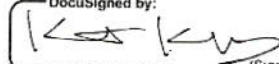



CW53089 PowerPlan AMP Maintenance & Support

AWARD/CONTRACT		1. Reserved for later use		Page of Pages 1 29	
2. Contract Number CW53089		3. Effective Date See Block 20C		4. Requisition/Purchase Request/Project No. RQ957009	
5. Issued By: Office of the Contracting and Procurement 441 4 th Street, NW, Suite 700 South Washington, DC 20001		Code		6. Administered by (If other than line 5) Office of the Chief Technology Officer 200 I Street SE Washington, DC 20003	
7. Name and Address of Contractor (No. street, city, county, state and Zip Code) PowerPlan Canada ULC dba PowerPlan Canada Ltd 410 Adelaide Street West Toronto, Ontario M5V 1S8		8. Delivery <input type="checkbox"/> FOB Origin <input checked="" type="checkbox"/> Other		9. Discount for prompt payment:	
Duns No. TIN		10. Submit invoices to the Address shown in Section 6 (2 copies unless otherwise specified) Attn: Accounts Payable			
11. Ship to/Mark For Office of the Chief Technology Officer Attn: Richard Dietz 200 I Street SE Washington, DC 20003		Code		12. Payment will be made by Office of the Chief Technology Officer 200 I Street SE Washington, DC 20003	
13. Remit Address: Same as 7		14. Accounting and Appropriation Data ENCUMBRANCE CODE:			
15A. Item	15B. Supplies/Services	15C. Qty.	15D. Unit	15E. Unit Price	15F. Amount
B.4.1	SEE SCHEDULE B on PAGE 2	1	lot	\$384,005.00	\$384,005.00
Total Amount of Contract Shall Not Exceed					\$384,005.00
16. Table of Contents					
(X)	Section	Description	Page	(X)	Section Description Page
PART I – THE SCHEDULE				PART II – CONTRACT CLAUSES	
X	A	Award/Contract Form	1	x	I Contract Clauses 20
X	B	Price Schedule	2	PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS	
X	C	Services-Specifications/Work Statement	4	x	J List of Attachments 29
X	D	Packing and Marking	6		
X	E	Inspection and Acceptance	6		
X	F	Contract Term	7		
X	G	Contract Administration data	8		
X	H	Special Contract Requirements	13		
Contracting Officer will complete Item 17 or 18 as applicable					
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return (2) copies to issuing office.) Contractor agrees to furnish and deliver all items, perform all the services set forth or otherwise identified above and on any continuation sheets, for the consideration stated herein. The rights and obligations of the parties to this Agreement shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, as amended, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)			18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number including the additions or changes made by which additions or changes are set forth in full above, is hereby accepted as to the items listed in B.3 and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) this award/contract, and (b) your offer. No further contractual document is necessary.		
19A. Name and Title of Signer (Type or print) Kent Kelley, CFO			20A. Name of Contracting Officer Chris Yi		
19B. DocuSigned by:  3172CC005F61446 (Signature of person authorized to sign)		19C. Date Signed 02/15/17		20B. District of Columbia  (Signature of Contracting Officer)	
				20C. Date Signed 8-18-17	

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SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

B.1 The District of Columbia Office of Contracting and Procurement, on Behalf of the Office of The Chief Technology Officer (OCTO), seeks a contractor to provide maintenance service for PowerPlan AMP and enable and configure Cost Estimate of the PowerPlan AMP (AMP) suite for a "bottoms up" approach for project cost estimation.

B.2 The District contemplates award of a single firm fixed price contract.

B.3 AGGREGATE GROUP OR INDIVIDUAL ITEM

Award, if made, will be to a single bidder in the aggregate for those groups of items indicated by "Aggregate Award Group" herein. Bidder must quote unit prices on each item within each group to receive consideration. Award, if made, on all other items will be on an individual item basis.

B.4 PRICE SCHEDULE**B.4.1 Base Period from date of award through September 30, 2017**

Contract line Item No. (CLIN)	Item Description	Total Price
0001	PowerPlan AMP maintenance and support	\$140,000.00
0002	Cost Estimator configuration	\$244,005.00
Grand Total B.4.1		\$384,005.00

B.4.2 Option Year One (1) October 1, 2017 – September 30, 2018

CLIN	Item Description	Total Price
1001	PowerPlan AMP maintenance and support	\$142,800.00
Grand Total B.4.2		\$142,800.00

B.4.3 Option Year Two (2) October 1, 2018 – September 30, 2019

CLIN	Item Description	Total Price
2001	PowerPlan AMP maintenance and support*	\$145,600.00
Grand Total B.4.3		\$145,600.00

CW53089 PowerPlan AMP Maintenance & Support**B.4.4 Option Year Three (3) October 1, 2019 – September 30, 2020**

CLIN	Item Description	Total Price
3001	PowerPlan AMP maintenance and support	\$148,600.00
Grand Total B.4.4		\$148,600.00

B.4.5 PRICE SUMMARY FOR FOUR (4) YEAR CONTRACT TERM

The period of performance for the base contract shall not exceed five (5) years from the date of contract award. The District contemplates award of Firm Fixed Price Contract. Please insert the "Total" proposed price from Tables B.3.1, B.3.2, B.3.3, B.3.4 and B.3.5 in the designated fields under the heading "Total" below.

Contract Period	Total
Base Period	\$384,005.00
Option Year 1	\$142,800.00
Option Year 2	\$145,600.00
Option Year 3	\$148,600.00
Four-Year Contract Total	\$821,005.00

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SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE:

The District of Columbia Office of Contracting and Procurement, on Behalf of the Office of The Chief Technology Officer (OCTO), seeks a contractor to provide maintenance service for PowerPlan AMP and enable and configure Cost Estimate of the PowerPlan AMP (AMP) suite for a “bottoms up” approach for project cost estimation. This would allow DC Gov to have each of the different agencies to create project requests with detailed cost estimates within the AMP software, enabling the finance team to have greater visibility and justification into the project costs to support the budget cycle an enterprise software solution.

C.2 APPLICABLE DOCUMENTS

The following documents are applicable to this procurement and are hereby incorporated by this reference:

N/A

C.3 DEFINITIONS

These terms when used in this IFB have the following meanings:

- OCTO – Office of the Chief Technology Officer
- District – District of Columbia Government
- UAT – User Acceptance Testing
- GUI – Graphical User Interface
- SSO – Single Sign-on
- OS – Operating System
- DS – Decision Support
- CP – Capital Planning
- AMP – Asset Management Planning
- Asset Group – One of three identified groups including Facilities, Fleet and Horizontal Infrastructure
- Asset Type – Any asset as a member of the asset group

C.4 BACKGROUND

- a. Provide maintenance service for PowerPlan AMP and enable and configure Cost Estimate of the PowerPlan AMP suite. The implementation will focus on enabling and configuring the Cost Estimate functionality within AMP, already installed within DC Gov. The implementation will be interactive, with workshops and presentations designed to demonstrate the Cost Estimate functionality and educate participants on the effort and process that would be involved in the implementation.
- b. The scope of the implementation will include:

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- i. Provide Maintenance Services for PowerPlan AMP
 - ii. Enabling the Cost Estimate of AMP
 - iii. Import current cost estimates within DC Gov
 - a. Excel file data load
 - b. Access file data load
 - iv. Configuration of Cost Estimate within AMP for DC Gov for two (2) agencies already part of the current AMP implementation
 - a. DCPS
 - b. OCTO
 - v. Review
 - vi. User Acceptance Review through Playbacks
 - vii. End User Training
 - viii. Monitored Deployment
 - ix. Project Close Out Meeting and Final Report
 - x. Design Document for Cost Estimate implementation
- c. Excluded from scope of the implementation are:
- i. Custom development of additional features not included with Cost Estimate within AMP
 - ii. Configuration of Cost Estimate for DC Gov outside of the three (3) agencies already part of the current AMP implementation
 - a. DPR
 - b. FEMS
 - c. DDOT
 - iii. Integration to source systems
 - iv. Data cleansing
 - v. Changes to AMP core architecture
 - vi. Custom documentation
 - vii. Custom reports

C.5 REQUIREMENTS

The Contractor shall:

- C.5.1 Provide maintenance and support to the existing PowerPlan AMP system.
- C.5.2 Enable and configure the Cost Estimator functionality within PowerPlan AMP.
- C.5.3 Provide workshops and presentations designed to demonstrate the Cost Estimate functionality and educate participants on the effort and process that would be involved in the implementation.

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SECTION D: PACKAGING AND MARKING

- D.1** The packaging and marking requirements for this contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

SECTION E: INSPECTION AND ACCEPTANCE

- E.1** The inspection and acceptance requirements for this contract shall be governed by clause number six (6), Inspection of Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

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SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

The term of the contract shall be from date of award specified on the cover page of this contract through September 30, 2017.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of this contract for a period of three (3) one-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

F.2.2 If the District exercises this option, the extended contract shall be considered to include this option provision.

F.2.3 The price for the option period(s) shall be as specified in the Section B of the contract.

F.2.4 The total duration of this contract, including the exercise of any options under this clause, shall not exceed four (4) years.

F.3 DELIVERABLES

The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the Contract Administrator identified in section G.9 in accordance with the following:

N/A

F.3.1 The Contractor shall submit to the District, as a deliverable, the report described in section H.5.5 which is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, the District shall not make final payment to the Contractor pursuant to section G.3.2.

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SECTION G: CONTRACT ADMINISTRATION

G1 INVOICE PAYMENT

- G.1.1** The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.
- G.1.2** The District will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.
- G.1.3** The District follows a specific policy for services related to software/hardware (SW/HW) maintenance/licenses and support services. These services must be provided and billed with in the districts fiscal year (10/1 to 09/30). Invoices should only cover one fiscal year and the District cannot be held liable for any such services not billed and paid with in the same fiscal year (October 1 to September 30)¹. The District issues separate payment for each fiscal year for accounting and budgetary reasons.
- G.1.4** By accepting this contract, for SW/HW maintenance/licenses and support services, you agree that a proper invoice constitutes a service period that covers ONLY October 1 thru September 30.

G2 INVOICE SUBMITTAL

- G.2.1** The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer with concurrent copies to the Contract Administrator (CA) specified in Section G.9 below. The address of the CFO is:

Office of the Chief Technology Officer
Office of the Controller/Agency CFO
200 I Street SE 5th floor
Washington, DC 20003

- G.2.2** To constitute a proper invoice, the Contractor shall submit the following information on the invoice:
- G.2.2.1** Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);
- G.2.2.2** Contract number and invoice number;
- G.2.2.3** Description, price, quantity and the date(s) that the supplies or services were delivered or performed;
- G.2.2.4** Other supporting documentation or information, as required by the Contracting Officer;

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- G.2.2.5** Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- G.2.2.6** Name, title, phone number of person preparing the invoice;
- G.2.2.7** Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and
- G.2.2.8** Authorized signature.

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

- G.3.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.
- G.3.2** The District shall not make final payment to the Contractor until the agency CFO has received the CO's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.4 PAYMENT

G.4.1 PARTIAL PAYMENTS

Unless otherwise specified in this contract, payment will be made on partial deliveries of goods and services accepted by the District if:

- a) The amount due on the deliveries warrants it; or
- b) The Contractor requests it and the amount due on the deliveries is in accordance with the following:
 - "Payment will be made on completion and acceptance of each item in accordance with the agreed upon delivery schedule"; and
- c) Presentation of a properly executed invoice.

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

- G.5.1** In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.
- G.5.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

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G.5.3 Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

"Pursuant to the instrument of assignment dated _____, make payment of this invoice to (name and address of assignee)."

G.6 THE QUICK PAYMENT CLAUSE

G.6.1 Interest Penalties to Contractors

G.6.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code § 2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- a) the 3rd day after the required payment date for meat or a meat product;
- b) the 5th day after the required payment date for an agricultural commodity; or
- c) the 15th day after the required payment date for any other item.

G.6.1.2 Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.6.2 Payments to Subcontractors

G.6.2.1 The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this contract:

- a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b) Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

G.6.2.2 The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- a) the 3rd day after the required payment date for meat or a meat product;
- b) the 5th day after the required payment date for an agricultural commodity; or
- c) the 15th day after the required payment date for any other item.

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G.6.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

G.6.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.6.3 Subcontract requirements

G.6.3.1 The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code § 2-221.02(d).

G.7 CONTRACTING OFFICER (CO)

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

Chris Yi
Office of Contracting and Procurement
200 I Street SE
Washington, DC 20003
Telephone: 202.724.5069
E-mail address: Chris.Yi@dc.gov

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.8.1 The CO is the only person authorized to approve changes in any of the requirements of this contract.

G.8.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

G.8.3 In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

G.9 CONTRACT ADMINISTRATOR (CA)

G.9.1 The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of

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ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

G.9.1.1 Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

G.9.1.2 Coordinating site entry for Contractor personnel, if applicable;

G.9.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

G.9.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

G.9.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

G.9.2 The address and telephone number of the CA is:

Richard Dietz
Project Manager
1350 Pennsylvania Avenue, N.W. - Suite 533
Washington, DC 20004
Telephone: 202.724.7693
E-mail address: Richard.dietz@dc.gov

G.9.3 The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

G.9.4 The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

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SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

H.1.1 For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

H.1.1.1 At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.1.2 The Contractor shall negotiate an Employment Agreement with the Department of Employment Services (DOES) for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 2015-4281 Rev 5, dated 3/17/2017, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. § 351 *et seq.*, and incorporated herein as Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with **clause 24 of the SCP**. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the exercise of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PREGNANT WORKERS FAIRNESS

H.3.1 The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq.* (PPWF Act).

H.3.2 The Contractor shall not:

(a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;

(b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

(1) Pay;

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(2) Accumulated seniority and retirement;

(3) Benefits; and

(4) Other applicable service credits;

(c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

(d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

(e) Require an employee to take leave if a reasonable accommodation can be provided; or

(f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

H.3.3 The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:

(a) New employees at the commencement of employment;

(b) Existing employees; and

(c) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

H.3.4 The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

H.3.5 Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

H.4 UNEMPLOYED ANTI-DISCRIMINATION

H.4.1 The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.*

H.4.2 The Contractor shall not:

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- (a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or
- (b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:
 - (1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
 - (2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

H.4.3 Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

Delete Article 35, 51% District Residents New Hires Requirements and First Source Employment Agreement, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Section **H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT** in its place:

51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

- H.5.1** For contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219:01 et seq. (First Source Act).
- H.5.2** The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:
 - (a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and
 - (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.
- H.5.3** The Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.
- H.5.4** The Contractor agrees that at least 51% of the new employees hired to perform the contract shall be District residents.

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H.5.5 The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the contract.

H.5.6 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

H.5.7 If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the contract for each percentage by which the Contractor fails to meet its hiring requirements.

H.5.8 Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

H.5.9 The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in **clause 14 of the SCP, Disputes**.

H.5.10 The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

H.6 **RESERVED**

H.7 **RESERVED**

H.8 **RESERVED**

H.9 SUBCONTRACTING REQUIREMENTS

H.9.1 Mandatory Subcontracting Requirements

H.9.1.1 For all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).

H.9.1.2 If there are insufficient SBEs to completely fulfill the requirement of paragraph H.9.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

H.9.1.3 A prime contractor that is certified by DSLBD as a small, local, or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1.1 and H.9.1.2.

H.9.1.4 Except as provided in H.9.1.5 and H.9.1.7, a prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own

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organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

H.9.1.5 A prime contractor that is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

H.9.1.6 Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

H.9.1.7 A prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

H.9.2 Subcontracting Plan

If the prime contractor is required to subcontract under this contract, it shall submit a subcontracting plan as part of the bid and it may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit of the District.

Each subcontracting plan shall include the following:

- (1) The name and address of each subcontractor;
- (2) A current certification number of the small or certified business enterprise;
- (3) The scope of work to be performed by each subcontractor; and
- (4) The price that the prime contractor will pay each subcontractor.

H.9.3 Copies of Subcontracts

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, CA, District of Columbia Auditor and the Director of DSLBD.

H.9.4 Subcontracting Plan Compliance Reporting

H.9.4.1 The Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

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- (A) The price that the prime contractor will pay each subcontractor under the subcontract;
- (B) A description of the goods procured or the services subcontracted for;
- (C) The amount paid by the prime contractor under the subcontract; and
- (D) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

H.9.4.2 If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

H.9.5 Annual Meetings

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

H.9.6 Notices

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

H.9.7 Enforcement and Penalties for Breach of Subcontracting Plan

- H.9.7.1** A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.
- H.9.7.2** A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.
- H.9.7.3** If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in **clause 8 of the SCP, Default**.

H.10 FAIR CRIMINAL RECORD SCREENING

- H.10.1** The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) ("Act" as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.
- H.10.2** Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by

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the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.

H.10.3 After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.

H.10.4 The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.

H.10.5 This section and the provisions of the Act shall not apply:

(a) Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;

(b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;

(c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or

(d) To employers that employ less than 11 employees.

H.10.6 A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

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SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated July 2010 (SCP) are incorporated as part of the contract. To obtain a copy of the SCP go to <http://ocp.dc.gov>, under Quick Links click on "Required Solicitation Documents".

I.2 CONTRACTS THAT CROSS FISCAL YEARS

Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

I.3 CONFIDENTIALITY OF INFORMATION

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

I.4 TIME

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

I.5 RIGHTS IN DATA

Delete clause 42, Rights in Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 42, Rights in Data) in its place:

A. Definitions

1. "Products" - A deliverable under any contract that may include commodities, services and/or technology furnished by or through Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.

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2. "Existing Products" - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.
3. "Custom Products" - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the District under the contract.
4. "District" – The District of Columbia and its agencies.

B. Title to Project Deliverables

The Contractor acknowledges that it is commissioned by the District to perform services detailed in the contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. Existing Products: Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or third party proprietary owner, who retains all rights, title and interest (including patent, trademark or copyrights). Effective upon payment, the District shall be granted an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the District as part of Contractor's bid that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the District's satisfaction), and distribute Existing Product to District users up to the license capacity stated in the contract with all license rights necessary to fully effect the general business purpose of the project or work plan or contract. Licenses shall be granted in the name of the District. The District agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.
2. Custom Products: Effective upon Product creation, Contractor shall convey, assign, and transfer to the District the sole and exclusive rights, title and interest in Custom Products, whether preliminary, final or otherwise, including all patent, trademark, and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor.

C. Transfers or Assignments of Existing or Custom Products by the District

The District may transfer or assign Existing or Custom Products and the licenses thereunder to another District agency. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project or work plan in the course of Contractor's business.

D. Subcontractor Rights

Whenever any data, including computer software, are to be obtained from a subcontractor under the contract, the Contractor shall use this clause, **Rights in Data**, in the subcontract, without

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alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

E. Source Code Escrow

1. For all computer software furnished to the District with the rights specified in section B.2, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the District with the restricted rights specified in section B.1 of this clause, the District, if the Contractor either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if the Contractor should be declared insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

2. If the Contractor or Product manufacturer/developer of software furnished to the District with the rights specified in section B.1 of this clause offers the source code or source code escrow to any other commercial customers, the Contractor shall either: (1) provide the District with the source code for the Product; (2) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with a standard escrow arrangement acceptable to the District; or (3) will certify to the District that the Product manufacturer/developer has named the District as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with the terms of escrow.

3. The Contractor shall update the source code, as well as any corrections or enhancements to the source code, for each new release of the Product in the same manner as provided above, and certify such updating of escrow to the District in writing.

F. Indemnification and Limitation of Liability

The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

I.6 OTHER CONTRACTORS

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

I.7 SUBCONTRACTS

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The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

I.8 INSURANCE

- A. **GENERAL REQUIREMENTS.** The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium.
1. Commercial General Liability Insurance. The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed under this contract.
 2. Automobile Liability Insurance. The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
 3. Workers' Compensation Insurance. The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

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4. Employer's Liability Insurance. The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.
5. Umbrella or Excess Liability Insurance. The Contractor shall provide umbrella or excess liability (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$1,000,000 per occurrence, including the District of Columbia as additional insured.
6. Professional Liability Insurance (Errors & Omissions). The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per occurrence for each wrongful act and \$1,000,000 annual aggregate.

The Contractor shall maintain this insurance for five (5) years following the District's final acceptance of the work performed under this contract.

- B. **DURATION.** The Contractor shall carry all required insurance until all contract work is accepted by the District, and shall carry the required General Liability; any required Professional Liability; and any required Employment Practices Liability insurance for five (5) years following final acceptance of the work performed under this contract.
- C. **LIABILITY.** These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**
- D. **CONTRACTOR'S PROPERTY.** Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- E. **MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.
- F. **NOTIFICATION.** The Contractor shall immediately provide the CO with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the CO.
- G. **CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to the Contracting Officer.

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H. **DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

I.9 EQUAL EMPLOYMENT OPPORTUNITY

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.3. An award cannot be made to any bidder who has not satisfied the equal employment requirements.

I.10 ORDER OF PRECEDENCE

The contract awarded as a result of this IFB will contain the following clause:

ORDER OF PRECEDENCE

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Contract document
- (3) Standard Contract Provisions
- (4) Contract attachments other than the Standard Contract Provisions
- (5) IFB, as amended
- (6) Bid

I.11 DISPUTES

Delete clause 14, Disputes, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 14, Disputes) in its place:

14. Disputes

All disputes arising under or relating to the contract shall be resolved as provided herein.

- (a) **Claims by the Contractor against the District:** Claim, as used in paragraph (a) of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant

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- (1) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor's claim shall contain at least the following:
 - (i) A description of the claim and the amount in dispute;
 - (ii) Data or other information in support of the claim;
 - (iii) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
 - (iii) The Contractor's request for relief or other action by the CO.
- (2) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (3) The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (4) The CO's written decision shall do the following:
 - (i) Provide a description of the claim or dispute;
 - (ii) Refer to the pertinent contract terms;
 - (iii) State the factual areas of agreement and disagreement;
 - (iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - (v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
 - (vi) Indicate that the written document is the CO's final decision; and
 - (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (5) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.
- (6) If a contractor is unable to support any part of its claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim. Liability under this paragraph (a)(6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

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- (7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.
- (b) **Claims by the District against the Contractor:** Claim as used in paragraph (b) of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- (1) The CO shall decide all claims by the District against a contractor arising under or relating to a contract.
- (2) The CO shall send written notice of the claim to the contractor. The CO's written decision shall do the following:
- (i) Provide a description of the claim or dispute;
 - (ii) Refer to the pertinent contract terms;
 - (iii) State the factual areas of agreement and disagreement;
 - (iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - (v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
 - (vi) Indicate that the written document is the CO's final decision; and
 - (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.
- (4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.
- (5) The authority contained in this paragraph (b) shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle or determine.
- (6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.

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- (d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

I.12 COST AND PRICING DATA

Delete clause 25, Cost and Pricing Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts.

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SECTION J: ATTACHMENTS

The following list of attachments is incorporated into the contract by reference.

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (July 2010)
J.2	U.S. Department of Labor Wage Determination 2015-4281 Rev 5, dated 3/17/2017
J.3	Way to Work Amendment Act of 2006 - Living Wage Notice
J.4	Way to Work Amendment Act of 2006 - Living Wage Fact
J.5	PowerPlan Canada Ltd bid response
J.6	PowerPlan Canada Ltd Software Maintenance Services Agreement



**Software Maintenance Services Agreement
Between
PowerPlan Canada ULC
(doing business in the District of Columbia as PowerPlan Canada Ltd.)
And
Government of District of Columbia**

This Agreement, dated May 19, 2017 (the "Effective Date"), is between PowerPlan Canada ULC, as successor-in-interest to Riva Modeling Systems, Inc. ("Licensor" or "PowerPlan") and doing business in the District of Columbia as PowerPlan Canada Ltd., with a notice address at 410 Adelaide Street, Toronto, ON M5V 1S7, Canada, and The Government of the District of Columbia ("Licensee" or "Client"), with a notice address at 200 I ST SE, WASHINGTON, DC 2003
5th Floor

Recitals

WHEREAS, Licensor licenses to Licensee certain proprietary software programs known as AMP Decision Support and Capital Planning (collectively, the "Software") pursuant to a Software license agreement, which remains in full force and effect, provided where such Software license agreement and this Agreement directly conflict, this Agreement shall govern; and

WHEREAS, Licensor and Licensee desire to terminate the previous Software Support and Maintenance Agreement between Licensee and Riva Modeling Systems, Inc. as provided below; and

WHEREAS, Licensee wishes to obtain Maintenance Services for the Software pursuant to the terms and conditions contained herein; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, Licensor and Licensee agree as follows:

1. EFFECT OF RECITALS.

The above recitals are true and correct and are incorporated herein by reference as if set forth herein verbatim.

2. TERMINATION OF PRIOR SUPPORT AND MAINTENANCE AGREEMENTS.

Licensor and Licensee acknowledge and agree that as of the Effective Date, any prior agreement for Software support or maintenance services is hereby terminated, and that the terms and conditions of this Agreement shall govern over the provision of Maintenance Services.

3. TERM OF AGREEMENT.

This Agreement shall remain in full force and effect so long as Licensee obtains Maintenance Services from PowerPlan.

