

This Non-Disclosure Agreement (**NDA**) is between the City of New York (“City”), acting through the Mayor’s Office of Labor Relations on behalf of the New York City Management Benefits Fund, located at 22 Cortlandt Street, 28th Floor, New York, NY 10007 (the “Fund”), and _____, including its current and future affiliates, a potential proposer in response to the RFP for Group Vision Administrative Services, with its primary offices at _____ (“Vendor”).

1. On May 30, 2023, the Fund released an RFP for Group Vision Administrative Services (“RFP”). Certain exhibits to the RFP contain Confidential Information as such term is defined below. The Fund agrees to provide Vendor with access to the Confidential Information, subject to the terms of this NDA.

2. Definitions.

- a. **Authorized Users** means employees, officials, and agents of the Vendor whose access to Confidential Information is necessary to carry out the Permitted Purpose.
- b. **Confidential Information** means non-public information that the Fund discloses to the Vendor under this NDA, in any form; information derived from non-public information or from information marked as private or confidential; Identifying Information, other than routine business contact information; any other information that a reasonable person knows or should understand to be confidential; and any information that could, if disclosed, reveal the Fund’s proprietary or trade secret information. Confidential Information **does not include** information that is publicly available or known to the Vendor prior to its disclosure by the Fund; is independently developed by the Vendor without reference or access to Confidential Information; or is lawfully obtained by the Vendor without restrictions on use or disclosure from a third party.
- c. **Permitted Purpose** means a use of the Fund’s information that is necessary to carry out the Vendor’s duties in relation to the submission of a proposal in response to the RFP.
- e. **Identifying Information** means information that alone or in combination with other information could be used to identify or locate a person.

3. **Scope.** The restrictions on collection and disclosure of Confidential Information apply to information that Vendor has received from the Fund or has otherwise acquired for purposes of this NDA.

4. Confidential Information.

- a. Except in connection with the Permitted Purpose, the Vendor will not disclose Confidential Information without the Fund’s written permission, subject to 4(e) below. Vendor will not use Confidential Information in any of its business operations except as needed for the Permitted Purpose and Vendor will not use Confidential Information for any purpose except as authorized under this NDA or as required by law. The Vendor will limit access to Confidential Information to Authorized Users for the Permitted Purpose and will ensure that Authorized Users understand and comply with the provisions of this agreement applicable to Confidential Information.
- b. Except as authorized under this NDA, or an agreement incorporating this NDA by reference or to which the NDA is attached, the Vendor will not use Confidential Information for any personal benefit or corporate benefit or the benefit of another, nor publish, sell, license, distribute, or otherwise reveal Confidential Information.
- c. The Vendor will use appropriate physical, technological, and procedural safeguards to protect Confidential Information. The Vendor will treat Confidential Information as required by the Cybersecurity Requirements for Vendors & Contractors, available at <https://www1.nyc.gov/site/doitt/business/it-security-requirements-vendors-contractors.page>.

- d. If the Vendor knows or suspects unauthorized use or disclosure of Confidential Information, it will promptly
 - (i) notify the Fund, no later than seventy-two hours after discovery, of:
 - 1. the discovery of the known or suspected unauthorized use or disclosure;
 - 2. the date of the use or disclosure;
 - 3. the name of the user or recipient, if known;
 - 4. the address of the user or recipient, if known;
 - 5. the affiliation of the user or recipient, if known;
 - 6. a brief description of the information used or disclosed;
 - 7. a description of any remedial measures taken to mitigate the effects of such unauthorized use or disclosure of Confidential Information, in accordance with all relevant laws;
 - 8. any details necessary for the Fund to know when and how the unauthorized use or disclosure was made;
 - (ii) cooperate with the Fund and relevant City officials, including the City's Chief Privacy Officer, NYC Cyber Command, and the City's Law Department, to investigate the occurrence and scope of the unauthorized use or disclosure, and make any required or voluntary notices; and
 - (iii) take all reasonably necessary steps to prevent or mitigate damages related to the unauthorized use or disclosure.

- e. The Vendor may disclose Confidential Information if required by court order or law. If the Vendor is required to disclose Confidential Information by law, it will:
 - (i) promptly notify the Fund sufficiently in advance of disclosure, but not more than five business days after it learns of the required disclosure, to permit Fund or City to seek a protective order and to make any required notifications; and
 - (ii) disclose Confidential Information only to the extent allowed under a protective order or as necessary to comply with the law.

- f. If the Fund instructs the Vendor to destroy Confidential Information, the Vendor will destroy it no more than five business days after receiving the instruction. The Vendor will inform the Fund that it has destroyed the Confidential Information no more than thirty days after receiving the Fund's instruction. If it is impossible for the Vendor to destroy Confidential Information, the Vendor will explain in writing why it is impossible, and will, upon receiving the Fund's destruction request, immediately stop accessing or using the Confidential Information.

5. General rights and obligations.

- a. **Law that applies; jurisdiction and venue.** The laws of the State of New York govern this NDA. If federal jurisdiction exists, the federal courts in New York County, New York, have exclusive jurisdiction and venue. If federal jurisdiction does not exist, the Supreme Court in New York County, New York, has exclusive jurisdiction and venue.

- b. **Waiver.** Delay or failure to exercise a right or remedy by the Fund is not a waiver of that, or any other, right or remedy.

- c. **Money damages insufficient.** Money damages may be an insufficient remedy for breach or threatened breach of this NDA by the Vendor. In addition to all other remedies that the Vendor may have, the Fund will be entitled to specific performance and injunctive or other

equitable relief as a remedy for any breach of the confidentiality and other obligations of this NDA.

- d. **Enforceability; severability.** If any part of this NDA is unenforceable, the Fund and Vendor (or if they cannot agree, a court) will revise it so that it is enforceable. Even if no revision can be enforced, the rest of the NDA will remain in place.
- e. **Intellectual property.** This NDA does not give the Vendor any intellectual property ownership of or licenses to Confidential Information.
- f. **Entire agreement.** This NDA is the entire agreement between the Fund and the Vendor about disclosing Confidential Information in relation to the Permitted Purpose, except that if other contracts between the Vendor and the Fund address Confidential Information, then those obligations remain in force for those contracts.
- g. **Modifications.** The Fund and the Vendor can only modify this NDA in writing upon consent of both parties.
- h. **Notices.**

Notice to the Fund shall be given to:

Georgette Gestely
Director of Employee Benefits Program
New York City Management Benefits Fund
22 Cortlandt Street, 28th Floor
New York, New York 10007

Notice to Vendor shall be given to: _____

All notices shall be in writing and delivered by certified mail, return-receipt requested. All notices are deemed received on the date they are mailed.

IN WITNESS WHEREOF, the parties hereto have executed this NDA as of the day and year herewith:

Dated: _____

**NEW YORK CITY MANAGEMENT
BENEFITS FUND**

VENDOR

BY: _____
(signature)

BY: _____
(signature)

NAME: Georgette Gestely
TITLE: Director

NAME:
TITLE: