

Attachment 3
STANDARD TERMS AND CONDITIONS

A. Choice of Law/Venue

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

B. Payment

1. The Contractor shall submit a detailed and itemized invoice for services rendered on a monthly basis to the Library for the Library's review and, if satisfactory, its acceptance. If accepted, the Library shall then remit payment to the Contractor within thirty (30) days of accepting the Contractor detailed and itemized invoice.
2. The Library's payment of any invoice shall not preclude the Library from making claim for adjustment on any item found not to have been in accordance with the general conditions and specific requirements of the contract.

C. Termination of Agreement

1. The Library may terminate the contract at any time, in its sole discretion, upon written notice to the Contractor, by certified mail, return receipt requested.
2. In the event of any breach of the terms of the contract by the Contractor, the Library shall have, in addition to any other recourse, the right to terminate the contract, by certified mail, return receipt requested. In such event, the Contractor shall be reimbursed for the expenditure(s) incurred for any satisfactory work completed under the contract prior to the date of termination.
3. Upon termination of the contract, for any cause, all records, reports, and operating and maintenance manuals shall be brought up to date and turned over to the Library before final payment is made.

D. Independent Contractor

Contractor acknowledges that it is solely an independent contractor and that nothing in the contract

shall be construed to create an employment, agency, partnership or any type of relationship other than that of an independent contractor with QBPL. Contractor further acknowledges that Contractor is not an employee of either QBPL, and is not entitled to any QBPL employment rights or benefits. QBPL shall not be responsible for payment of workers' compensation, disability benefits, or unemployment insurance, or for withholding or paying employment-related taxes for Contractor. In the event that any federal, state or local government agency, any court or any other applicable entity determines that Contractor hereunder is an employee of QBPL for any purpose, Contractor agrees to indemnify and hold harmless QBPL from all liabilities, costs, and expenses (including, but not limited to, attorneys' fees) associated with such determination.

E. Work Rules

Contractor shall observe the working hours, working rules, holiday schedules and policies of QBPL while working on QBPL premises.

F. Indemnification

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

G. Insurance

A contract shall not be executed, a Purchase Order shall not be issued, and the Contractor shall not commence work until all insurance has been obtained, as required below, and such insurance has been reviewed and approved by the Library's Risk Management and Purchasing Department, as follows:

Within fifteen (15) days after notification of recommendation to make an award, the Contractor shall (1) mail a copy of its insurance certificate(s) to the Library; and (2) include with its mailed insurance certificate(s) a provision that in the event the policies are either canceled, not renewed for any reason, altered or diminished, at least thirty (30) days prior written notice by certified mail, return receipt requested, thereof shall be provided to:

Ms. Cristina Polychronopoulos
Procurement Coordinator
Queens Borough Public Library
89-11 Merrick Boulevard
Jamaica, New York 11432

1. Contractor must procure prior to commencement of work under any solicitation and executed agreement resulting from a solicitation, and maintain until the expiration or satisfactory completion of the services provided under an executed agreement resulting from a solicitation, insurance of the kinds and in the amounts specified below and adhered to the following:
 - a. All insurance required by this RFP shall be obtained at the sole cost and expense of the Contractor;
 - b. All insurance required by this RFP shall be maintained with insurance carriers licensed to do business in New York State and acceptable to the Library, with a best rating of "A" or better;
 - c. All insurance required by this RFP shall be primary to any Library insurance policy, which shall be excess and non-contributory. No claims-made policies will be accepted;
 - d. Contractor shall furnish Certificate(s) of Insurance ("COIs") on ACORD Form 25 (or equivalent) for each insurance carrier and line involved to the Library. Such COIs shall be executed by an authorized representative of the insurance carrier, certifying such authorization and showing compliance with the Library's insurance requirements, as set forth herein;

- e. If any of the insurance policies utilized for the Library's projects contain Deductibles or Self-Insured Retentions ("SIRs"), they must be declared as such with applicable levels on the COIs. The Library has the option to accept or reject the Deductibles or SIRs, or to impose additional security or other requirements, in view of the Library's preference that insurance policies utilized for the Library's projects have no Deductibles or SIRs;
 - f. Contractor shall provide certified copies of the declarations pages or of the insurance policies themselves, upon request by the Library, within twenty (20) calendar days of such request;
 - g. Failure of the Library to demand such certificates, policies, endorsements, or other evidence of full compliance with these insurance requirements, or failure of the Library to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of the Contractor's obligation to maintain such insurance;
 - h. Failure to maintain the required insurance and provide proof of such coverage to the Library may, in the Library's sole discretion, result in termination of this Agreement, or in delay or stoppage of payments;
 - i. If the Contractor fails to maintain the required insurance, the Library shall have the right, but not the obligation, to purchase said insurance at the Contractor's expense. The Contractor agrees that all premiums, costs, and expenses associated with such purchase, or the recovery of those purchase amounts by the Library, shall be deducted from the Contractor's payments under the Agreement, or by any other lawful means, including deduction from any current or future contract with the Library.
 - j. By requiring insurance, the Library does not represent that certain coverage and limits will necessarily be adequate to protect the Contractor, and such coverage and limits shall not be deemed a limitation on the Contractor's liability under the indemnification provisions of the Agreement.
2. The Contractor shall require any subcontractor(s) to provide all of the same insurance requirements that the Contractor shall provide, prior to commencement of and through to completion of any work arising out of the Agreement between the Library and the Contractor.