4. INITIAL TERM OF MAINTENANCE AND FEES.

The Parties hereby agree to the following Maintenance Terms and Fees:

- Year 1: October 1, 2016 – September 30, 2017: **\$140,000 USD**
- Year 2: October 1, 2017 – September 30, 2018: **\$142,800 USD**
- Year 3: October 1, 2018 – September 30, 2019: **\$145,600 USD**
- Year 4: October 1, 2019 – September 30, 2020: **\$148,600 USD**



Thereafter, the Maintenance Term shall automatically renew for additional one (1) year terms (each, an "Additional Maintenance Term"; the Initial Maintenance Term and all Additional Maintenance Terms are collectively referred to as the "Maintenance Term"), unless either party provides written notice to the other party at least ninety (90) days prior to the end of the then-current Maintenance Term of its intent to not renew the Agreement.

Maintenance Fees shall be paid annually in advance. PowerPlan shall notify Client at least thirty (30) days in advance of the then Maintenance Term of any change in Maintenance Fees for the next twelve (12) months of the Maintenance Term.

Any amount not paid when due shall bear a late payment charge at the lesser of 1.5% per month or the maximum amount permitted by law until paid. If Client's account is in arrears for 60 days or more, PowerPlan may suspend the provision of services until such time as Client's account is brought current. The rights in this Section are in addition to any other rights under this Agreement, at law, or in equity.

Client agrees to pay all personal property, sales, use and other taxes (excluding taxes based upon PowerPlan's net income) and license and registration fees, and other assessments or charges levied or imposed by any governmental body or agency as a result of the execution or performance of the Agreement. Any amount due from Client under this Section shall be paid directly by Client, where appropriate, or shall be reimbursed to PowerPlan upon payment thereof by PowerPlan. In the event Client or the transactions contemplated by the Agreement are exempt from the foregoing taxes, fees, assessments or charges, Client agrees to provide PowerPlan as evidence of such tax exempt status, proper exemption certificates, or other documentation acceptable to PowerPlan.

In the event Client discontinues receiving Maintenance Services and desires to reinstate such services, unless otherwise agreed, Client shall pay all Maintenance Fees which would have been applicable during the period during which Maintenance Services were lapsed.

5. MAINTENANCE SERVICES.

(a) During the Maintenance Term, and as long as Client remains in full compliance with this Agreement and the Software license agreement, PowerPlan will provide to Client maintenance services ("Maintenance Services") in accordance with the terms of this Maintenance Services Schedule. Maintenance Services will be provided in accordance with PowerPlan's maintenance policy, including maintenance service levels, in effect at the time Maintenance Services are provided ("Maintenance Policy"). PowerPlan's Maintenance Policy is at <http://www.powerplan.com/files/PowerPlan-Standard-Software-Maint-Policy-Website.pdf>. Notwithstanding the foregoing, the Maintenance Services provided to Client during the Initial Maintenance Term shall not be materially less than the Maintenance Services provided under the Maintenance Policy in effect on the Effective Date.

(b) PowerPlan will use commercially reasonable efforts to provide an Error Correction or Workaround for all verifiable and reproducible Errors in the Software in accordance with this Agreement and the Maintenance Policy.

(c) PowerPlan will provide Service Packs and Patches to the Software that PowerPlan makes generally available to its customers as part of Maintenance Services and in accordance with the Maintenance Policy.

(d) PowerPlan will make available to Client new Versions in accordance with the Maintenance Policy as and when developed, except for new products or modules for which PowerPlan generally charges a separate license or SaaS Fee. PowerPlan is not obligated to develop New Versions.

(e) PowerPlan will provide one or more reasonable means of communication to allow Client's IT personnel ("Maintenance Contacts") to contact PowerPlan for assistance in resolving problems with the



Software ("Help Desk") in accordance with and during the hours of operation more specifically set forth in the Maintenance Policy.

6. LIMITATIONS OF MAINTENANCE SERVICES

(a) PowerPlan is under no obligation to provide Maintenance Services with respect to: (i) Software that has been altered or modified by Client or any third party; (ii) Software used on a system that does not meet the minimum hardware, software, operating system, and other system and configuration requirements set forth in the Software documentation; (iii) hardware, network, or communication problems, (iv) the any applicable deliverables which are not included Software as shown in the Software documentation, or (v) any systems or software not both supplied by PowerPlan and identified as covered in this Agreement.

(b) PowerPlan shall have no responsibility for the procurement, installation, or support of any other hardware, software, or other computing or communications systems and the day-to-day operation of the Software.

7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY.

(a) PowerPlan's Intellectual Property. PowerPlan and its suppliers retain sole and exclusive ownership of their respective confidential information, the Software (both in object code as well as its source code), and all intellectual property in, to, or embodied in or associated with the Software and Maintenance Services, and all copies and modifications thereof (whether developed by PowerPlan, Client, or a third party). Client shall not take any action inconsistent with such title and ownership.

(b) Client's Intellectual Property. Client retains sole and exclusive ownership of Client's confidential information and all copies and modifications thereof. PowerPlan shall not take any action inconsistent with such title and ownership. Any output provided to PowerPlan is only to allow PowerPlan to provide Maintenance Services under this Agreement. Notwithstanding anything to the contrary, any suggestions or proposed modifications to the Software provided by Client to PowerPlan may be freely used by PowerPlan without limitation, and any modification to the Software resulting from such suggestions or proposed modifications shall be exclusively owned by PowerPlan.

(c) Confidentiality. By virtue of this Agreement, the parties may be exposed to or provided with certain Confidential Information of the other party. Each party will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own Confidential Information, but in no event less than a reasonable amount of care. Except as required by law, neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement and as may be required to report to its affiliates, legal and financial advisors, and regulators. Except as otherwise expressly set forth in this Agreement, neither party will disclose to third parties the other's Confidential Information without prior written consent of the other party. Client shall cause the users it authorizes and each party shall cause their respective personnel to be bound in writing by obligations of confidentiality at least as restrictive as set forth in this Agreement. The responsibilities under this paragraph shall continue during the term of this Agreement and for five (5) years thereafter for Confidential Information that is not a trade secret under law and for trade secrets shall continue for so long as such Confidential Information remains a trade secret. Nothing in this paragraph is intended to reduce the scope of rights that a party shall have with respect to its Confidential Information and trade secrets under applicable law.

For purposes of this Agreement, Confidential Information means any information that is of value to its owner, or is required to be kept confidential by contract or otherwise, and is treated as confidential, that is disclosed by or on behalf of the discloser or otherwise directly or indirectly obtained from the discloser. Confidential Information includes, but is not limited to, the following: trade secrets, proprietary information, technical processes and formulas, the Software and any deliverables including source code, object code, and any other form, Software documentation, benchmark and performance test results, product designs,



any sales, cost, and other unpublished financial information, product and business plans, projections and marketing data, and the terms and conditions (but not the existence) of this Agreement. Confidential Information does not include information (i) generally known to the public through no act or omission of recipient; (ii) independently developed by the recipient without use of or reference to the discloser's Confidential Information; and (iii) obtained by recipient from any third party not owing any confidentiality obligation to the discloser.

PowerPlan shall treat all Client Data (defined as data that Client stores in the Software or provides to PowerPlan for purposes of performing services) as confidential and shall only use the Client Data to (i) provide any services (including reporting to Client on their use of the Software as part of Maintenance Services), (ii) aggregate information relating to transactions for statistical analysis and business measures of the performance of the Software or services, to improve PowerPlan's products and services, and to manage PowerPlan's systems, including the Platform, (iii) monitor Client's use of the Software or services for security and technical support purposes and for purposes of otherwise complying with PowerPlan's obligations to Client, (iv) enforce this Agreement, and (v) share with any PowerPlan subcontractors who need to know such information in order to provide services, provided that they are bound by similar confidentiality obligations. For purposes of clarity, PowerPlan's obligation to keep such Client Data confidential shall not apply to information that (1) PowerPlan learns of from another source or independently develops without reference to the Client Data or (2) PowerPlan is required to disclose by law (but only to the extent of such required disclosure). PowerPlan may use, modify, market, and disclose any De-identified Data for any legal purpose. "De-identified Data" means data and information generated by or captured through the use of the Software, or that is derived from such data and information, that both (i) does not identify and cannot be reasonably used to identify any individual person, including, without limitation, any Client personnel, and (ii) is aggregated with data of third parties, including, without limitation, other customers of PowerPlan, such that the data cannot identify Client or be attributed solely to Client or use of the Software by Client, Client's authorized users, Client's personnel, or Client's customers.

(d) Injunctive Relief. The parties agree that monetary damages are not an adequate remedy if this Section 7 is breached and that the non-breaching party will suffer irreparable damage, and therefore, either party, in addition to any other legal or equitable remedies, shall be entitled to seek an injunction or similar equitable relief against such breach or threatened breach.

8. WARRANTY.

Subject to this Agreement and the Maintenance Policy, PowerPlan warrants that the applicable Maintenance Services will be performed in a good and workmanlike manner, consistent with generally accepted industry standards. Client shall promptly notify PowerPlan in writing if the Maintenance Services fail to perform in accordance with this warranty. PowerPlan shall, after receipt of Client's notice, re-perform the Maintenance Services within a reasonable time.

The warranty in this Section constitutes Licensor's sole and entire liability and Licensee's exclusive remedies with respect to such warranty. Licensor shall not be obligated to correct any breach of the above warranty if Licensee has not notified Licensor of the specific existence and nature of such breach promptly during the applicable warranty period. Without limiting the foregoing, Licensor does not warrant and is not responsible for (i) any third-party products or (ii) services not provided solely by Licensor or its authorized personnel.

EXCEPT AS SET FORTH IN THIS SECTION 8, NEITHER POWERPLAN NOR ITS LICENSORS MAKES ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, CONDITION, OR AGREEMENT WITH RESPECT TO THE SOFTWARE, MAINTENANCE, OR ANY SERVICES. POWERPLAN AND ITS LICENSORS EXPRESSLY DISCLAIM AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM USAGE, CONDUCT, OR COURSE OF TRADE. POWERPLAN DOES NOT REPRESENT THAT THE OPERATION OF THE SOFTWARE AND THE



SOFTWARE DOCUMENTATION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS WILL BE CORRECTED.

Notwithstanding anything to the contrary, Licensee is solely responsible for ensuring the proper selection, use, management, and supervision of the Software and audit controls, programs, operating methods and office procedures for establishing the necessary controls over access to and use of data and for establishing all proper checkpoints, safeguards, and procedures necessary for the proper use of the Software, any changes made by Licensee to alter the calculations, functions, or performance of the Software, the security of the data stored therein and the suitability of the results obtained with the use of the Software. Licensee agrees that Licensor shall not be liable for any damages caused by Licensee's failure to fulfill these responsibilities.

