

**CITY OF PORTLAND**  
**CONTRACT FOR GOODS AND SERVICES**  
**for**  
**DEFERRED COMPENSATION**

**Contract Number:** \_\_\_\_\_

As authorized by PCC 5.33.220, this Contract is made effective on August 30, 2023 (“Effective Date”) by and between the City of Portland (“City”), a municipal corporation of the State of Oregon, and Voya Retirement Insurance and Annuity Company (“Contractor”), a(n) \_\_\_\_\_ corporation, by and through their duly authorized representatives. This Contract may refer to the City and Contractor individually as a “Party” or jointly as the “Parties.”

The initial Term of this Contract shall be from the Effective Date through August 31, 2028, with the City’s option to extend for an additional five years, for a total not to exceed 10 years.

Party contacts and Contractor’s and City’s Project Manager for this Contract are:

For City of Portland:	For Contractor:
Name: Michelle Taylor	Name: Shelley Fredrick
Title: Benefits Manager	Title: VP, Strategic Relationship Management
Address: 1120 SW Fifth Ave Room 987	Address: One Orange Way
City, State: Portland OR 97204	City, State: Windsor CT 06095
e-mail: michelle.taylor@portlandoregon.gov	e-mail: shelley.fredrick@voya.com
Copy to:	Copy to:
Procurement Services	Voya Legal and Technical Services
1120 SW 5 <sup>th</sup> Ave.	One Orange Way
Portland OR 97204	Windsor CT 06095

**Scope and Consideration**

- (a) Contractor shall perform the Services and provide the Deliverables set forth in the Statement of Work by the due dates specified in the Contract.
- (b) Payments shall be made to Contractor according to the schedule identified in Exhibit A, the Contractor’s Price.

Recitals:

WHEREAS, to further its government operations, the City of Portland desires to obtain deferred compensation recordkeeper services\_(the “Project”); and

WHEREAS, the City issued a Notice of Special Procurement for Hyas Deferred Compensation Recordkeeper RFP; and

WHEREAS, Contractor, in its Proposal dated March 10, 2023 and submitted in response to the City’s RFP represented that it has the knowledge, experience, and expertise in deferred compensation administration and recordkeeping; and

WHEREAS, the City selected Contractor based on its Proposal;

THE PARTIES HEREBY AGREE AS FOLLOWS:

## **SECTION 1 DEFINITIONS (10/19)**

General Definitions. (11/18) These definitions apply to the entire Contract, subsequent Amendments, and any Change Orders or Task Orders, unless modified in an Amendment. If any definition contains a substantive provision conferring rights and/or obligations upon a Party, then effect shall be given to the substantive provision.

“Acceptance” (10/19) means the Deliverable demonstrates to the City’s satisfaction that the Deliverable conforms to and operates according to the Acceptance Criteria, and if required, has successfully completed Acceptance review, and for Deliverables not requiring Acceptance Testing that the Deliverable conforms to the Acceptance Criteria or the City’s Specifications.

“Acceptance Certificate” (11/18) means a written instrument by which the City notifies Contractor that a Deliverable has been Accepted or Accepted with exceptions, and Acceptance Criteria have been met or waived, in whole or in part.

“Acceptance Criteria” (11/18) means functionality and performance requirements determined by the City, based upon the Specifications, which must be satisfied prior to City’s Acceptance of a Deliverable. City and Contractor shall agree upon written Acceptance Criteria.

“Acceptance Date” (11/18) means the date on which the City issues an Acceptance Certificate for the Deliverable(s).

“Affiliates” (11/18) means, for Contractor, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control. The term “control” means the power to

direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

“Amendment” (12/18) means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions of the Contract, Contract amount, or substantially altering a Statement of Work.

“Business Day” (11/18) means a twenty-four hour day, excluding weekends and City holidays, beginning at midnight and ending at midnight twenty-four hours later, and that it is a Day the NYSE is Open.

“Calendar Day” (11/18) means a twenty-four hour day, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Change Order” (12/18) means a document, agreed and signed by both Parties, that changes an existing Statement of Work. Change Orders cannot change Contract amount or Master Terms and Conditions.

“Confidential Information” (08/19) means any information that is disclosed in written, graphic or machine-recognizable form and is marked or labeled at the time of disclosure as being Confidential or its equivalent, or, if the information is in verbal or visual form, it is identified as Confidential or proprietary at the time of disclosure, or a reasonable time thereafter. Information shall always be considered Confidential Information, whether or not it is marked or identified as such, if it is described by one or more of the following categories: (1) non-public financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.345(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) information which is exempt from disclosure per Oregon Public Records Law; (6) attorney/client privileged communications; (7) information which is exempt per federal laws (including but not limited to copyright, HIPPA); and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems including without limitation, data and information systems, any software code and related materials and processes, Customizations, Configurations, Updates, Upgrades; and any Documentation. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving Party; is already lawfully known to the receiving Party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving Party’s possession without any obligation restricting disclosure; is independently developed by the receiving Party, as shown by reasonable written documentation, without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing Party.

“Contract” (11/18) means the Master Terms and Conditions including all exhibits, attachments and schedules and their constituent parts listed in the Order of Precedence or incorporated by reference.

“Contract Price” (10/19) means the not-to-exceed price agreed upon by the Parties for all Services.

“Deliverable(s)” (11/18) means the Services, Documentation or documents or tangible work products described in the Statement of Work to be provided to the City by Contractor under this Contract.

“Documentation” ( 10/19) means user manuals and other written materials in any form that describe the features or functions of the Deliverables and Services, including but not limited to published specifications, online instructions and help, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

“Defect” (10/19) means any error, problem, condition, bug, or other partial or complete inability of a Service, Deliverable or component thereof, to operate in accordance with the applicable Specifications.

“Final Acceptance” (11/18) means the City has determined that all Deliverables have successfully completed Acceptance Testing, which demonstrates to the City’s satisfaction that all Deliverables conform to and operate according to the Acceptance Criteria, applicable Documentation, and Contractor’s representations; and that for Deliverables not requiring Acceptance Testing, that the Deliverables conform to the Acceptance Criteria or the City’s specified requirements.

“Force Majeure Event” (11/18) means an exceptional and unavoidable occurrence beyond the reasonable control of the affected Party, such as, riots, epidemics, war, government regulations, labor disputes, fire, natural phenomena, or other causes beyond such Party’s reasonable control.

“Goods” means materials supplied by Contractor under this Contract.

“Intellectual Property Rights (IPR)” (11/18) means any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, trade dress, moral rights, know-how and any other similar rights or intangible assets to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations, or reissues of the foregoing now or hereafter in force.

“Key Personnel” (11/18) means the specific individuals identified in Section 3.11 to fill Key Positions.

“Key Position” (11/18) means a job position critical to the success of the Project as identified in Section 3.11 of this Contract.

“Master Terms and Conditions” (11/18) means the body of text from the preamble through the signature page of this Contract.

“Material Breach” (11/18) means any breach of this Contract that causes, caused, or may cause substantial harm to the non-breaching Party or substantially deprives the non-breaching Party of the benefit it reasonably expected under this Contract.

“Personally Identifiable Information (PII)” (11/18) means information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context, as described in the Oregon Consumer Identity Theft Protection Act.

“Project” (10/19) means the overall delivery of the Services including, without limitation, design, development, integration, implementation, testing, support, and any Deliverables any of which Contractor may be providing in whole or in part.

“Proposal” (10/19) means Contractor’s response to the City’s RFP referenced on page one of this Contract.

“Services” (10/19) means ordinary or professional services performed by Contractor under this Contract.

“Specifications” (10/19) means the most current cumulative statement of capabilities, functionality, and performance requirements for the System and its components as set out in the Acceptance Criteria, Change Orders, the Statement of Work, Documentation, Contractor’s representations, Contractor’s Proposal and Proposal Clarifications, and the City’s Request for Proposals.

“Statement of Work” (SOW) (10/19) means the written detailed specifications of the Services(s) to be delivered to the City by Contractor, including any Change Orders subject to the terms and conditions of this Contract.

“Subcontractor” (11/18) means any person or entity under the control of Contractor, other than an employee of Contractor, utilized by Contractor to perform all or part of this Contract.

“Task Order” (10/19) means any written request or document issued by the City and signed by both Parties for additional Service(s) to be provided under this Contract. Task Orders shall document the description of Services, price, payment schedule, Project and performance schedule, due dates, milestones and Deliverables.

“Term” (11/18) means the period of time that this Contract is in effect as stated on page one.

## **SECTION 2 ORDER OF PRECEDENCE**

2.1 Order of Precedence. (09/17) In the event there is a conflict or ambiguity between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict or ambiguity will be resolved in accordance with the order of precedence below. This order of precedence designates which portion of the Contract takes precedence over the other for purposes of interpretation. Contractor’s hyperlinks contained herein will not supersede or alter the Master Terms and Conditions. For the avoidance of doubt, no other terms and conditions will override the Parties’ obligations in the Confidentiality, Indemnification, or Choice of Law provisions in these Master Terms and Conditions. In this Contract the order of precedence shall be:

1. Amendments
2. Master Terms and Conditions
3. Exhibit A, Contractor's Price
4. Change Orders
5. Exhibit B, Statement of Work
6. Exhibit C\_, City RFP No. \_\_\_\_\_
7. Exhibit D\_, Contractor's Proposal
8. Exhibit E - Sample Documents: E-1, Sample Status Reports, E-2 Certificate of Acceptance, E-3 Change Order
9. Contractor's Hyperlinks

### **SECTION 3 GENERAL AND ADMINISTRATIVE PROVISIONS**

- 3.1 Term. (09/17) This Contract shall begin on the Effective Date and end upon the expiration date set forth on page one of this Contract unless terminated or extended under the applicable Contract provisions.
- 3.2 Point of Contact. (09/17) Contractor shall be the sole point of contact for the City with regard to this Contract and the System.
- 3.2.1 Written Notifications. (10/18) All notices to, and other written communication between the Parties shall be deemed received five (5) Business Days after being sent by first class mail, or upon receipt when sent by courier services, or by e-mail. All notices and written communications shall be sent to the Parties set forth on page 1 of the Contract, or to such other places as they may designate by like notice from time to time. Each Party shall provide written notice of any changes to the Party's contacts within thirty (30) Calendar Days.
- 3.3 Changes to Contract.
- 3.3.1 Amendment of the Contract. (06/19) Any changes to the provisions of this Contract shall be in the form of an Amendment. No provision of this Contract may be amended unless such Amendment is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. If the requirements for Amendment of this Contract as described in this section are not satisfied in full, then such Amendments automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect. The City reserves the right to make administrative changes to the Contract unilaterally, such as extending option years and increasing compensation. An administrative change means a written Contract change that does not affect the substantive rights of the Parties.

