUSTOMER AGREE TO THE FOLLOWING LEGAL TERMS:

1. Service and Usage. During the Term specified in the applicable Service Order, Corporate Solutions shall provide the Services in consideration for Customer paying the Service Fees and complying with the terms and conditions of this Agreement. Customer shall use the Services in accordance with this Agreement and all applicable laws and regulations. Upon termination of a Service Order or this Agreement, Customer's right to access or use the Services shall immediately terminate. Customer may not market, sell, distribute or otherwise provide the Services to a third party as a reseller or for other commercial purposes. For certain Services, Customer's use of the Service and/or data is subject to additional terms provided by the third party vendor/ exchange and copies of such terms are available upon request. Customer shall comply with any third party vendor/exchange data retraction and deletion notifications. In addition, Customer may be required to authorize Corporate Solutions to obtain certain Customer data from third party vendors. In the event such authorization is required, the applicable Service shall not be provided until the authorization is provided. Corporate Solutions may suspend use of the Service if the authorization is revoked or if the Customer violates the third party data terms. Customer shall take reasonable security precautions to prevent an unauthorized individual or entity from gaining access to the Services and shall comply with all reasonable Corporate Solutions security specifications or instructions in order to prevent the Services from being used or accessed in a manner that is not in accordance with the terms of this Agreement. For each hosted Service, any Customer (or third-party on its behalf), reverse engineering, dynamic or static scanning of the Service is specifically prohibited and may be considered a material breach of this Agreement. In addition, Corporate Solutions reserves the right to block IP addresses or malicious threats that may pose security threats to the hosted service or related infrastructure on an as-needed basis.

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Comment [DJ1]: NISDA does not agree with the Fourth (4th) and Fifth(5th) sentences of this section, starting with "For certain Services, Customer's use of the Service and/or data....." and concluding with "...vendor/exchange data retraction and deletion notifications. In addition,". The referenced sentences and the introductory clause to the sixth (6th) ("In addition,") should be deleted.

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2. Intellectual Property.

2.1 Customer, or its third party vendors, retains the intellectual property rights to the data and information provided to Corporate Solutions to perform the Service or that Corporate Solutions obtains directly from such third-party vendors on behalf of Customer.

2.2 Corporate Solutions retains all intellectual property rights in the Service except where such intellectual property is licensed to Corporate Solutions by a third-party vendor. Customer acknowledges that all intellectual property rights, including trade secrets, in and to the Service belong to Corporate Solutions and/or its third party vendors, whether or not marked. Any deliverable provided to Customer under this Agreement shall belong to Corporate Solutions and Customer is granted a non-exclusive, non-transferable, limited license to use such deliverable and the Service for its internal business purposes during the Term of this Agreement. Customer shall not share, transfer, disclose, copy, publish or create derivative works from the Service without Corporate Solutions' prior written approval. Customer shall not modify any markings or any proprietary rights notices of Corporate Solutions or its third party service providers.

3. Confidential Information.

3.1 Customer and Corporate Solutions both acknowledge that they may receive and/or access "Confidential Information" which may include, but is not limited to, the terms of this Agreement, Customer provided data, Corporate Solutions pricing information, trade secrets, inventions, ideas, specifications, Corporate Solutions data, processes, know-how, reports, reviews, analyses and information, whether oral, written or in any other form, relating to the providing party, its commercial affairs or business, sales, financial, marketing or promotional information which is not in the public domain except to the extent excluded in Section 3.2 below and any other information identified by the providing party as confidential at the time of disclosure, except where such entry is the result of the receiving party's breach of this Agreement.

Comment [DJ2]: NISDA does not agree that the Terms of the Agreement are confidential. Accordingly, the words "the terms of this Agreement" should be deleted from the list of Confidential Information enumerated in the first (1st) sentence.

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3.2 Receiving party shall not use any portion of Confidential Information for any purpose other than as contemplated by this Agreement. Receiving party shall use the same standard of care that it uses to protect its own confidential information to prevent the unauthorized use, dissemination or publication of the Confidential Information, and in any event no less than a reasonable standard of care. The duties in this Section 3 shall not apply to information which (a) prior to its disclosure by the providing party, was already rightfully in the receiving party's possession; (b) voluntarily disclosed to the receiving party by a third-party, on a non-confidential basis, and who has the right to disclose such information to the receiving party; or (c) has already entered the public domain through no fault of the receiving party. In addition, Customer or Corporate Solutions may disclose confidential information to the extent demanded by a court, arbitrator or government agency with regulatory jurisdiction over Corporate Solutions or Customer.

3.3 The obligation of non-disclosure shall survive the termination or expiration of the applicable Service Order for a period not to exceed three (3) years. This limitation shall not apply to the Corporate Solutions information security policies and procedures which shall have a duty of non disclosure that survives indefinitely. Notwithstanding the above, each party may keep such Confidential Information or copies thereof as necessary to comply with applicable laws and or appropriate document and data retention policies.

4. LIMITATION OF LIABILITY.

4.1 EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IF EITHER PARTY IS FOR ANY OTHER REASON HELD LIABLE TO THE OTHER PARTY OR TO ANY OTHER INDIVIDUAL OR ENTITY, INCLUDING IN CONTRACT, FOR INDEMNIFICATION OR IN TORT, LIABILITY IS LIMITED TO THE ACTUAL FEES PAID BY CUSTOMER FOR THE APPLICABLE SERVICE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM AND SUCH LIABILITY SHALL BE CUMULATIVE AND NOT PER INCIDENT. THIS LIMITATION OF LIABILITY SHALL ALSO APPLY TO ANY CORPORATE SOLUTIONS THIRD PARTY VENDORS.

4.2 CORPORATE SOLUTIONS DISCLAIMS ALL RESPONSIBILITY AND LIABILITY WITH RESPECT TO ANY CUSTOMER CONTENT OR DATA THAT IS PROCESSED OR TRANSMITTED WITH THE SERVICES INCLUDING ANY THIRD PARTY DATA SUPPLIED AS PART OF THE SERVICE. CUSTOMER ACKNOWLEDGES AND AGREES THAT WHERE CUSTOMER PROVIDES DATA TO CORPORATE SOLUTIONS AS A PART OF THE SERVICE, CUSTOMER IS THE SOLE "DATA CONTROLLER" AND IS SOLELY RESPONSIBLE FOR ITS OWN COMPLIANCE WITH ALL APPLICABLE LAWS WITH RESPECT TO SUCH DATA, INCLUDING, WITHOUT LIMITATION APPLICABLE DATA PROTECTION AND PRIVACY LAWS.

5. CONSEQUENTIAL DAMAGES.

NEITHER PARTY, INCLUDING ANY CORPORATE SOLUTIONS THIRD PARTY VENDOR, SHALL BE LIABLE TO THE OTHER PARTY, TO ANY OTHER ENTITY OR INDIVIDUAL, FOR ANY LOSS OF PROFITS, REVENUES, TRADES, OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL LOSS OR DAMAGE OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

6. WARRANTIES.

6.1 CORPORATE SOLUTIONS WARRANTS THAT IT SHALL PROVIDE THE SERVICES IN A PROFESSIONAL AND WORKMANLIKE MANNER. IN THE EVENT OF ANY CLAIMED BREACH OF THIS WARRANTY, CUSTOMER MUST NOTIFY CORPORATE SOLUTIONS PROMPTLY OF ANY WARRANTY DEFECTS. IN SUCH AN EVENT, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND CORPORATE SOLUTIONS' SOLE LIABILITY, SHALL BE RE-PERFORMANCE OF THE APPLICABLE PORTION OF THE DEFECTIVE SERVICE.

6.2 EXCEPT AS PROVIDED IN 6.1 ABOVE, CORPORATE SOLUTIONS, AND ITS THIRD PARTY VENDORS, MAKE THE SERVICES AVAILABLE ON AN "AS IS" BASIS AND MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND EXPRESS, IMPLIED OR STATUTORY REGARDING THE USE, ACCURACY, COMPLETENESS OR TIMELINESS OF THE SERVICES AND CORPORATE SOLUTIONS DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. **Force Majeure.** Neither party shall be obligated to perform or observe their obligations undertaken in this Agreement if prevented or hindered from doing so by circumstances beyond its reasonable control.

8. Indemnification.

8.1 Customer will indemnify, defend and hold harmless Corporate Solutions and its employees, officers, directors, providers and other agents from any and all liabilities, damages, costs and expenses (including reasonable attorneys' fees and expenses) for any third party claims relating to, or arising out of: (i) information or materials provided to Corporate Solutions by Customer under a Service Order, including, but not limited to, violations of intellectual property rights; and (ii) Customer's breach of this Agreement.

8.2 Corporate Solutions shall indemnify, defend and hold harmless Customer and its employees, officers, directors, providers and other agents from any and all liabilities, damages, costs and expenses (including reasonable attorneys' fees and expenses) solely for any third party claims alleging infringement by the Service of any US patents, trademarks and copyrights granted as of the Effective Date.

