

STANDARD CLAUSES FOR LIRPC CONTRACTS

1. Independent Contractor. The Contractor is an independent contractor of the LIRPC. The Contractor shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a “Contractor Agent”), be (i) deemed a LIRPC employee, (ii) commit the LIRPC to any obligation, or (iii) hold itself, himself, or herself out as a LIRPC employee or Person with the authority to commit the LIRPC to any obligation. As used in this Agreement the word “Person” means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

2. No Arrears or Default. The Contractor is not in arrears to the LIRPC upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the LIRPC, including any obligation to pay taxes to, or perform services for or on behalf of, the LIRPC.

3. Compliance With Law.

(a) Generally. The Contractor shall comply with any and all applicable Federal, State and local Laws, including, but not limited to those relating to conflicts of interest, discrimination, a living wage and disclosure of information, in connection with its performance under this Agreement.

(b) Records Access. The parties acknowledge and agree that all records, information, and data (“Information”) acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. The Contractor acknowledges that Contractor Information in the LIRPC’s possession may be subject to disclosure under Section 87 of the New York State Public Officer’s Law. In the event that such a request for disclosure is made, the LIRPC shall make reasonable efforts to notify the Contractor of such request prior to disclosure of the Information so that the Contractor may take such action as it deems appropriate.

4. Minimum Service Standards. Regardless of whether required by Law:

(a) The Contractor shall, and shall cause Contractor Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.

(b) The Contractor shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which the Contractor operates. The Contractor shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing

all Contractor Agents to obtain and maintain, all approvals, licenses, and certifications (“Approvals”) necessary or appropriate in connection with this Agreement.

5. Indemnification; Defense; Cooperation.

(a) The Contractor shall be solely responsible for and shall indemnify and hold harmless the LIRPC, its officers, employees, and agents (the “Indemnified Parties”) from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys’ fees and disbursements) and damages (“Losses”), arising out of or in connection with any acts or omissions of the Contractor or a Contractor Agent, regardless of whether taken pursuant to or authorized by this Agreement and regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same; provided, however, that the Contractor shall not be responsible for that portion, if any, of a Loss that is caused by the negligence of the LIRPC.

(b) The Contractor shall, upon the LIRPC’s demand and at the LIRPC’s direction, promptly and diligently defend, at the Contractor’s own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties for which the Contractor is responsible under this Section and the Contractor shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

(c) The Contractor shall, and shall cause Contractor Agents to, cooperate with the LIRPC in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement.

(d) The provisions of this Section shall survive the termination of this Agreement.

6. Insurance.

(a) Types and Amounts. The Contractor shall obtain and maintain throughout the term of this Agreement, at its own expense: (i) one or more policies for commercial general liability insurance, which policy(ies) shall name the “LIRPC” as an additional insured and have a minimum single combined limit of liability of not less than two million dollars (\$2,000,000) per occurrence, (ii) if contracting in whole or part to provide professional services, one or more policies for professional liability insurance, which policy(ies) shall have a minimum single combined limit liability of not less than one million dollars (\$1,000,000) per occurrence, (iii) compensation insurance for the benefit of the Contractor’s employees (“Workers’ Compensation Insurance”), which insurance is in compliance with the New York State Workers’ Compensation Law, and (iv) such additional insurance, including, without limitation, builder’s all risk, if applicable, automobile liability insurance and umbrella liability insurance, as the LIRPC may from time to time specify.

(b) Acceptability; Deductibles; Subcontractors. All insurance obtained and maintained by the Contractor pursuant to this Agreement shall be (i) written by one or more commercial insurance carriers licensed or authorized to do business in New York State and acceptable to the LIRPC, and (ii) in form and substance acceptable to the LIRPC. The Contractor shall be solely responsible for the payment of all deductibles to which such policies are subject. The Contractor shall require any subcontractor hired in connection with this Agreement to carry insurance with the same limits and provisions required to be carried by the Contractor under this Agreement.