- 3.3.2 Change Orders to a Statement of Work. (12/18) The City and Contractor can agree to make changes, at any time to a Statement of Work in the form of a Change Order. Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall execute an Amendment to the Contract, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified amount.
- 3.4 Time is of the Essence. (06/19) The Parties agree that time is of the essence as to the delivery of Deliverables and performance of Services under this Contract. By executing this Contract and accepting the Statement of Work, Contractor agrees that the time limits specified in the Statement of Work are reasonable. By accepting late or otherwise inadequate performance of Contractor's obligations, the City will not waive its rights to require timely performance of Contractor's obligations thereafter.
- 3.5.1 Late Delivery. (10/19) In the event that any specified delivery date is not met, Contractor shall be liable for any loss, expense, or damage resulting from delay in delivery or failure to deliver Deliverables or provide Services which is due to any cause except as set forth in Force Majeure. In the event of delay due to any such cause, the City may obtain substitute Services from another source and bill all additional costs directly to Contractor who shall remain financially liable for all additional acquisition costs.
- 3.5.2 Best Efforts. (10/19) Contractor shall use best efforts to minimize any delay in the provision of Deliverables or performance of Services. If Contractor anticipates any delay that may prevent timely performance of Contractor's obligations under this Contract, Contractor shall promptly notify the City, including the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of such measures.
- 3.6 City Reporting Requirements. (12/18) The City is required to track certain types of contract data for reporting purposes. Items which the City must report on may include, but are not limited to, Subcontractor utilization, Minority, Women, Emerging Small Business, Service-Disabled Veteran Business Enterprise (D/M/W/ESB/SDVBE) participation and Subcontractor/Supplier Payment. The City will enforce all diversity in workforce and D/M/W/ESB/SDVBE subcontracting commitments made by Contractor in its Proposal.
- 3.7 Payment. (09/17) Payment(s) shall be in accordance with the payment schedule set forth in Exhibit A: Contractor's Price.
- 3.7.1 Payment shall be issued by the City net thirty (30) Calendar Days from receipt of a complete and acceptable invoice from Contractor. Contractor invoices must contain Contractor's name and address; invoice number; date of invoice; Contract number and date; description of Products and/or Services; quantity, unit price, (where appropriate), and total amount; City-

required reporting, if any, and the title and phone number of the person to whom payment is to be sent. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to Contractor.

3.7.2 The City makes payments via electronic fund transfers through the Automated Clearing House (ACH) network. To initiate payment of invoices, Contractor shall execute the City's standard ACH Vendor Payment Authorization Agreement. Upon verification of the data provided, the ACH Vendor Payment Authorization Agreement will authorize the City to deposit payment directly into specified Contractor accounts with specified financial institutions. All payments shall be made in United States currency.

3.8 Payment of Taxes/Contractor Shall Withhold. (09/17) Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations for its employees. Contractor shall also ensure that any Subcontractor shall comply with the foregoing obligations for its employees. The City shall have no duty to pay or withhold such obligations.

3.9 Records and Audits (06/19)

3.9.1 Records Retention. (06/19) Contractor shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). Contractor agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Contract during the Term of this Contract and for a minimum of six (6) years after the expiration or termination date of this Contract or until the resolution of all audit questions or claims, whichever is longer.

3.9.2 City Audits. (06/19) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and Products or Services at any time in the course of the Contract and during the records retention period listed above. Audits shall be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.

3.9.3 Access to Records. (06/19) The City may examine, audit and copy Contractor's books, documents, papers, and records relating to this Contract at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request.



3.10 Overpayment. (09/17) If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices.

3.11 Independent Contractor. (09/17) Contractor is independent of the City and, accordingly, this Contract is not entered into as a joint venture, partnership, or agency between the Parties. No employment or agency relationship is or is intended to be created between the City and any individual representing Contractor. Employees of Contractor and any authorized Subcontractors shall perform their work under this Contract under Contractor's sole control.

3.12 Personnel.

3.12.1 Key Positions and Personnel. (09/17) For the period of performance until Final Acceptance has been completed, the Parties have identified Key Positions and Key Personnel as set forth in the table below, along with the percentage of their time to be allocated to the City's Project:

Name	Title/Role	% of Time	Company

3.12.2 Substitution of Key Personnel. (09/17) Contractor shall make no substitutions of Key Personnel unless the substitution is necessitated by law, illness, death, resignation, or termination of employment. Contractor shall notify the City within ten (10) Calendar Days after the occurrence of any of these events.

Any substitutions or replacements of Key Personnel require the written approval of the City. Contractor shall provide the City with the maximum possible period of notice of substitution or replacement of Key Personnel in order to allow for background screening, fingerprint checks, and other investigation as may be required in Section 3.11.3.

For any proposed substitute or replacement Key Personnel, Contractor shall provide the following information to the City: a detailed explanation of the circumstances necessitating the proposed substitution or replacement, a complete resume for the proposed substitute(s), and any additional information requested by the City. Proposed substitutes or replacements should have qualifications comparable to or better than those of the persons being replaced.

No change in Contract prices may occur as a result of substitution or replacement of Key Personnel.

- 3.12.3 Security Requirements for Personnel. (09/17) If required by the City, Contractor shall conduct a criminal history/records check of all personnel that will have access to City information, systems, or payments and ensure ongoing security requirements for personnel are maintained.
- 3.13 Termination. (06/19) The following conditions apply to termination of this Contract. The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Contract for any reason in the City's sole discretion. In the event of such termination, the City shall pay to Contractor the portion of the not-to-exceed price attributable to all Deliverables Accepted or Services performed and Accepted through the effective date of the termination. In the event of termination all of Contractor's Work Product to date shall be delivered to the City, and it will become and remain property of the City.
- 3.14 Mutual Agreement. (09/17) The City and Contractor, by mutual written agreement, may terminate this Contract at any time.
- 3.15 Material Breach. (09/17) Either Party may terminate this Contract in the event of a Material Breach of this Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Calendar Days of the notice, then the Party giving the notice shall have the option to: (a) terminate this Contract by giving a written notice of termination, (b) seek any remedies in this Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract, or (c) any combination thereof.
- 3.16 Force Majeure. (09/17) Either Party may terminate this Contract due to a Force Majeure event as set forth in Section 5.12, Force Majeure.
- 3.17 Bankruptcy. (09/17) The City may terminate this Contract if Contractor: (a) becomes insolvent, makes a general assignment for the benefit of creditors; (b) suffers or permits the appointment of a receiver for its business or assets; (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) Calendar Day period; or (d) has wound up or liquidated, voluntarily or otherwise.
- 3.18 Void Assignment. (09/17) In the event that Contractor assigns its obligations under this Contract to a third party in a manner other than as set forth in Section 5.7, Assignment, the City shall have the option to terminate this Contract without any notice or cure period or further obligation to Contractor or the assignee, and promptly receive a refund for fees paid for Products delivered and/or Services performed by the third party.

- 3.19 Waiver. (09/17) No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach of this Contract. The failure of either Party to insist upon any of its rights under this Contract upon one or more occasions, or to exercise any of its rights, shall not be deemed a waiver of such rights on any subsequent occasions.
- 3.20 Severability. (09/17) Any section of this Contract which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Contract and the remainder of this Contract shall continue to be binding and of full force and effect. This Contract shall be binding upon and inure to the benefit of the City and its successors and assigns.
- 3.21 Business Tax Registration. (09/17) Contractor shall register for a City of Portland business license as required by Chapter 7.02 of the Code of the City of Portland prior to execution of this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full Term of this Contract. Failure to be in compliance may result in payments due under this Contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.
- 3.22 EEO Certification. (09/17) Contractor shall be certified as an Equal Employment Opportunity Affirmative Action Employer as prescribed by Chapter 5.33.076 of the Code of the City of Portland and maintain its certification throughout the term of this Contract.
- 3.23 Non-Discrimination in Benefits. (09/17) Throughout the term of this Contract, Contractor shall provide and maintain benefits to its employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 5.33.077 of the Code of the City of Portland.
- 3.24 Sustainability. (12/18) Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these Principles into its scope of work with the City wherever possible. Therefore, in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of Products or Services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable Products or Services into its work performance wherever possible. "Environmentally preferable" means Products or Services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the Product or Service.

- 3.25 Packaging. (09/17) All packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.
- 3.26 News Releases and Public Announcements. (09/17) Contractor shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Contract or the Project without the express written approval of the City. Such approval may be withheld in the City's sole discretion. Contractor shall not use the City seal without specific written permission from the City Auditor.
- 3.27 Rule of Construction/Contract Elements/Headings. (09/17) This Contract has been drafted by the City in the general format by the City as a convenience to the Parties only and shall not, by reason of such action, be construed against the City. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of this Contract.
- 3.28 Survival. (09/17) All obligations relating to Confidential Information; indemnification; publicity; representations and warranties; remedies; proprietary rights; limitation of liability; and obligations to make payments of amounts that become due under this Contract prior to termination or expiration shall survive the termination or expiration of this Contract and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City.
- 3.29 Access to City Facilities. (11/18/20) Contractor agrees that Contractor's physical or remote access to City facilities shall be subject to the security interests and health controls necessary to protect public property, City employees and the public. The City shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or systems.

#### **SECTION 4 STATUTORY REQUIREMENTS, PUBLIC RECORDS AND CONFIDENTIALITY**

- 4.1 Governing Law and Jurisdiction. (09/17) This Contract shall be construed according to the laws of the State of Oregon without reference to the conflict of laws' provisions. Any litigation between the City and Contractor arising under this Contract or out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.
- 4.2 Public Records Request. (09/17) Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential

Information Contractor submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. All information submitted by Contractor is public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Contractor requests and meets an exemption from disclosure consistent with federal or Oregon law. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

4.3 Public Records. (09/17) The City will retain one (1) copy of any public records for the express purposes of complying with State of Oregon and Portland City Code public records and archiving laws.

4.4 Confidentiality.

4.4.1 Contractor's Confidential Information. (08/19) During the term of this Contract, Contractor may disclose to the City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark Confidential Information CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked, or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Contract itself shall not be considered Confidential Information. Subject to Section 4.2, the City shall: (1) limit disclosure of Contractor Confidential Information to those directors, employees, contractors and agents of the City who need to know the Contractor Confidential Information in connection with the City Project and who have been informed of confidentiality obligations at least as strict as those contained in this Contract, and (2) exercise reasonable care to protect the confidentiality of the Contractor Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.

4.4.2 City's Confidential Information. (08/19) Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit in the performance of this Contract. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors and agents of Contractor who need to know the City Confidential Information in connection with the City Project and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Contract, (2) exercise reasonable care to protect the confidentiality

of the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use the Intellectual Property Rights of the City without the City's prior written consent.

- 4.4.3 Scope. (09/17) This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. Contractor's confidentiality obligations under this Contract shall survive termination or expiration of this Contract.
- 4.4.4 Equitable Relief. (12/18) Contractor acknowledges that unauthorized disclosure of City Confidential Information will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief. The Parties agree that, notwithstanding any other section of this Contract, in the event of a breach or a threatened breach of Contract terms related to Confidential Information or Intellectual Property Rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- 4.4.5 Discovery of Documents. (06/19) In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

## **SECTION 5 CONTRACTOR PERFORMANCE AND WARRANTIES**

5.1 General Warranties. (09/17) Contractor makes the following warranties:

- 5.1.1 Capacity. (09/17) Contractor warrants it has the legal authority and capacity to enter into and perform this Contract.
- 5.1.2 Authority to Conduct Business. (08/19) Contractor warrants it is lawfully organized and constituted and duly authorized to operate and do business in all places where it shall be required to do business under this Contract, and that it has obtained or will obtain all necessary licenses and permits required in connection with this Contract.

- 5.1.3 Disclosure of Litigation. (09/17) Contractor warrants that as of the Effective Date there are no suits, actions, other proceedings, or reasonable anticipation thereof, in any judicial or quasi-judicial forum that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will immediately notify the City in writing if, during the Term of this Contract, Contractor becomes aware of, or has reasonable anticipation of, any lawsuits, actions, or proceedings in any judicial or quasi-judicial forum that involves Contractor or any Subcontractor and that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract.
- 5.1.4 Conflict of Interest. (09/17) Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under this Contract.
- 5.1.5 Compliance with Applicable Law. (09/17) Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is currently in compliance with all tax laws.
- 5.1.6 Public Contracts. (09/17) Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A and 279B require every public contract to contain certain provisions. To the extent applicable, ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Agreement by reference.
- 5.1.7 Compliance with Civil Rights Act. (09/17) Contractor warrants it is in compliance with Title VI of the Civil Rights Act of 1964 and its corresponding regulations as further described at: <http://www.portlandoregon.gov/bibs/article/446806>
- 5.1.8 Respectful Workplace Behavior. (09/17) The City is committed to a respectful work environment, free of harassment, discrimination and retaliation and other inappropriate conduct. Every individual has a right to work in a professional atmosphere where all individuals are treated with respect and dignity. The City's HR Rule 2.02 covers all employees of the City as well as contractors, vendors or consultants who provide services to the City of Portland. Contractor warrants its compliance with terms and conditions HR 2.02 as further described at: <https://www.portlandoregon.gov/citycode/27929>
- 5.2 Grant Funding. (02/18). This Contract is currently not using grant funding. However, in the event that City acquires or uses grant funding to pay for any portion of this Contract, the City and Contractor agree to Amend the Contract to include the federally required terms and conditions. General grant terms may be found at <http://www.portlandoregon.gov/bibs/article/455735>
- 5.3 Compliance with Non-Discrimination Laws and Regulations.

- 5.3.1 Nondiscrimination. (06/19) Pursuant to all City, State, and federal non-discrimination and civil rights laws, Contractor, with regard to the work performed by it during this Contract, shall not discriminate on the grounds of race, color, national origin, including limited English proficiency, sex, sexual orientation, gender identity, age, religion or non-religion, disability, marital status, family status, or source of income, including in employment practices, the selection and retention of subcontractors, including procurements of materials and leases of equipment.
- 5.3.2 Solicitations for Subcontractors, Including Procurements of Materials and Equipment. (06/19) In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract relative to nondiscrimination on the grounds of race, color, national origin, sex, sexual orientation, age, religion, disability, marital status, or family relationships.
- 5.3.3 Sanctions for Noncompliance. (09/17) In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such contract sanctions as it or any state or federal agency may determine to be appropriate, including, but not limited to withholding of payments to Contractor under this Contract until Contractor complies, and/or cancellation, termination, or suspension of this Contract, in whole or in part.
- 5.3.4 ADA Compliance. (07/18) Contractor shall comply with the Americans With Disabilities Act (ADA), including any duty the ADA may impose on City or Contractor as a result of the Products, Services or activities requested to be provided for City under this Agreement.

At minimum, Contractor shall do the following:

Contractor shall [if applicable: provide language translation services, sign language, accommodate service animals, audio, TTY, transcripts]

Contractor shall document each ADA request for modification to the Products or Services and Contractor's fulfillment of the request. If Contractor determines that it is unable to promptly fulfill the request for modification under the ADA, Contractor will contact the City contract manager within the same business day, proving reasons why Contractor is unable to fulfill the request for modification and to identify alternate accessibility options that Contractor can perform.

Within [X] Business Days after receipt, City and Contractor shall advise the other Party in writing, and provide the other Party with copies (as applicable) of any notices alleging violation of or noncompliance with the ADA relating to the Agreement, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with



the ADA and relating to the Agreement or the programs, Products, Services or activities that Contractor is undertaking for City under this Agreement.

5.3.5 Required Reporting. (05/19) If any person or class of persons files a complaint with Contractor alleging discrimination under Title VI of the Civil Rights Act of 1964 (race, color, or national origin, including limited English proficiency), Contractor will notify the City of Portland of the complaint and cooperate with any investigation related to the complaint. Notifications shall be sent to Title VI Program Manager, 421 SW 6th Ave, Suite 500, Portland, Oregon 97204, or [title6complaints@portlandoregon.gov](mailto:title6complaints@portlandoregon.gov).

5.4 Service(s) and Deliverables Warranties. (10/19) Contractor makes the following warranties:

5.4.1 No Third-Party Conflict or Infringement. (01/19) As of the Effective Date, Contractor warrants the execution and performance of this Contract, shall not contravene the terms of any contracts with third parties or any third-party Intellectual Property Right; and, as of the Effective Date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision. Contractor agrees to promptly notify the City, in writing, if during the Term of the Contract, a potential third-party conflict or infringement of third-party Intellectual Property Rights arises.

5.4.2 No Encumbrances. (08/19) All Deliverables provided by Contractor under this Contract shall be transferred to the City free and clear of any and all restrictions of transfer or distribution and free and clear of any and all liens, claims, security interests, liabilities and encumbrances of any kind.

5.4.3 Conformance with Specifications. (01/19) Contractor warrants that the Deliverables and Services shall operate in conformance with the Specifications.

5.4.4 Compliance with Law. (10/19) Contractor warrants that the Deliverables conform to all requirements of applicable law, including all applicable health, safety, privacy, data security and environmental laws and regulations.

5.4.5 Industry Standards. (10/19) Contractor warrants that the Services performed under this Contract will meet the standards of skill and diligence normally employed by persons performing the same or similar services.

5.4.6 Substitution or Modification of Products at No Charge. (03/19) In the event that Contractor substitutes or modifies the Deliverables, Contractor shall ensure that the new or modified Deliverables shall conform in all aspects to the Specifications. Such substitutions or modifications shall in no way degrade the performance or functionality of the Deliverables and shall not result in additional cost to the City.

- 5.5 No Waiver of Warranties or Representation. (10/19) Performance of Services shall not be construed to represent Acceptance nor relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor.
- 5.6 No Third Party to Benefit. (09/17) This Contract is entered into for the benefit of the City and Contractor. Except as set forth herein, nothing in this Contract shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a Party to this Contract to maintain a suit for breach of contract, personal injuries, property damage, or any other relief in law or equity in connection with this Contract.
- 5.7 Assignment. (08/19) Neither Party shall assign, transfer, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld. For purposes of this Section, the acquisition, merger, consolidation or change in control of Contractor or any assignment by operation of law shall be considered an assignment of this Contract that requires the City's prior written consent. Notwithstanding the foregoing: (a) in the event that the City's business needs change or the City enters into an agreement with a provider for outsourcing services, Contractor agrees that the City shall have the right to assign this Contract to a successor of all, substantially all, or specified area(s) of the City's business, including an outsourcing provider, upon written notice to the other Party, and (b) Contractor may, without the City's consent, but upon prior written notice to the City, assign its right to payment under this Contract or grant a security interest in such payment to any third party without requiring that the third party be liable for the obligations of Contractor under this Contract. Any attempted assignment or delegation in violation of this Section shall be void.
- 5.8 Notice of Change in Financial Condition. (09/17) Contractor must maintain a financial condition commensurate with the requirements of this Contract. If, during the Term of this Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform the obligations of this Contract, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition is sufficient grounds for terminating this Contract.
- 5.9 Notice of Change in Ownership. (09/17) If, during the Term of this Contract, Contractor experiences a change in ownership or control, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in ownership or control is sufficient grounds for terminating this Contract.
- 5.10 Subcontractors. (10/19) Except to the extent that a subcontractor is performing ministerial non-client facing work, Contractor shall not subcontract any work under this Contract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its Subcontractors, including any Affiliates, at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to

Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between Contractor and its Subcontractors for Services authorized under this Contract.

All D/M/W/ESB/SDVBE (COBID Certified) Subcontractors/suppliers identified in Contractor's proposals shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any D/M/W/ESB/SDVBE Subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Chief Procurement Officer before such substitutions can be made. In no event shall Contractor subcontract any work, assign any rights, or delegate any obligations under this Contract without the City's prior written consent.

5.11 Flow-down Clauses. (01/19) Contractor shall include the following clauses, or substantially similar language, in its subcontracts under this Contract:

Section 4.4, Confidentiality

Section 5.3, Compliance with Non-Discrimination Laws and Regulations

Section 6.1, Hold Harmless and Indemnification

Section 6.2, Insurance

5.12 Force Majeure. (01/19)

5.12.1 In the event that either Party is unable to perform any of its obligations under this Contract due to a Force Majeure Event not the fault of the affected Party, the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, the performance obligations affected by the Force Majeure event shall immediately be suspended.

5.12.2 If the period of nonperformance exceeds fifteen (15) Calendar Days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract or any Statement of Work.

5.12.3 If the period of nonperformance due to a Force Majeure Event does not exceed fifteen (15) Calendar Days, such nonperformance shall automatically extend the Project schedule for a period equal to the duration of such events. Any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event.

5.12.4 If the period of nonperformance due to Force Majeure Event is longer than fifteen (15) Calendar Days, the Parties shall negotiate options for mitigation of the Force Majeure Event.

5.13 Ownership of Property. (06/19) All work product produced by the Contractor under this Contract is the exclusive property of the City. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or

information in any form. The Contractor and the City intend that such Work Product shall be deemed “work made for hire” of which the City shall be deemed the author. If for any reason a Work Product is deemed not to be a “work made for hire,” the Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Contractor is an architect, the Work Product is the property of the Consultant-Architect, and by execution of this Contract, the Contractor-Architect grants the City an exclusive and irrevocable license to use that Work Product.

Notwithstanding the above, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of Contractor are and will remain the exclusive property of Contractor. Contractor hereby grants to the City a non-exclusive, perpetual, irrevocable license, with the right to sublicense, to disclose, copy, distribute, display, perform, prepare derivative works of and otherwise exploit any pre-existing Intellectual Property Rights incorporated into the Work Product(s).

## **SECTION 6 INDEMNIFICATION, INSURANCE, BONDING, LIQUIDATED DAMAGES**

### **6.1 Hold Harmless and Indemnification. (08/19)**

- 6.1.1 Contractor shall indemnify, defend and hold harmless the City of Portland, its officers, agents, and employees, from all claims, demands, suits, and actions for all losses, damages, liabilities, costs and expenses (including all attorneys’ fees and costs), resulting from or arising out of the actions, errors, or omissions of Contractor or its officers, employees, Subcontractors, or agents under this Contract.
- 6.1.2 Infringement Indemnity. (08/19) Contractor shall indemnify, defend, and hold harmless the City, its directors, officers, employees, and agents from and against any and all claims, demands, suits, and actions for any damages, liabilities, losses, costs, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged misappropriation, violation, or infringement of any proprietary right or Intellectual Property Right of any person whatsoever. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise.
- 6.1.3 Contractor shall indemnify, defend, and hold harmless the City against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the City may be required to pay arising from Deliverables and Services provided by Contractor under this

Contract. The City of Portland, as a municipal corporation of the State of Oregon, is a tax-exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.

- 6.2 Insurance. (08/19) Contractor shall not commence work until Contractor has met the insurance requirements in this section and Contractor has provided insurance certificates approved by the City Attorney. Contractor shall acquire insurance issued by insurance companies or financial institutions with an AM Best rating of A- or better and duly licensed, admitted and authorized to do business in the State of Oregon.
- 6.2.1 Insurance Certificate. (08/19) As evidence of the required insurance coverage, Contractor shall provide compliant insurance certificates, including required endorsements, to the City prior to execution of the Contract. The certificates shall list the City as certificate holder. Contractor shall maintain continuous, uninterrupted coverage for the Term of this Contract and to provide insurance certificates demonstrating the required coverage for the Term of this Contract. Contractor's failure to maintain insurance as required by this Contract constitutes a Material Breach of this Contract. Contractor must notify the City in writing thirty (30) Calendar Days prior to a cancellation, non-renewal, or changes to the insurance policy.
- 6.2.2 Additional Insureds. (08/19) For commercial general liability coverage, Contractor shall provide City with a blanket additional insured endorsement form that names the City of Portland, Oregon, and its officers, agents and employees, as an additional insured. The additional insured endorsement must be attached to the general liability certificate of insurance.
- 6.2.3 Insurance Costs. (08/19) Contractor shall be financially responsible for all premiums, deductibles, self-insured retentions, and self-insurance.
- 6.2.4 Coverage Requirements. (08/19) Contractor shall comply with the following insurance requirements:
- 6.2.4.1 Commercial General Liability. (08/19) Contractor shall acquire commercial general liability ("CGL") and property damage insurance coverage in an amount not less than \$2 million per occurrence for damage to property or personal injury arising from Contractor's work under this Contract.  
 Required and attached  Reduced by Authorized Bureau Director  Waived by Authorized Bureau Director
- 6.2.4.2 Automobile Liability. (08/19) Contractor shall acquire automobile liability insurance to cover bodily injury and property damage in an amount not less than \$2 million for each accident. Contractor's insurance must cover damages or injuries arising out Contractor's use of any vehicle.  
 Required and attached  Reduced by Authorized Bureau Director  Waived by Authorized Bureau Director

6.2.4.3 Workers' Compensation. (08/19) Contractor shall comply with Oregon workers' compensation law, ORS Chapter 656, as it may be amended. If Contractor is required by ORS Chapter 656 to carry workers' compensation insurance, Contractor shall acquire workers' compensation coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City for the entire period during which work is performed under this Contract. Contractor shall acquire workers compensation coverage in an amount not less than \$1 million each accident, \$1 million disease each employee, and \$1 million disease policy limit.

Required and attached  Proof of exemption (Complete Independent Contractor Certification Statement)

6.2.4.4 Professional Liability. (08/19) Contractor shall acquire insurance to cover damages caused by negligent acts, errors or omissions related to the professional Services, and performance of duties and responsibilities of the Contractor under this Contract in an amount not less than \$1 million per occurrence and aggregate of \$3 million for all claims per occurrence. In lieu of an occurrence-based policy, Contractor may have claims-made policy in an amount not less than \$1,000,000 per claim and \$3,000,000 annual aggregate, if the Contractor acquires an extended reporting period or tail coverage for not less than three (3) years following the termination or expiration of the Contract.

Required and attached  Reduced by Authorized Bureau Director  Waived by Authorized Bureau Director

6.2.5 Insurance Requirements for Subcontractors. (08/19) Contractor shall contractually require its Subcontractors to acquire and maintain for the duration of this Contract insurance equal to the minimum coverage limits required above.

6.3 Rolling Estoppel. (09/17) Unless otherwise notified by Contractor, it shall be understood that the City shall have met all its obligations under this Contract. The City will be conclusively deemed to have fulfilled its obligations, unless it receives written notification of a failure to meet such obligations in the next status report, or within ten (10) Business Days following such failure, whichever is sooner, and Contractor identifies the specific failure in that notification. The City's failure to meet obligations must be described in terms of how it has affected the Project schedule or a specific performance requirement of Contractor.

6.3.1 Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in Project timetable, the standards of performance under this Contract, or the Contract price, if Contractor knew of that problem and failed to provide notification to the City as set forth above or to include it in the applicable status report to the City's project manager.

6.3.2 In the event Contractor identifies a situation that is impairing Contractor's ability to perform for any reason, Contractor's notification should contain Contractor's suggested solutions to

the situation. These suggestions should be in sufficient detail so that the City's Project Manager can make a prompt decision as to the best method of dealing with the problem and continuing the Project in an unimpeded fashion.

- 6.4 Dispute Resolution. (09/17) Contractor shall cooperate with the City to ensure that all claims and controversies which arise during this Contract will be resolved as expeditiously as possible in accordance with the following resolution procedure:
- 6.4.1 Any dispute between the City and Contractor shall be resolved, if possible by the Project Manager or their designee on behalf of the City and \_\_\_\_\_ on behalf of Contractor.
  - 6.4.2 If the Project Manager or the Project Manager's designee and Contractor are unable to resolve any dispute within three (3) Business Days after notice of such dispute is given by either Party to the other, the matter shall be submitted to [Bureau Head] on behalf of the City and \_\_\_\_\_ on behalf of Contractor for resolution, if possible.
  - 6.4.3 Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
  - 6.4.4 Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract.
  - 6.4.5 Unless ordered by the City to suspend performance of all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute while having the right to withhold payments that are in dispute.
- 6.5 Remedies. (09/17) The remedies provided in this Contract are cumulative and may be exercised concurrently or separately. In the event of any Material Breach by Contractor, which Material Breach shall not have been cured as agreed to between the Parties, the City shall have the ability to pursue the City's rights at law or equity. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

- 6.6 Cost of Cover. (09/17) In the event of termination of this Contract by the City due to a Material Breach by Contractor, then the City may complete the Project itself, by agreement with another contractor, or by a combination thereof. After termination, in the event the cost of completing the Project exceeds the amount the City would have paid Contractor to complete the Project under this Contract, then Contractor shall pay to the City the amount of the reasonable excess.

## **SECTION 7 ACCEPTANCE AND ACCEPTANCE TESTING**

- 7.1 Right to Perform Acceptance Testing. (09/17) Prior to Accepting Deliverables or the System, the City shall have the right to perform Acceptance Testing, or for Deliverables not requiring Acceptance Testing, the City shall have the right to evaluate the Deliverable(s) to ensure they meet Acceptance Criteria. Contractor shall cooperate with the City in the development of Acceptance Criteria and the Acceptance Test Plan that shall codify and set forth the location, date, and other specifications of the test. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.
- 7.2 Procedure and Timetable. (09/17) Unless otherwise specified,
- 7.2.1 The City shall commence Acceptance Testing within a reasonable amount of time after receipt of a Deliverable.
- 7.2.2 Contractor shall provide, at no additional cost, reasonable and appropriate support, assistance, and consultation in order to facilitate Acceptance Testing.
- 7.2.3 City will make all reasonable efforts to complete Acceptance Testing within the time period specified within the Project schedule mutually agreed upon by the Parties in writing. If an Acceptance Test is successful the City shall issue an Acceptance Certificate, a sample of which is attached in Exhibit C.
- 7.3 Failure of Acceptance Test. (09/17) The City will notify Contractor if a Deliverable or a portion of a Deliverable fails to pass an Acceptance Test and will specify in reasonable detail the identified failures and possible reasons for failure. After City's notification, Contractor shall correct the failure within ten (10) Business Days and notify the City that the correction has been completed. After Contractor's correction notification, the City shall perform a second Acceptance Test. If the Deliverable or portion of the Deliverable fails to pass the second Acceptance Test, the City shall notify Contractor in writing, and the City may, in its sole discretion: (a) terminate this Contract with no further liability; (b) require Contractor to replace the Deliverable or defective portion of the Deliverable at no additional cost to the City, (c) require Contractor to make further corrections to prepare for retesting again; (d) Accept the Deliverable at a reduced cost to be negotiated



between the Parties; or (e) issue an Acceptance Certificate for an “Acceptance with Exception(s)” in accordance with Sections 7.3.1 and 7.3.2.

- 7.3.1 If the City issues an Acceptance Certificate for an “Acceptance with Exception(s)” the City will list the exception(s) and the date for Contractor’s correction of the Error(s). If Error(s) are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the Deliverable or affected portion(s). If the Deliverable passes the Acceptance Tests, the City will issue an Acceptance Certificate.
- 7.3.2 If a Deliverable fails a second or subsequent Acceptance Test (or in the event of a single Acceptance Test, the Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the Deliverable.
- 7.4 City Acceptance of Failure. (09/17) If the City elects to accept a Deliverable, the System, or any combination of Products even with the failure(s), then the City may request that Contractor issue a refund to the City in an amount equal to a percentage of the full fee value of the Deliverable or System that the Parties mutually determine represents the loss of functionality.
- 7.5 Revocation of Acceptance. (09/17) The City shall have the right to revoke “Acceptance with Exception(s)” if the City granted an “Acceptance with Exception(s)” based on Contractor’s commitment to correct the Error within a reasonable period of time, but the Error has not been so corrected. The City shall also have the right to revoke Acceptance if the City accepted the Deliverable without discovery of the Error, and the Acceptance was reasonably induced by Contractor’s assurances or by the difficulty of discovery of the Error before Acceptance. Revocation is effective only if it occurs within a reasonable time after the City discovers or should have discovered the reasons for revocation.
- 7.6 Termination Based on Failure of Acceptance. (09/17) If the System fails to pass the Final Acceptance Test(s), the City may terminate this Contract. Contractor shall refund all costs paid for the System or any combination of Products and Services in U.S. Dollars within fifteen (15) Calendar Days of the date of receipt of notice of termination. The refund shall be in cash and not in the form of future credits from Contractor.
- 7.7 No Waiver. (09/17) Acceptance shall not relieve Contractor from its responsibility under any Warranty. Payment for Products or the System or any portion thereof does not constitute Acceptance nor does it constitute a waiver of any Warranty applicable to the City.



Contract Number: XXXXXXXXX

Amendment Number: XX

Contract Title:

CITY OF PORTLAND SIGNATURES

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Bureau Director

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chief Procurement Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Elected Official

Approved:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of City Auditor

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of City Attorney

**Exhibit A**  
**Contractor's Price**

**Exhibit B  
Statement of Work**

**SECTION 1 SUMMARY**

**SECTION 2 SCOPE OF WORK**

**The scope of work the City and the Contractor have mutually agreed upon is as written and incorporated herein as Exhibit A.**

The Contractor agrees to provide the Plan with the services listed within this Schedule for the term of this Agreement. For purposes of this Schedule, all references to "participant" are intended to apply equally to all account holders under the Plan. This includes participants, beneficiaries and alternate payees.

**SECTION 3 TASKS AND DELIVERABLES**

The individual Deliverables are described in more detail below:

3.1 Task 1:

3.1.1 Deliverable 1:

3.1.1.1 Acceptance Criteria:

3.1.2 Deliverable 2:

3.1.2.1 Acceptance Criteria:

3.1.3 Deliverable 3:

3.1.3.1 Acceptance Criteria:

3.2 Task 2:

3.2.1 Deliverable 1:

3.2.1.1 Acceptance Criteria:

3.2.2 Deliverable 2:

3.2.2.1 Acceptance Criteria:

3.2.3 Deliverable 3:

3.2.3.1 Acceptance Criteria:

3.3 Task 3:

3.3.1 Deliverable 1:

3.3.1.1 Acceptance Criteria:

3.3.2 Deliverable 2:

3.3.2.1 Acceptance Criteria:

3.3.3 Deliverable 3:

3.3.3.1 Acceptance Criteria:

## SECTION 4 PROJECT SCHEDULE

The detailed Project schedule is shown below (or as another Schedule B-X to this Exhibit B) –OR –  
The Project shall be completed no later than [insert CALENDAR DATE].

## SECTION 5 PROJECT MANAGEMENT

5.1 Status Reports

Contractor shall summarize activities under this Contract in written weekly/monthly status reports submitted to the City Project Manager. The status reports are due on the first day of the week/month and shall include summaries of all activities and Deliverables completed in the prior week/month. The report shall include a list of any delayed items, a description of the cause of the delay, schedule impact, and a proposed method of resolution. Delayed items shall be carried over onto subsequent reports until resolved.

5.2 Place of Performance

Contractor shall provide City with services at City locations as directed by the City Project Manager. Some portions of the work will be performed at Contractor facilities as agreed with the City Project Manager.

5.3 Project Managers

The City's Project Manager will be \_\_\_\_\_. The City may change City's Project Manager from time to time upon written notice to Contractor. Contact Information:

The Contractor's Project Manager will be\_\_\_\_\_. Contact Information:

5.4 Acceptance Criteria and Acceptance Test Plan

Acceptance Criteria and the Acceptance review plan shall be reviewed jointly by the City's Project Manager and Contractor's Project Manager. When agreed, the Acceptance Criteria and review plan shall be attached and incorporated here in this Statement of Work as Exhibit B-1.