3. The types of insurance required by the Library are described below:

- a. **Commercial General Liability** – The Contractor shall maintain Commercial General Liability (“CGL”) with no less than the limits and coverage indicated below. CGL insurance shall cover liability arising from premises, operations, independent contractors, products / completed operations, personal injury, advertising injury, and contractual liability. The General Aggregate shall apply separately to the subject matter of the Agreement, and the Contractor shall provide an appropriate Endorsement, using ISO Form CG 25 03 11 85 or its equivalent, to the Library for this purpose.

CGL Limits / Coverages:

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

- b. **Commercial Umbrella Liability** – The Contractor shall maintain Commercial Umbrella Insurance (“Umbrella”) with a limit of no less than five million dollars (\$5,000,000) per occurrence;
- c. **Business Auto Liability** – The Contractor shall maintain Business Automobile Liability coverage, with no less than a one-million-dollar (\$1,000,000) Combined Single Limit, which shall cover liability arising out of any motor vehicle, whether owned, hired, or non-owned. If the Agreement involves removing hazardous waste from the project site, or the project involves environmental exposures, pollution liability coverage equivalent to that provided under the ISO Broadened Pollution Liability Coverage for Covered Autos endorsement (CA 9948) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached;
- d. **Workers’ Compensation** –The Contractor shall provide and maintain statutory Workers’ Compensation, Employer’s Liability, and Disability Benefits Law coverage during the life of

this Agreement for all of the Contractor's employees engaged in work under the Agreement and similar coverage for all of the employees required to be covered under such laws; and

- e. **Professional Errors & Omissions Insurance** – The Contractor shall provide and maintain Professional Liability or Errors and Omissions Insurance in the amounts of one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate. Such insurance shall apply to professional acts or omissions arising out of the scope of services covered by the Agreement.
4. “The Queens Borough Public Library and the Queens Borough Public Library Board of Trustees shall be named as an Additional Insured” using ISO Additional Insured Endorsement CG 20 10 11 85 or its equivalent. The above language should be entered in the “Description of Operations” part of the form showing coverage under the General Liability policy and the Umbrella policy, as required.
5. This insurance, including the Umbrella policy, as required, shall apply as primary insurance with respect to any other insurance or self-insurance program afforded to or maintained by the Library.
6. The Contractor shall waive all rights against the Library and its agents, officers, trustees, directors, and employees, for recovery of damages to the extent these damages are covered by the CGL policy, the Business Auto Policy, and the Umbrella policy, as required.
7. A copy of every required Endorsement shall be furnished to the Library.
8. The Contractor shall provide a copy of the Library's Basic Insurance Requirements to its insurance producer(s) and insurance carrier(s).
9. If the Contractor believes that a specific condition or coverage does not in any respect apply to the Contractor's performance under the Agreement, or cannot be obtained by the Contractor, the Contractor must then:
 - a) Identify that condition(s) or coverage(s);
 - b) Indicate the reasons why the condition(s) or coverage(s) cannot be satisfied;
 - c) Provide and explain its proposed alternatives, if any.
10. The Library reserves the right to adjust these insurance requirements.
11. In addition to the insurance requirements as specified above, the Contractor shall procure and maintain all other insurance coverage's as required by Federal, State or local laws and shall procure and maintain insurances.

H. Notification of Injury and Loss

1. In the event of an occurrence, the Contractor shall provide written notice to the following departments or individuals within twenty-four (24) hours of the occurrence:
 - a. The Library's Director of Risk Management, _____, Queens Borough Public Library, 91-14 Merrick Blvd., Jamaica, N.Y. 11432;
 - b. The Library's Vice-President of Logistics and Security, _____, Queens Borough Public Library, 89-11 Merrick Blvd., Jamaica, N.Y. 11432;
 - c. The Library's General Counsel, _____, Queens Borough Public Library, 89-11 Merrick Blvd., Jamaica, N.Y. 11432; and
 - d. its CGL insurance carrier, and where applicable, its Workers' Compensation and / or other insurance carrier(s).

(I) The Contractor's notice to their insurance carrier must expressly specify that, "This notice is being given to you on behalf of the Queens Borough Public Library and the Queens Borough Public Library Board of Trustees as additional insureds, as well as [the Contractor] as named insured." Within three (3) days after notice by the Contractor of the occurrence of any such loss, damage or injury to work, persons or property, or any accidents, the Contractor shall make a full and complete report thereof in writing to the Library's Representative or Designee and the Library's General Counsel.

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

I. Confidentiality and Non-Disclosure

1. Contractor agrees to hold confidential, both during and after the completion or termination of this Contract, any and all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Contract. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Library. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other personal

identifying information, the Contractor shall utilize best practices (e.g., encryption of electronic records) to protect the confidentiality of such data.

2. The Contractor shall provide notice to the Library within three (3) days of the discovery by the Contractor of any breach of security of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information, where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Library of such steps. In the event of such breach of security, without limiting any other right of the Library, the Library shall have the right to withhold further payments under this Contract for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The Library shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measures. The Library shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the Library's discretion, or if monies remaining to be earned or paid under this Contract are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.
3. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Contract.
4. At the request of the Library, the Contractor shall return to the Library any and all confidential information in the possession of the Contractor or its subcontractors.
5. A breach of this Section shall constitute a material breach of this Contract for which the Library may terminate this Contract for cause. The Library reserves any and all other rights and remedies in the event of unauthorized disclosure.