8.3 The obligation to indemnify under this Section 8 shall be conditioned on the following: (1) the indemnified party shall promptly, but in any event, in a time frame that does not prejudice the rights of the indemnifying party, provide the indemnifying party with written notice of the claim, action or allegation; and (2) the indemnifying party shall have sole control of the defense and related settlement negotiations. However, the indemnified party shall have the right to consent to any settlement that requires the indemnified party to accept legal or financial obligations that are not set forth in this Agreement. In addition, Corporate Solutions has no indemnification obligation for any claim arising from any of the following circumstances: (i) any Customer content or data Corporate Solutions uses in connection with the Service or Corporate Solutions' compliance with any designs, specifications, or instructions provided by the Customer or by a third party on Customer's behalf; (ii) Customer's combination, distribution, operation or use of the Service or deliverable with any product, data, apparatus, business method or service that Corporate Solutions does not provide or authorize in writing; (iii) modifications to the Service by Customer that Corporate Solutions does not authorize in writing or if Customer has not started to pay the Service Fees; or (iv) if Customer has not used the Service in accordance with this Agreement.

8.4 If any claim of infringement is made, or appears likely to be made, Customer shall permit Corporate Solutions, at its sole option and cost, to either implement measures to enable Customer to continue to use the Service or modify the Service so it no longer infringes. In the event such options are not commercially reasonable, Corporate Solutions shall have the right to terminate this Agreement with written notice to Customer.

9. Term and Termination. ~~Unless agreed to otherwise in a Service Order, the Services shall have an initial term of twelve (12) months ("Initial Term") and shall automatically renew for additional twelve (12) month terms ("Renewal Term") under the same terms and conditions, except for any price increases as set forth in Section 10. The Initial Term and any Renewal Term shall be considered the "Term".~~

9.1 After the Initial Term, either party may terminate this Agreement by giving the other party no less than two (2) months written notice prior to the expiration of the Initial Term or any Renewal Term.

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Comment [D13]: NJSDA, as an instrumentality of the State of New Jersey, cannot agree to indemnify any vendor. Accordingly, paragraph 8.1 shall be deleted in its entirety.

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Comment [D14]: The term of the proposed Contract shall be three (3) years, as set forth in the RFP, therefore, Paragraph 9, which sets forth a 12 month term, must be deleted.

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9.2 Either party may terminate a Service Order if the other party is in breach of any material provision of this Agreement and such breach continues uncured for a period of thirty (30) days after the non-breaching party delivers written notice of the breach to the breaching party. Corporate Solutions shall also have the right to suspend the Service in the event Customer is in breach of the Agreement.

9.3 Notwithstanding the above, Corporate Solutions may also terminate this Agreement, or a Service Order, with shorter notice if (i) Customer liquidates, ceases to do business, becomes insolvent; or (ii) if an agreement with one or more of its third party providers is terminated during the Term of this Agreement and such provider facilitates providing the Services in the applicable SO; or (iii) for a regulatory reason. A "regulatory reason" is defined to include, but not be limited to, where Corporate Solutions is directed by the U.S. Securities and Exchange Commission (or any other regulatory body having jurisdiction over Corporate Solutions' ability to provide the Services), to discontinue providing the Services and/or to terminate the Agreement. Termination of this Agreement under this Section 9.3 shall also automatically terminate all Service Orders then in effect.

10. Fees & Payment. Customer agrees to pay Corporate Solutions the Service Fees including, but not limited to, any applicable interest and/or late fees. In addition, Customer shall pay any applicable taxes, charges, or assessments (other than taxes imposed on the net income or personal property of Corporate Solutions) levied by any foreign or domestic, national, state, provincial or local government bodies. All payments are due within thirty (30) days of the invoice date. All invoices shall be deemed final and binding unless Customer provides Corporate Solutions notice of any alleged discrepancies no later than sixty (60) days from the invoice date. The Service Fees may be subject to an automatic annual fee increase effective on each anniversary of the Effective Date. For certain Services, there may be additional bank fees associated with providing data to Corporate Solutions to perform the Services. In such an event, such third-party fees will be listed in the Service Order

11. General.

11.1 Arbitration & Governing Law. Any claim, dispute, controversy or other matter in question with regard to this Agreement shall be submitted to the American Arbitration Association ("AAA") and shall exclusively be subject to final binding arbitration in accordance with the Commercial Arbitration Rules and Regulations of the AAA ("Rules"). The arbitrator shall be selected in accordance with the Rules and the arbitration shall be conducted in New York, NY in the English language. The arbitrator is not empowered to award punitive damages. Each party hereby waives the right to seek or recover punitive damages with respect to any dispute resolved by arbitration. The prevailing party will be entitled to recover from the non-prevailing party all reasonable attorneys' fees. This Agreement will be governed by and construed in accordance with the laws of the State of New York, excluding its conflict of laws rules.

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Comment [DJ5]: Paragraph 11.1 Arbitration and Governing Law - this paragraph conflicts with the RFP, which states that the Agreement will be governed by New Jersey law. Also, NJSDA will not waive any rights with regards to its right to seek remedies in court. Accordingly, paragraph 11.1 shall be deleted.

11.2 Headings. Section headings are included for convenience only and are not to be used to construe or interpret this Agreement.

11.3 Waiver and Severability. Except where otherwise provided in this Agreement, any waiver or failure of a party in insisting in any one or more instances upon the performance of any provisions of this Agreement shall not be construed as a waiver or relinquishment of that party's rights to future performance of such provision and the other party's obligation in respect of such future performance shall continue in full force and effect. Any waiver must be made in writing.

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11.4 Publicity. Corporate Solutions may disclose in its publicity materials that the Customer is a client of Corporate Solutions for the Services. Except as set forth herein, all media releases, public announcements and public disclosures by either party relating to this Agreement, or its subject matter, including promotional or marketing material, shall be mutually agreed to in writing by the parties prior to release.

11.5 Survival of Provision. Each party's obligations under the following sections will survive any termination or expiration of this Agreement: 2, 3, 4, 5 and 11.

11.6 No Agency. Nothing in this Agreement shall create a partnership or joint venture between the parties and, except as expressly provided herein, neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of the other party or pledge the credit of or otherwise bind or oblige the other party.

11.7 Notices. All notices and other communications shall be in writing and sent to the parties at the addresses set forth above or to any other address a party hereto shall specify by prior notice to the other party. All notices shall be deemed to have been duly given (i) upon actual receipt (or date of first refusal); (ii) upon constructive receipt (or date of first refusal) if sent by certified mail, return receipt requested; or (iii) if another delivery method is used that actually obtains a signed delivery receipt. Customer shall send a copy of all legal notices to the following address: The NASDAQ OMX Group, Inc, 805 King Farm Blvd, Rockville MD, 20850 Attention: Contracts Group. All other notices shall be sent to the attention of the Senior Vice President at the address listed above.

11.8 Entire Agreement, Assignment and Subcontractors. This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, communications, writings, and understandings and may not be modified except in a writing signed by both parties. Corporate Solutions shall be entitled to use subcontractors to perform some, or all, of the Services and, in such instances, Corporate Solutions shall remain liable for work performed by its subcontractors. Except as expressly provided herein, neither party may assign or transfer this Agreement (including by operation of law), or any of its rights or obligations, to a third party without prior written consent and such consent shall not be unreasonably withheld. However, Corporate Solutions shall be entitled to assign or transfer its rights or obligations to an affiliate or subsidiary without consent.

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Comment [DJ6]: Paragraph 11.8. Entire Agreement - This paragraph should be amended to include, among the relevant contract documents, the RFP, any addenda thereto, and NJSDA's Terms and Conditions.

11.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original. Each party agrees that a scanned copy shall be considered and treated like an original copy of the Agreement.

12. Trials. The following additional terms apply to an evaluation of the Service listed in the applicable SO ("Evaluation Terms").

12.1 During the evaluation period set forth in the SO ("Evaluation Period"), Customer shall use the Service free of charge for evaluation purposes only. If an Evaluation Period is not listed in the SO, the default shall be a maximum period of one (1) week.

12.2 NOTWITHSTANDING ANY PROVISION SET FORTH HEREIN TO THE CONTRARY, DURING THE EVALUATION PERIOD CORPORATE SOLUTIONS DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, AND LIABILITIES SET FORTH IN THIS AGREEMENT AND CORPORATE SOLUTIONS SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM THE CUSTOMER'S USE OF THE SERVICE DURING THE EVALUATION PERIOD.

12.3 Notwithstanding any provision in the Agreement to the contrary, either party may cancel the evaluation of the Service by providing prior written notice of termination to the other party. At the expiration of the Evaluation Period, if such termination notice has not been provided, Customer's use of the Service shall automatically be governed by the Agreement and the SO, including the payment of all Service Fees.

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