SAMPLE




SAMPLE

**Exhibit D, Contractor's Proposal/Quote**

SAMPLE

**Exhibit E  
Sample Forms**

**Exhibit E-1: STATUS REPORT**

	<b>BUREAU NAME</b>	<b>Bureau Logo</b>
<b>Contractor</b>		<b>Project Title</b>
<b>Contract No.</b>		<b>Report Date</b>
<b>Contract Date</b>		<b>Submitted by:</b>

**1. Key Status Indicators:**

Description	No	Yes	Explanation
Has scope changed?			
Will target dates slip?			
Are there resource problems?			
Any other issues?			

**2. Major Activities Completed For Reporting Week (Key Accomplishments):**

Activity	Comment(s)

**3. Major Activities Planned For Reporting Week and Not Completed:**

Activity	Comment(s)

**4. Major Activities Planned For Next Week:**

Activity	Comment(s)


**5. Status of Key Team Deliverables:**

Deliverable	Comment(s)

**6. Major Issues Requiring Immediate Attention:**

Issue	Resolution

**7. Weekly Summary of Performance by Individual**

Individual's Name:

Scheduled Activities	complete	incomplete	Comment(s)

Individual's Name:

Scheduled Activities	complete	incomplete	Comment(s)

**Exhibit E-2: FINAL ACCEPTANCE CERTIFICATE**  
(08/19)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_, the City certifies **Final** Acceptance of **(name Deliverable(s))**, in accordance with Contract No. \_\_\_\_\_. This Certificate of Acceptance is issued subject to and in accordance with the Contract, all defined terms having the meanings as set forth in the Contract, and without prejudice to any claims which subsequently may arise in connection with Defects in the **Deliverables** (or combination of Products) described herein.

-- OR --

**FINAL ACCEPTANCE CERTIFICATE WITH EXCEPTIONS**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_, the City certifies **Final** Acceptance of **(name of Deliverable(s))**, in accordance with Contract No. \_\_\_\_\_. This Certificate of **Final** Acceptance is issued subject to the following exceptions:

- 1.
- 2.
- 3.

Exceptions must be completed by \_\_\_\_\_. If Exceptions are not completed by \_\_\_\_\_, the City may revoke **Final** Acceptance of the Deliverables.

This Certificate of **Final** Acceptance is issued subject to and in accordance with the Contract, all defined terms having the meanings as set forth in the Contract, and without prejudice to any claims which subsequently may arise in connection with Defects in the Deliverable(s) described herein.


**CITY OF PORTLAND**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**Exhibit E-3: CHANGE ORDER**

	<b>BUREAU NAME</b>	<b>LOGO</b>
-----------------------------------------------------------------------------------	--------------------	-------------

**CHANGE ORDER**

<b>Contractor</b>		<b>Project Title</b>	
<b>Contract No.</b>		<b>Change Order No.</b>	*SAMPLE*
<b>Contract Date</b>		<b>Change Order Date</b>	

Select	Type	Description and Reason for Change	Modification to:
<input type="checkbox"/>	Time		Project Schedule and/or Contract
<input type="checkbox"/>	Scope or Specifications		Statement of Work Acceptance Test Plan
<input type="checkbox"/>	Deliverables		Statement of Work Acceptance Test Plan
<input type="checkbox"/>	Price		Statement of Work and/or Contract
<input type="checkbox"/>	Terms and Conditions		Request Amendment to Contract
<input type="checkbox"/>	Other		

1. Additional time is necessary and the Project Schedule for the Statement of Work or a specific Deliverable is hereby extended through **(DATE)** or modified as shown on the attached Project Schedule.
2. Additional work or a change in work or Specifications is necessary. **For example, changes to the Statement of Work, Deliverables and/or the Acceptance.**
3. A price adjustment is necessary for the following Deliverables. These changes will NOT affect the total not-to-exceed value of the Contract. **For example, price changes that show the original price and the modified price.**

4. An Amendment to the Contract is requested for the following reasons. For example, any change to the total value of the Contract, the term or ending date of the Contract, or the Contract terms and conditions requires an Amendment.

The Change Order is subject to the terms and conditions of the above-referenced Contract.

The rest of the Statement of Work shall remain unchanged and in full force and effect.

**CITY OF PORTLAND**

**CONTRACTOR**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

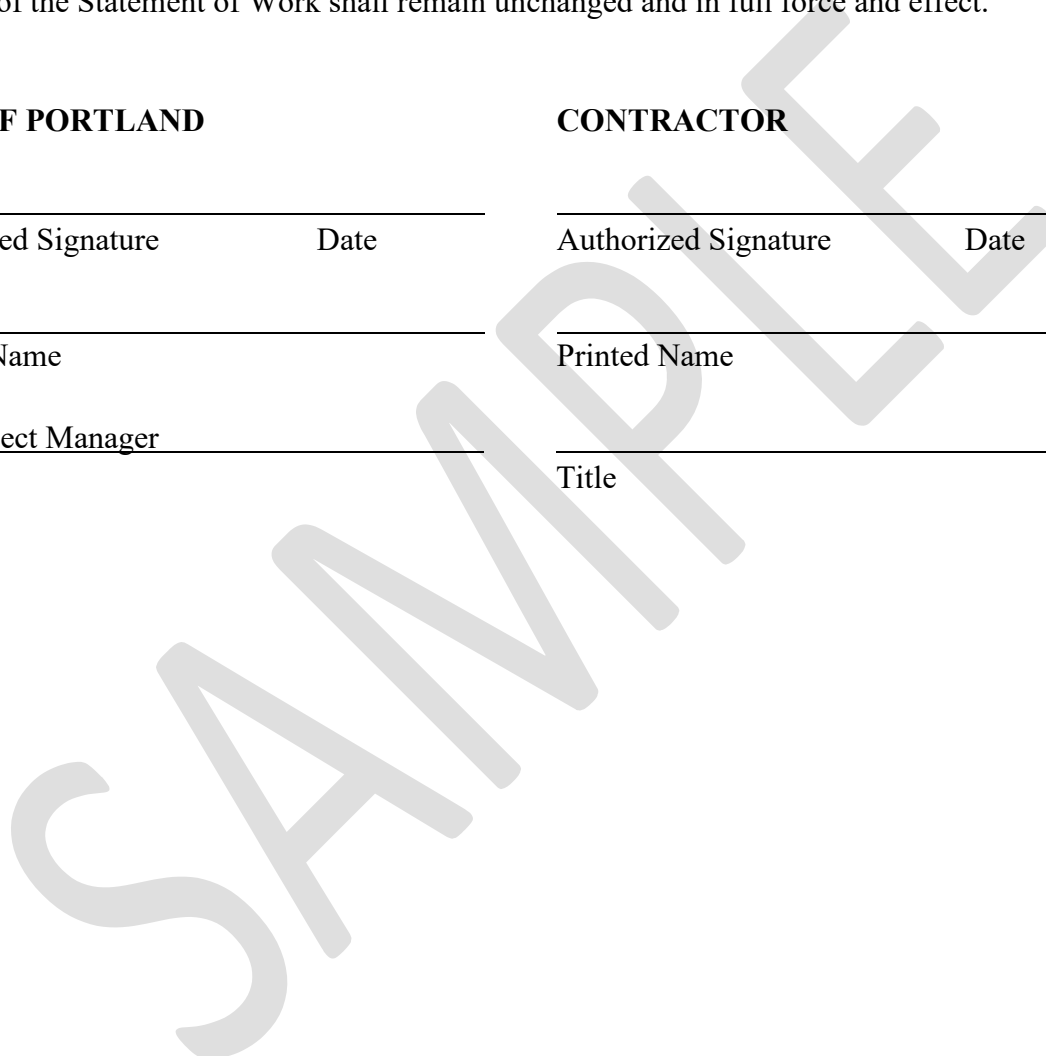
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City Project Manager

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title



**[DRAFT]**  
**Contractor Exhibit**

**Contract For Goods and Services for  
Deferred Compensation**

**Section 1. Services**

- 1.01 Good Order: The Contractor and the City acknowledge that for purposes of this Agreement “Good Order” is defined as the receipt at the Contractor’s designated location of a transaction request, instructions or data that is complete, accurate and in an acceptable format, and which do not require the Contractor to apply any research or discretionary judgment. To qualify as current business day instructions, a transaction request, instructions or data sent electronically, by telephone, facsimile or mail must be received by the Contractor no later than the close of the New York Stock Exchange (“NYSE”) (typically 4:00 p.m. ET). If the Contractor receives a transaction request, instructions or data in Good Order after the close of the NYSE, the Contractor will process the data or request on the next business day that the NYSE is open. The parties understand and acknowledge that a transaction request, instructions or data deemed by the Contractor as being received not in Good Order may be returned for correction and processed upon resubmission in Good Order.
- 1.02 Allocation of Contractor Responsibilities: The Broker-Dealer or other broker-dealers with which Voya Financial Partners, LLC has a selling agreement shall service or perform all marketing communications, enrollment and securities transactions settlement and processing functions assigned to the Contractor. VRIAC shall perform all other responsibilities assigned to the Contractor, including Plan and participant recordkeeping. For plans that have multiple providers of investment products and administrative services, VRIAC will provide recordkeeping services solely for that portion of the Plan utilizing assets record kept by the Contractor.
- 1.03 Plan Specifications: The relevant characteristics of the Plan that will govern the administration of the Plan are documented within the Plan Specifications section of this Agreement.
- 1.04 Scope of Services: The Contractor agrees to provide the Plan with the services listed on Schedule A for the term of this Agreement.
- 1.05 Administrative Requirements: The Contractor agrees to comply with the requirements set forth on Schedule B in the performance of this Agreement.
- 1.06 Performance Standards: The Contractor agrees to comply with the standards set forth on Schedule C in the performance of this Agreement. At the City’s request, the Contractor shall report to the City how it measures compared to these performance standards. Any non-performance fee payable pursuant to the terms of this Agreement shall be in addition to any damages or other remedies available to the Plan, participants or City hereunder. The Contractor and the City will review these performance standards at the City’s request and make adjustments as necessary and mutually agreed.
- 1.07 Selection of Investment Options: The City acknowledges that it is responsible for choosing the investment options to be made available to participants under the Plan. The Contractor agrees to provide Plan participants with a selection of investment options including a stability of principal option. The stability of principal option is specified in Schedule D.
- 1.08 Investment Provider Minimum Standards: Subject to the minimum standards set forth in Schedule E, the Contractor will provide its administrative services in connection with the City’s selection of investment products to fund the Plan.
- 1.09 Modification to Investment Options: In order to confirm the fund selected by the City can be recordkept by the Contractor, the addition or removal of any investment option to the Plan must be mutually agreed to by the Contractor and the City and will be made in accordance with a mutually agreed upon schedule for implementing the change.



- (1) Subject to mutual agreement between the parties to add an investment option;
  - (i) The City may direct the Contractor to add or remove an investment option from the range of investment products the Contractor currently offers, and that are currently available in the Program, upon forty-five (45) days written notice of the proposed change.
  - (ii) The City may direct the Contractor to add an investment option that the Contractor does not currently offer or an investment option that the Contractor currently offers but is not currently available in the Program, upon at least ninety (90) days written notice of the proposed change. Any investment option additions made pursuant to this Subsection 1.09(1)(ii) will be made in accordance with the Contractor's scheduled quarterly fund updates.
- (2) The Contractor reserves the right to reject any new investment option that imposes short-term trading (redemption) fees on participant accounts.
- (3) To the extent an existing investment option imposes short-term trading (redemption) fees on participant accounts, the investment option may be discontinued or short-term trading (redemption) fees may be deducted from participant accounts.

1.10 Limits Imposed by Underlying Funds: The City understands and acknowledges that orders for the purchase of fund shares may be subject to acceptance by the fund. The Contractor reserves the right to reject, without prior notice, any allocation of payments to the variable investment option (which, depending on the Contractor's product offering, may be a fund offered directly to the Plan, or a subaccount of a separate account which in turn invests in an underlying fund), if the Contractor's purchase order for the corresponding fund is not accepted by the fund for any reason.

1.11 Limits Imposed by Contractor on Frequent Transfers: The City understands and acknowledges that the investment products offered or otherwise made available by or through the Contractor are not designed to serve as vehicles for frequent trading in response to short-term fluctuations in the market. Such frequent trading can disrupt management of a fund and raise its expenses. This in turn can have an adverse effect on fund performance. Accordingly, the City agrees to adhere to the Contractor's current Excessive Trading Policy, as set forth in Schedule F (the "Excessive Trading Policy"). The Contractor reserves the right to modify the Excessive Trading Policy in whole or in part at any time and without prior notice, depending on the needs of the underlying fund(s), the best interest of contract owners and fund investors, and/or state or federal regulatory requirements.

1.12 Legacy Life Insurance Policies: Service offered pursuant to the Plan's life insurance option will be subject to the terms specified in Schedule M.

## **Section 2. Participant Information**

2.01 Provision of Certain Participant Information: The City or its authorized representative shall facilitate the transmission to the Contractor of all current Plan participant level records including, but not limited to: name; address; social security number; active or terminated employment status; loan information; and deferral amount information. The Contractor shall be able to rely on the information provided by the City. We are not responsible for any errors, omissions or other inaccuracies in the data you or an unaffiliated third party, including without limitation, prior service providers furnish us. Over the term of this Agreement, the Contractor and City will develop procedures for the City to notify the Contractor of changes in employment status and, to the extent the City has knowledge of the death of any participant, the City will notify the Contractor of such death. The City shall provide such information on a timely basis and use its best efforts to assure the accuracy and completeness of all information provided to the Contractor.

2.02 Changes in Deferral or Contribution Information; New Participant Deferral or Contribution Information: The Contractor and the City will develop procedures to coordinate the processing of (i) changes in deferral or contribution amount information and (ii) initial deferral or contribution information pertaining to participants joining the Plan on or after the date the Contractor commences the provision of services under this Agreement.

- 2.03 Participants' Ability to Direct Investments: Participants shall have the ability to choose their investment allocations and to make participant-directed transfers between investment options, subject to any limitations of the Plan and of the Contractor's investment product.
- 2.04 Restricting Participant Accounts (Administrative Holds): The City directs the Contractor to place an administrative hold on a participant's account upon receipt of a signed or draft domestic relations order (DROs) or joinder, federal tax levy, or upon the receipt of other types of court orders that assert a claim to plan benefits. Placing an administrative hold on the participant's account(s) will prevent the participant from taking distributions, including. The participant will continue to have the ability to make allocation changes and fund transfers to his/her account. With the exception of DROs, the restriction will remain on the account until such time that the Contractor is advised to remove the administrative hold either by the City or upon receipt of a court order indicating that the matter has been resolved and the hold is no longer needed.
- Administrative holds placed on a participant's account due to DROs shall remain on the account for a period up to 18 months, or if earlier, until the date the Contractor is advised to remove the administrative hold either by the City or a court order indicating that the matter has been resolved and the hold is no longer needed. If a subsequent order is received a new 18-month period will be activated.
- Notwithstanding the foregoing, with respect to joinders issued pursuant to California Family Code 9 (if applicable), Section 2060, the restriction will not be removed until the Contractor receives either: (1) a QDRO; (2) a court order vacating/dismissing the joinder; or (3) a final judgment that awards the participant all of the plan benefits.
- 2.05 Power of Attorney, Guardianship or Conservatorships: The Contractor will determine the validity of the documentation received relative to a power of attorney, guardianship or conservatorship. Once the documentation is determined to be in Good Order, the Contractor will set up or modify the existing account as directed in the documentation received.

### **Section 3. Compensation**

- 3.01 Contractor's Compensation: The Contractor's services under the Agreement are rendered in connection with the City's selection of certain investment products offered by or through the Contractor, including the Voya Fixed Plus Account III. The Contractor's overall annual revenue requirement is \$16.00 per participant which is deducted quarterly and provides for the services described herein. Such revenue requirement shall be deducted from amounts collected through the application of a Plan Administrative fee as further described in Schedule I. The Contractor will assess the Plan Administrative Fee as directed by the City, and such fee will be assessed quarterly and calculated across all funds, including the stability of principal option. This fee is not assessed on assets held in the Self Directed Brokerage Account, if available.
- Additional transactional fees and charges may apply for optional services such as loans, investment advisory services and Self Directed Brokerage Account. Refer to Schedule G ("Additional Plan Services and Fees") for additional fees and charges.
- 3.02 Assumptions Regarding Pricing: Any fees, reimbursements, products and services rendered in connection with this Agreement are contingent on the Contractor being the exclusive provider of investment products and administrative services to the Plan during the Term of this Agreement and any subsequent renewal periods (as described in Section 4.01). The addition of any other provider or providers to the Plan during the Term of this Agreement and any subsequent renewal periods or changes in the Plan document may impact any fees, reimbursements, products and services under this Agreement. The City will notify the Contractor of any such changes in a timely manner.

This Agreement and fees are contingent on the Plan provisions in effect on the date of this Agreement. Any amendment to the Plan may impact this Agreement and fees.

The City understands and acknowledges that the compensation to the Contractor is subject to the certain general provisions, as set forth in Schedule H (the "General Compensation Provisions"). The Contractor reserves the right

to modify the General Compensation Provisions in whole or in part at any time and without prior notice, depending on the needs of the underlying fund(s), the best interest of contract owners and fund investors, and/or state or federal regulatory requirements.

- 3.03 Reimbursement of Plan Expenses: The Contractor shall reimburse the Plan for reasonable administrative expenses as set forth in Schedule I as directed by the City.
- 3.04 Compensation Paid to Sales Professionals: The Contractor shall pay sales professionals a flat salary plus 1.00% takeover compensation paid for all funds rolled over to a participant's Plan account. The compensation paid to sales professionals will be derived exclusively from the Contractor's compensation, defined in Schedule I. Sales professionals may also be eligible for additional expense reimbursement.
- 3.05 Float: VRIAC and its affiliated companies (collectively referred to as "Voya®" for purposes of this Section 3.05) may earn income in the form of bank service credits on contributions awaiting investment and on payments awaiting distribution from the bank accounts that Voya maintains (or "float"). The bank service credits are applied against the bank service fees that apply to the bank accounts that Voya maintains and may not be redeemed for cash. Specifically, the bank accounts have been established to receive and hold for a reasonable time:
- contributions or other amounts to be invested in your retirement Plan, or
  - amounts redeemed to pay a distribution or disbursement from your Plan.

Voya will receive income in the form of bank service credits (as described below) and offset such credits against bank service fees that are charged to Voya for the use of such bank accounts and for services provided by the banks for processing receipts or disbursements.

Float Generated by Contributions:

Voya uses a bank account to receive and hold contributions or other Plan deposit amounts to be invested. Contributions or other deposit amounts are held until authorized instructions are received in Good Order. Income in the form of bank service credits are earned on the bank account during any waiting period for authorized instructions. For authorized instructions received in Good Order, contributions or other deposit amounts will be invested on that business day. For authorized instructions received in Good Order after the close of the New York Stock Exchange, contributions or other deposit amounts will be processed on the next business day.

Float Generated by Distributions:

Voya receives income in the form of bank service credits in connection with distributions or disbursements that Voya pays on the Plan's behalf. The bank service credits accrue during the period beginning when an amount is redeemed from the Plan's investment to fund a distribution or disbursement check and ending when the check is presented for payment.

Additionally, from time to time, Voya may receive money market like rates of return on other deposit or short term investment products in which distributions may be held until such time as the check is presented for payment.

- 3.06 Transaction Processing: VRIAC seeks to avoid transaction processing errors to the greatest extent possible, but inadvertent errors do occur from time to time. When a transaction processing error for which VRIAC is directly responsible occurs, VRIAC will attempt to correct the error as soon as reasonably practicable after identification of the error. Once all necessary information has been gathered, VRIAC will promptly take corrective action to put the Plan and its participants in a position financially equivalent to the position they would have been in if the VRIAC processing error had not occurred.

VRIAC processes your Plan's investment instructions on an "omnibus" or aggregated basis. If VRIAC's correction of a VRIAC processing error results in a loss to your Plan or its participants, VRIAC will absorb the loss. If any gain results in connection with the correction of a VRIAC processing error, VRIAC will net any such gain against other losses absorbed by VRIAC and retain any resulting net gain as a component of its compensation for transaction processing services, including its agreement to make Plan and participant accounts whole for losses resulting from VRIAC processing errors. For more information on our error correction policy, please refer to Voya Retirement Insurance and Annuity Company's Policy for Correction of Processing Errors ("VRIAC Policy"), which is included in Schedule J. The VRIAC Policy and any updates to the VRIAC Policy are posted in the Sponsor Disclosure section of Sponsor Web.

- 3.07 Fund Management Fees: Fund management fees and other fund operating expenses will also apply to the variable investment options under the Plan. Fees depend on the investment options chosen.

#### **Section 4. Term, Termination, and Amendment**

- 4.01 Term: This Agreement shall commence on September 1, 2023, and, unless sooner terminated as set forth in this Section 4, shall continue for an initial term of five (5) years ("Initial Term"). Thereafter, this Agreement shall automatically renew for up to two (2) subsequent one (1) year Specified Period terms unless either the City or the Contractor provides written notice to the other party of its intent not to renew this Agreement at least ninety (90) calendar days before the end of the then current term. This Agreement may be amended in writing if agreed to by both parties.
- 4.02 Termination Without Cause: At any time following the Initial Term, either the City or Contractor may terminate this Agreement upon at least ninety (90) calendar days' advance written notice to the other party. The City and Contractor may also mutually agree in writing to terminate this Agreement at any time.
- 4.03 Termination For Cause: Notwithstanding Section 4.01, either party may terminate this Agreement immediately at any time upon written notice "for cause." For purposes of this Agreement, "for cause" shall mean: (1) failure of the other party to comply substantially with this Agreement and the attached schedules hereto which, when called to the attention of the other party in writing has not been corrected within thirty (30) calendar days of such notice; (2) the fraud or embezzlement on the part of the other party or provider of investment advice; (3) if the other party ceases to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors; (4) failure of the other party to pay any fees under this Agreement; or (5) if pursuant to Section 1.09 the City requests the addition or removal of an investment option under the Plans, that is reasonably anticipated by the Contractor to result in a reduction in revenues under the Plans and no mutual agreement is reached between the parties on the recoupment of such lost revenues, the Contractor shall have the right to terminate this Agreement.
- 4.04 Transfer of Records: In the event of the termination of this Agreement, the Contractor shall provide all electronic data records to the Plan's designated representative or to a new contractor in an agreed upon format at no cost and within ninety (90) days of written notice of intent to terminate this Agreement.

#### **Section 5. General**

- 5.01 Circumstances Excusing Performance: Neither the City nor the Contractor shall be liable to the other for any delays or damages or any failure to act due, occasioned, or caused by reason of restrictions imposed by any government or government agency, acts of God, strikes, labor disputes, action of the elements, or causes beyond the control of the parties affected thereby.
- 5.02 Business Recovery Plan: The Contractor acknowledges that it has a Business Recovery Plan in place for its computer environment, specifying steps to be taken in the event of a disaster. The plan is built around a worst-case scenario involving loss of the facility or loss of access to the facility. It is also adaptable to less severe disasters. Generally, there are three phases to the Contractor's Business Recovery Plan:
- ♦ Immediate response, damage assessment and critical notifications
  - ♦ Environmental and operation restoration
  - ♦ Operational readiness, testing and business resumption.

A critical part of this plan is the Contractor's System Recovery Plan, which itself has three components:

Hardware: The Contractor maintains a primary data center to support its mainframe applications and a portion of its mid-range and Intel based distributed environment. The Contractor has contracted with an outside vendor to provide hot site recovery capabilities for the primary data center in case of a site level disaster. The vendor maintains equipment that the Contractor will use to restore its applications in case of emergency. In addition, the

Contractor has several data centers located throughout the U.S. with mid-range and distributed equipment to lessen the risk from any one site. On-site generators and UPS systems provide continuous power to the Contractor's facilities. A fully redundant wide area network connects all of the data centers in the U.S. as well as to the hot site vendor facility.

Application software: the Contractor secures program libraries, to tape cartridges weekly, storing them in both on-site and off-site vaults.

Production data: the Contractor's system and database files are backed up periodically, many on a daily basis, to tape cartridges stored in both on-site and off-site vaults.

The Contractor's internal auditors have reviewed its disaster recovery procedures. Portions of the plan are tested on an annual basis.

- 5.03 Ownership and Use of the Content Copyright: Each party owns all right, title and interest in its pre-existing intellectual property. You acknowledge and agree that, except for your pre-existing intellectual property, all information and content distributed through or displayed on a Contractor Web site, printed or electronic literature, including but not limited to all text, graphics, images, software applications and code, video, audio, and user interface design ("Content") is the property of the Contractor and its affiliates or its third party licensors. You have a limited, non-exclusive license to use the Content during the term of this Agreement.

If you or any appointee thereof, provides the Contractor with Content for distribution or display on a Contractor Web site, or in printed or electronic literature, you are responsible for obtaining permission from the owner or licensor for use of the Content.

- 5.04 Parties Bound: This Agreement and the provisions thereof shall be binding upon the respective parties and shall inure to the benefit of the same.

- 5.05 Applicable Law: This Agreement shall be construed in accordance with the laws of the State of Oregon, referred to as the jurisdiction of issue. The Contractor and the City shall comply with all state and federal laws and regulations applicable to the services to be performed.

- 5.07 Severability: If any provision of this Agreement shall be found to be illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of this Agreement and the remainder of this Agreement shall be construed and enforced as if said illegal or invalid provision had never been inserted herein. Neither party shall be required to perform any services under this Agreement which would violate any law, regulation or ruling.

- 5.08 Acknowledgment: The City acknowledges the following.

- (a) The Contractor is performing non-discretionary, administrative services at the direction of the Plan and its authorized representatives.
- (b) Neither the Contractor nor its affiliates is the Plan administrator or a fiduciary under state law, the Investment Advisors Act of 1940 or, as applicable ERISA, and the Contractor is not responsible for the selection or supervision of fiduciaries to the Plan or of service providers not associated with the Contractor.
- (c) The City is solely responsible for maintaining the qualified status of the Plan.
- (d) The City has consulted with a tax or legal advisor regarding the tax consequences of the Plan.
- (e) The City is responsible for selecting the Plan design and investment options that best meet its objectives. The City understands that it has selected a program that may include a stability of principal option and/or variable annuities funded through a group annuity contract and/or mutual funds offered through a custodial or trust agreement to fund a tax-qualified arrangement; that the tax laws provide for deferral of taxation on earnings on participant account balances (excluding Roth or after-tax contribution sources); and that, although the annuity provides features and benefits that may be of value to participants, it does not provide additional deferral of taxation beyond that provided by the tax qualified arrangement itself. To the extent mutual funds are available as investment options under the Plan, there may be one or

more classes of shares with respect to each mutual fund and each class of shares may have different rules, requirements and expense ratios and City has made the determination that the class of shares chosen for the Plan is the appropriate class and is suitable for the Plan. All discretion and control with respect to the terms, administration of assets of the Plan shall remain with the City or with the named fiduciaries under the Plan.

- (f) The City and its authorized representatives have sole responsibility for the overall administration of the Plan, including periodically providing participants with any notices required under the Code and related Regulations to which the Plan is subject and for making all benefit determinations. The Contractor and its affiliates shall not have any discretion with respect to the management or administration of the Plan or with respect to determining or changing the rules or policies pertaining to eligibility or entitlement of any participant in the Plan to benefits under the Plan. **The Contractor and its affiliates shall not have any control or authority with respect to any assets of the Plan, including the investment or disposition thereof.**
- (g) . The City may delegate the day-to-day administration of certain City responsibilities to the Contractor as indicated in Schedule A.
- (h) The City and its authorized representative have the sole authority for the review and final disposition of a Plan participant's appeal of any benefit determination made by the Contractor under the Plan.
- (i) The Contractor does not directly provide any investment advice to the City with respect to the Plan's assets.
- (j) In performing services under this Agreement, the Contractor is entitled to rely on any information the City, or its authorized representatives or the Plan participants provide. The Contractor has a reasonable duty to inquire as to the authenticity or the accuracy of such information or the actual authority of such person to provide it.
- (k) The City will provide the Contractor with an up-to-date copy of the Plan document(s) and complete information governing the terms and operation of the Plan (including a written explanation of any practices and procedures not reflected in the Plan document). The City will promptly provide to the Contractor any proposed amendments to the Plan for review and comment by the Contractor at least 90 days prior to the proposed amendment effective date.
- (l) Generally, only fees relating to the ongoing administration of the Plan may be passed through to participants. You will direct us to deduct from participant accounts those fees outlined in Schedule G. The City is responsible for determining if an expense is deductible from Plan assets.
- (m) **VRIAC Error.** VRIAC's responsibility with respect to providing the services is limited to correcting errors, within a reasonable time, which result from its computer system malfunctions, its staff errors or are otherwise caused by VRIAC's negligent acts. VRIAC shall make a good faith effort to correct any such error as soon as reasonably practicable after identification of the error when such correction is reasonably necessary and practical under the circumstances. For more information on our error correction policy, please refer to Voya Retirement Insurance and Annuity Company's policy for Correction of Processing Errors ("VRIAC Policy"), which is included in Schedule J. The VRIAC Policy and any updates to the VRIAC Policy are also posted in the Sponsor Disclosure section of Sponsor Web.
- (n) **City Error.** VRIAC will attempt to correct, at the City's expense, processing errors resulting from the City, or the City's representative, or otherwise caused by the negligent acts of the City; provided that the City promptly notifies VRIAC of such error and furnishes all data to VRIAC reasonably necessary to make such corrections. The City shall pay VRIAC its reasonable expenses incurred in making such corrections.

5.09 **Notices:** Each party will promptly provide the other with notice and copy of any attempts to levy or attach amounts held under the Plan and/or any litigation affecting the Plan of which it becomes aware and/or any notices or demands to be given under this Agreement. All such notices, demands or other communications hereunder shall be in writing and duly provided if sent certified mail, return receipt requested, addressed to the party to be notified or upon whom a demand is being made, at the addresses set forth in this Agreement or such other place as either party shall from time to time designate in writing. The date of service of a notice or demand shall be the receipt date on any certified mail receipt.

Notices to the Contractor shall be sent to:

Voya Retirement Insurance and Annuity Company  
Attn: Deputy General Counsel  
Legal Department, C2N  
One Orange Way  
Windsor, CT 06095

Notices to the City shall be sent to:

Human Resources Department  
Attn: Deferred Compensation Plan Administrator  
1120 SW Fifth Avenue  
Portland, OR 97204

- 5.10 Copies of Agreement: This Agreement may be executed in any number of counterpart copies, each of which when fully executed shall be considered as an original.
- 5.11 Headings: Headings are for convenience of reference only. Headings do not limit or expand the scope of the text and are not intended to emphasize any portion thereof.
- 5.12 Independent Contractor: The Contractor is associated with the City only for the purposes and to the extent specified in this Agreement. With respect to the performance of the contracted services pursuant to this Agreement, the Contractor shall have the sole right to supervise, manage, operate, control and direct performance of the details incident to its duties under this Agreement.
- 5.13 Contractor Primary Contact: The Contractor designates certain individual(s) to serve as the primary point of contact for the Agreement. These individuals are identified in Schedule K.
- 5.14 Licensed Representative: The Contractor agrees to provide licensed representatives to perform enrollment and education services, and to assist participants with account balance inquiries, investment selection changes, interfund transfers or exchanges, and transaction initiation. Although the licensed representatives are prohibited from soliciting other business, in addition to these services, the licensed representatives may as requested by the participant, pursuant to a separate agreement with the licensed representative, provide advice, financial plans and sell other financial products including but not limited to Section 529, annuity and IRA products. These individuals are identified in Schedule L.
- 5.15 Contractor Global Operations Team: The Contractor supplements its retirement plan resources for some services through its global operations team. This team brings added efficiency, capabilities and innovation that benefit plans – as well as expanded back-office processing with the addition of servicing in different time zones. The Contractor has carefully and intentionally built its global operations team to supplement its existing team and align with leading global service organizations that have extensive retirement operations and servicing experience. All network servers are hosted in the United States and no Plan or participant data will be stored outside the United States. However, to service the Plan successfully, data may be accessed by our global operations team to perform or supplement omni-channel administrative inquiries and transaction services. The Contractor will continue to honor its existing contractual standards and its S.A.F.E® (Secure Accounts for Everyone) Guarantee.
- 5.16 Subcontracting: The Contractor may enter into subcontracting agreements for work contemplated under the Agreement. Any subcontractor shall be subject to the same terms and conditions as the Contractor. The Contractor shall be fully responsible for the performance of any subcontractor.
- 5.17 Contract Assignability: Without the prior written consent of the City, the Agreement is not assignable by the Contractor.
- 5.18 Licenses and Permits: The Contractor shall ensure that it has all necessary licenses and permits required by federal, state, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses and permits in effect for the duration of this Agreement. The Contractor will notify the City immediately of loss or suspension of any such licenses and permits. Failure to maintain a required license or permit may result in immediate termination of this Agreement.

- 5.19 Conflict of Interest: The Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, agents or subcontractors and the City. The Contractor shall make a reasonable effort to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others such as those with whom they have family, business, or other ties.
- 5.20 Improper Consideration: The Contractor shall not offer or be forced to provide (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, services, the provision of travel or entertainment, or any items of value to any officer, employee, group of employees, or agent of the City in an attempt to secure favorable treatment or consideration.
- 5.21 Right to Monitor: The City or any appointee thereof, shall have the right to review and audit all records, books, documents, and other pertinent items as requested, and shall have the right to monitor the performance of the Contractor in the delivery of services provided under this Agreement. Full cooperation shall be given by the Contractor in the implementation, and in any auditing or monitoring conducted.
- 5.22 Use and Disclosure of Confidential Information. Either party may disclose ("Disclosing Party") confidential information to the other party ("Non-Disclosing Party") as described in this Section. The Non-Disclosing Party agrees that it will (i) disclose the Disclosing Party's confidential information only to its employees, agents, advisors, third party service providers, consultants and contractors who have a need to know and are bound by confidentiality terms no less restrictive than those contained in this Agreement, and (ii) use the Disclosing Party's confidential information only for the purposes of performing its obligations under this Agreement. The Non-Disclosing Party will use all reasonable care in handling and securing the Disclosing Party's confidential information and will employ all security measures used for its own proprietary information of similar nature. These confidentiality obligations will not restrict any disclosure of confidential information by order of a court or any governmental agency, provided that the Non-Disclosing Party shall cooperate in all reasonable respects with the Disclosing Party in seeking to prevent or limit disclosure and shall limit any such disclosure to the information actually required to be disclosed.
- 5.23 Voya Data Security Addendum: The Contractor acknowledges that it has a Data Security Addendum in place as attached hereto in **Schedule N**. The Contractor reserves the right to terminate or modify the Data Security Addendum in whole or in part at any time and without prior notice to the City. The Contractor shall provide an updated Data Security Addendum to the City upon request. For purposes of the Data Security Addendum, the "Client" is the City.