9. LIMITATION OF LIABILITY.

EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTION 7, POWERPLAN, ITS LICENSORS, AND OTHER SUPPLIERS SHALL NOT BE LIABLE TO CLIENT, CLIENT AFFILIATES, USERS AUTHORIZED BY CLIENT, OR ANY THIRD PARTY, FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES OR LIABILITIES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL EXHIBITS OR AMENDMENTS, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, INCLUDING A BREACH, FOR DAMAGES OR LIABILITIES FOR LOST PROFIT, LOST REVENUE, LOSS OF USE, LOSS OF GOODWILL, LOSS OF REPUTATION, LOSS OF DATA, COSTS OF RECREATING LOST DATA, THE COST OF ANY SUBSTITUTE EQUIPMENT, PROGRAM, OR DATA, OR CLAIMS BY ANY THIRD PARTY REGARDLESS OF WHETHER SUCH DAMAGES OR LIABILITIES HAVE BEEN COMMUNICATED TO POWERPLAN AND REGARDLESS OF WHETHER POWERPLAN HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES.

EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTIONS 7, THE CUMULATIVE, AGGREGATE LIABILITY (INCLUDING ATTORNEYS FEES AWARDED UNDER THIS AGREEMENT) OF POWERPLAN, ITS LICENSORS, AND OTHER SUPPLIERS TO CLIENT, OTHER CLIENT ENTITIES, USERS AUTHORIZED BY CLIENT, OR ANY THIRD PARTY FOR ALL CLAIMS, LIABILITIES AND DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL EXHIBITS OR AMENDMENTS THERETO, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED MAINTENANCE FEES PAID TO POWERPLAN DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE DATE THAT THE CLAIM AROSE.

10. MISCELLANEOUS.

(a) Force Majeure. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the party invoking this provision, including, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including ecommerce software, payment gateways, chat, statistics or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment, the affected party's performance shall be extended for the period of delay or inability to perform due to such occurrence, and provided further that the other party may terminate this Agreement if such condition continues for a period of 180 days. This provision shall not apply to payment obligations.

(b) Assignment. Except in connection with a merger or sale involving a majority of the stock or assets of a party, this Agreement and the rights and obligations hereunder, may not be assigned in whole or in part by either party without the prior written consent of the other party. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators,



and assigns of the parties hereto. Any attempt at assignment without such consent shall be null and void and of no force and effect. Any applicable fees resulting from Assignment will be based on PowerPlan's then current pricing terms and conditions.

(c) Export. Under no circumstances shall Client take any action that results in an export of any PowerPlan product, including the Software, outside of Canada or that would constitute an "export" or "deemed export" under either the laws of the Province of Ontario or the laws of Canada applicable therein or the laws of the United States. Client shall not give any person or entity access to any PowerPlan product, including the Software, if such person or entity is prohibited from accessing such product(s) pursuant to this Agreement, pursuant to the laws of the Province of Ontario or the laws of Canada applicable therein or the laws of the United States. Finally, Client shall not access any PowerPlan product, including the Software, from any location or jurisdiction if such access is prohibited by the laws of the Province of Ontario or the laws of Canada applicable therein or the laws of the United States.

(d) No Agency; Independent Contractors. Nothing contained in this Agreement shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

(e) Third Party Beneficiaries. There are no express or implied third party beneficiaries of this Agreement.

(f) Notices. Any notice or communication from one party to the other shall be in writing and either personally delivered or sent via nationally recognized overnight service, or certified mail, postage prepaid and return receipt requested, addressed to the attention of Legal at the address of the other party as specified in the first paragraph of the Signature Page of this Agreement or at such other address as such party may from time to time designate in a notice to the other party. All notices shall be in English and shall be effective upon receipt.

(g) Waiver. The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor, except as otherwise expressly provided otherwise in this Agreement, shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power, or privilege by such party.

(h) Severability. If any provision in this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified, or severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect.

(i) Governing Law. The validity, construction, and performance of the Agreement and the legal relations among the parties to the Agreement shall be governed by and construed in accordance with the laws of the District of Columbia, excluding that body of law applicable to choice of law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

(j) Entire Agreement. This Agreement, including all the Exhibits attached hereto, constitute the entire agreement between the parties with regard to the subject matter hereof. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given. In the event of any conflict between this Agreement, the Award/Contract CW53089 PowerPlan AMP Maintenance & Support, the Standard Contract Provisions for use with District of Columbia Government Suppliers and Services Contracts dated July 2010, this Agreement shall control.

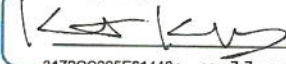
[Signatures on Following Page]




WHEREFORE, the Parties hereto have signed this Agreement, intending to be bound.

PowerPlan Canada ULC

(doing business in the District of Columbia as PowerPlan Canada Ltd.)

DocuSigned by:
Sign: 
Print: Kent Kelley
Title: CFO
Date: August 14, 2017

Government of the District of Columbia

Sign: 
Print: Matthew Crossett
Title: GIS Project Manager
Date: 8/14/17