(c) Delivery; Coverage Change; No Inconsistent Action. Prior to the execution of this Agreement copies of current certificates of insurance evidencing the insurance coverage required by this Agreement shall be delivered to the LIRPC. Not less than thirty (30) days prior to the date of any expiration or renewal of, or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, the Contractor shall provide written notice to the LIRPC of the same and deliver to the LIRPC renewal or replacement certificates of insurance. The Contractor shall cause all insurance to remain in full force and effect throughout the term of this Agreement and shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages. The failure of the Contractor to maintain Workers’ Compensation Insurance shall render this contract void and of no effect. The failure of the Contractor to maintain the other required coverages shall be deemed a material breach of this Agreement upon which the LIRPC reserves the right to consider this Agreement terminated as of the date of such failure.

7. Assignment; Amendment; Waiver; Subcontracting.

(a) This Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) subcontracted, without the prior written consent of the LIRPC Executive Director or his or her duly designated deputy (the “Executive Director”), and any purported assignment, other

disposal or modification without such prior written consent shall be null and void. The failure of a party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

(b) It shall be a condition to the consent of the Executive Director to any assignment or subcontract that the Person to or with whom or which such assignment or subcontract is made agrees in writing that, except as provided in the following sentence with respect to amounts payable by the LIRPC, such Person shall be bound by the terms and conditions of this Agreement as though an original party hereto. Unless the action being approved is an assignment of every right and obligation of the Contractor under this Agreement (i) the Contractor shall remain responsible for the full performance of its obligations under this Agreement, and (ii) no amounts payable by the LIRPC under this Agreement shall be or become payable by the LIRPC to any Person other than the Contractor.

8. Termination. (a) Generally. This Agreement may be terminated (i) for any reason by the LIRPC upon thirty (30) days' written notice to the Contractor, (ii) for "Cause" by the LIRPC immediately upon the receipt by the Contractor of written notice of termination, (iii) upon mutual written Agreement of the LIRPC and the Contractor, and (iv) in accordance with any other provisions of this Agreement expressly addressing termination.

As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.

(b) By The Contractor. This Agreement may be terminated by the Contractor if performance becomes impracticable through no fault of the Contractor, where the impracticability relates to the Contractor's ability to perform its obligations and not to a judgment as to convenience or the desirability of continued performance. Termination under this subsection shall be effected by the Contractor delivering to the Executive Director, at least sixty (60) days prior to the termination date (or a shorter period if sixty days' notice is impossible), a notice stating (i) that the Contractor is terminating this Agreement in accordance with this subsection, (ii) the date as of which this Agreement will terminate, and (iii) the facts giving rise to the Contractor's right to terminate under this subsection.

(c) Contractor Assistance Upon Termination. In connection with the termination or impending termination of this Agreement the Contractor shall, regardless of the reason for termination, take all actions reasonably requested by the LIRPC (including those set forth in other provisions of this Agreement) to assist the LIRPC in transitioning the Contractor's responsibilities under this Agreement. The provisions of this subsection shall survive the termination of this Agreement.

8. Accounting Procedures; Records. The Contractor shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles and, if the Contractor is a non-profit entity, must comply with the accounting guidelines set forth in the federal Office of Management & Budget Circular A-122, "Cost Principles for Non-Profit Organizations." Such Records shall at all times be available for audit and inspection by the LIRPC and any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

9. Limitations on Actions and Special Proceedings Against the LIRPC. No action or special proceeding shall lie or be prosecuted or maintained against the LIRPC upon any claims arising out of or in connection with this Agreement unless:

(a) Notice. At least thirty (30) days prior to seeking relief the Contractor shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the Executive Director for adjustment and the LIRPC shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. The Contractor shall send or deliver copies of the documents presented to the Executive Director under this Section to each of (i) the Department and the (ii) the LIRPC Attorney (at the address specified above for the LIRPC) on the same day that documents are sent or delivered to the Executive Director. The complaint or necessary moving papers of the Contractor shall allege that the above-described actions and inactions preceded the Contractor's action or special proceeding against the LIRPC.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, and (ii) the time specified in any other provision of this Agreement.

10. Consent to Jurisdiction and Venue; Governing Law. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Suffolk County or Nassau County in New York State and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

11. All Legal Provisions Deemed Included; Severability; Supremacy; Construction.

(a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be

deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) In the event of a conflict between the terms and conditions of the contract, including any and all attachments thereto and amendments thereof, and the terms of this Appendix A, the terms of this Appendix A shall control.

(d) Each party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against either party as drafter.