## **Contractor Exhibit for Goods and Services for Deferred Compensation**

### **Schedule A: Scope of Contractor Services**

The Contractor agrees to provide the Plan with the services listed within this Schedule for the term of this Agreement. For purposes of this Schedule, all references to “participant” are intended to apply equally to all account holders under the Plan. This includes participants, beneficiaries and alternate payees.

1. The development of Plan enrollment materials, including basic investment education material. The distribution of such materials shall be as mutually agreed upon by the parties.
2. Conducting introductory on-site education and enrollment meetings for employees. Ongoing provision of employee enrollment and education services, including the provision of enrollment materials which include the necessary information for employees to enroll and make investment choices. Enrollment materials will be made available via the Contractor’s enrollment website.

EZ Enrollment: This service allows the City to adopt a simplified enrollment process as described in this Appendix. In conjunction with group meeting, the Contractor will make available a simplified enrollment process called “EZ Enroll” for employees who choose not to select their own investments. This EZ Enroll process will include a shorter enrollment form and will utilize the default investment option selected by the City. The EZ Enroll form is to be made available to newly hired employees solely from the City and not by the Broker-Dealer. The Broker-Dealer will not assist employees with completing the EZ Enroll Form.

The Contractor’s Licensed Representative will provide online access or a hardcopy enrollment kit to each participant following an enrollment into the Plan using the EZ Enroll form. The kit must include, but is not limited to the following: investment option fact sheets for each of the available investment options, fund performance, participant disclosure booklet and information on how a participant can access their account to make account changes.

The City understands that it has the fiduciary responsibility to choose the appropriate “default” investment option for use with the EZ Enrollment process, and therefore, may choose from any of the investment options available under the Plan.

The City has selected the Vanguard® Target Retirement Trust II Collective Investment Trust as the “default” investment option and understands that all contributions into these funds will be based on each Participant’s age, not their anticipated retirement age as the investment is designed. Plan Participants will be allocated to the target date funds assuming the standard retirement age of 65.

City understands that all contributions, including any employer contribution, will be invested in this investment option until such time that a participant makes allocation changes and/or fund transfers.

3. Ongoing allocation of Plan contributions received in Good Order to individual participant accounts, and reconciliation of Plan and participant activity on a daily basis. For purposes of this provision, Plan contributions are deemed to include loan repayments (if applicable) and non-routine contributions, such as rollovers or plan to plan transfers, if permitted under the Plan.
4. Contractor will perform one test per month beginning in October through December on each participant account per Plan covered by this Agreement for the limit on elective deferrals pursuant to Code section 402(g) and/or 457(e)(15) and on the annual additions limit in accordance with Code section 415(c), if applicable.
5. Ongoing maintenance of participant beneficiary designations under the Plan based upon mutually agreed upon procedures which shall be reflected in the Plan document. Participants may designate a beneficiary via the Contractor’s participant internet site or by speaking with a customer service representative via a toll free telephone line.

#### Community Property Edit

This optional feature of the online beneficiary maintenance service will take into account community property laws applicable in the participant’s resident state at the time that he or she is making a beneficiary designation. When this service has been elected, the Contractor’s online beneficiary maintenance service will require any participant who

has identified themselves as being married or in a registered domestic partnership or a civil union and who does not designate a person identified as his or her spouse or domestic partner as a primary beneficiary for at least the percentage prescribed under the community property laws to complete and submit a paper beneficiary designation form.

The City elects to utilize the Contractor's Community Property Edit feature as described above.

6. Ongoing maintenance, recordkeeping of individual participant account records and processing in a timely manner of all transactions permitted under the Plan as authorized or approved by the City. Any delegation of the City's role of authorizing or approving transactions under the Plan to the Contractor will be as directed later within this Schedule or other written instrument between the parties. Such direction shall not be construed as delegating Contractor discretion with respect to such decision.
7. Ongoing generation of periodic Plan activity reports for the City's use, as mutually agreed upon, to be made available through a secure website.  
Plan level confirmations including transactional activity and Sponsor Activity Report will be made available to the City via the Plan Sponsor Website.
8. Ongoing processing of participant-initiated benefit payment requests received in Good Order, calculation and withholding of federal and state taxes, and the provision of necessary tax forms on a timely basis to participants who received taxable distributions during the previous year.
9. Establish and maintain an electronic interface with the City for participant enrollment information and changes to the participant's contribution amount or rate.
10. Access to customer service representatives via a toll free telephone line to respond to Plan participant inquiries, provide information about participants' accounts and investment options, help facilitate the enrollment of an employee into the Plan and to distribute administrative forms.
11. Access to an automated voice response system via toll free telephone lines, through which participants may obtain updated account and investment information and initiate transactions permitted under the Plan.

Access to an internet site and mobile app, through which participants may obtain updated account and investment information, and initiate transactions permitted under the Plan and request forms for initiating certain transactions as permitted under the Plan.

The Contractor provides a Personal Identification Number (PIN) for secure Participant online account registration as well as for customer service support by phone. A unique, temporary PIN is delivered by the U.S. Postal Service to Participants shortly after their account is established. To facilitate account access, temporary PINs can be delivered by email to Participants upon request. This process requires at least one Employer email domain to be provided to the Contractor.

The City authorizes the Contractor to provide temporary PINs by request of Participants to designated Employer email addresses. The following domains are registered to the Employer and provided for this purpose: @portlandoregon.gov, @prosperportland.us

12. The Contractor has an ongoing commitment to advancing the retirement readiness of your participants which includes our continued addition of self-service planning tools to the participant internet site and mobile app along with the availability of phone and local Voya Financial Advisors representatives to assist individuals with their broader financial needs. These services are offered outside of the recordkeeping services described in this Agreement. If individuals elect fee-based services, fees are charged directly to the employee and will not be withheld from any plan participant account. To facilitate the delivery of the services, the Contractor may use participant data to the extent and for purposes authorized by the participant whose data is being used. Securities and investment advisory services offered through Voya Financial Advisors, Inc., member SIPC.
13. Access to a Sponsor Web site, through which the City may obtain reports. The City must select a primary contact by completing an administrative form to be provided by the Contractor.
15. Incoming Rollovers / Transfers Authorization

Ongoing review and processing of participant-initiated incoming rollover or transfer requests, on behalf of the City, shall be based on mutually acceptable procedures for the review, and processing of these types of requests. Incoming rollover and transfer requests determined to be in Good Order will be processed on the same business day as the assets are received by the Contractor.

At the City's direction, participants who have had a request denied shall be given the opportunity to appeal to the City for review and final disposition of the determination.

16. Unforeseeable Emergency Withdrawal

The Contractor will provide ongoing review, determination and processing of participant unforeseeable emergency withdrawal requests on behalf of the City, based on the standard for the review, qualification and processing of these withdrawals as provided in Appendix I to Schedule A.

The Contractor will make a determination (approval and/or denial) within 5 business days of receipt of the request, and supporting documentation, in Good Order. If the request is approved, the request will be processed as of the date of favorable determination; with payment being mailed or made available electronically through ACH.

17. Permissible In-Service Withdrawal Related Provisions

The Contractor will review and process participant-initiated withdrawal or transfer requests, on behalf of the City, which shall be based on mutually acceptable procedures for the review and processing of these types of requests. Withdrawals or transfer requests are processed as of the date received in Good Order, with payment being mailed or made available electronically through ACH.

At the City's direction, participants who have had a request denied shall be given the opportunity to appeal to the City for a review and final disposition of the determination.

18. Domestic Relations Order Administration

The Contractor will review and process DROs on behalf of the City, based on the standard for the review, qualification and processing of DROs as provided in Appendix II to Schedule A.

The Contractor will make a determination within 5 business days of receipt of a DRO in Good Order. If the request is approved, the request will be processed as of the date of favorable determination; with confirmation being provided.

If a DRO is not received in good order, the Contractor will work with the respective parties until the order is presented in Good Order.

NOTE: If a DRO received from a state agency is related to child support payments, the Contractor will 1) set up the alternate payee account AND 2) obtain sponsor authorization if required to process the check made payment to the alternate payee or if minor, to the custodial parent for the benefit of the minor child and mail directly to the state agency per instructions in the DRO. Additional distribution paperwork and/or action from the alternate payee are not required.

19. Benefit Payment Related Provisions

The Contractor will provide ongoing review and processing of participant-initiated benefit payment requests (including annuity payments, if permitted, and death benefits) due to participant's separation from service or death, on behalf of the City, based on mutually acceptable procedures for the review, qualification and processing of these requests. The City is responsible for providing the Contractor with any and all participant termination data in the mutually agreed upon electronic format, within a reasonable time period following the participant's separation from service or death. In those individual circumstances where the Contractor does not have a beneficiary designation on file for the participant and where the Plan does not provide direction to make payment to the estate of the account holder, the Contractor will seek written direction from the City as to who to make payment to pursuant to the Plan. The Contractor may not make the applicable benefit payment request transaction and/or paperwork available to the participant until the termination data is received from the City in Good Order.

Benefit payment requests are processed as of the date received in Good Order; with payment being mailed or made available electronically through ACH. Accounts with administrative holds due to federal tax levies will not be

distributed to the participant until such time that the federal tax levy is satisfied or as otherwise resolved. Once the participant has a triggering event, or requests a distribution, if evidence of payment of federal tax levy is not received, the Contractor will first make payment to satisfy the federal tax levy and then pay any remaining distribution amount to the participant.

At the City's direction, participants who have had a request denied shall be given the opportunity to appeal to the City for a review and final disposition of the determination.

20. Access to counseling by licensed agents or representatives for Plan participants, who are retiring or otherwise requesting a benefit payment from the Plan, based on mutually acceptable standards.
21. Ongoing processing of Required Minimum Distributions ("RMD") in accordance with Code Section 401(a)(9) for eligible Plan participants and their beneficiaries as described in this Section 25; provided, however, that such processing must comply with Code Section 401(a)(9) and the Treasury Regulations promulgated thereunder and, to the extent a conflict exists between the applicable law and regulations and this Section, the applicable law and regulations shall govern:
  - a. Based on the indicative age and employment status data in its files, with respect to each Plan, the Contractor shall timely notify participants who have attained their required beginning date or who are first eligible to receive RMDs (based on age and/or employment status) that an RMD is due and that an RMD calculation is available upon request. Subject to subsection (e) below, in the absence of an affirmative election or instructions received in Good Order from the participant on an annual basis for receiving the RMD, the Contractor is directed by the City with respect to a 401(a) and/or 457(b) Plan to calculate and distribute the applicable RMD. With respect to a 403(b) Plan, the Contractor is directed by the City to calculate the RMD amount but not distribute the RMD amount unless the participant requests such payment and the Contractor receives the distribution form in Good Order.
  - b. All distributions to Participants and beneficiaries shall be made in accordance with the requirements of Code Section 401(a)(9) and applicable regulations thereunder including the minimum distribution incidental benefit requirement. Under any method of payment selected by the Participant, distribution must be made over a period not extending beyond the life (or life expectancy) of the Participant. If a participant has reached RMD age and has separated from service with the City any distribution requested will first be reduced by the applicable RMD for the distribution calendar year.
  - c. In the absence of an affirmative election or instructions received in Good Order from a Participant's beneficiary or beneficiaries, as applicable, the City directs the Contractor to calculate the RMD amount in accordance with Code Section 401(a)(9), for each of the 401(a), 403(b) and 457(b) plans (as applicable), provided the Contractor has received in Good Order proper notification of the participant's death and complete beneficiary(ies) information (including, without limitation the complete name, ~~and~~ address and all required tax and other information of the beneficiary(ies)).
  - d. If a Participant dies on or after December 31, 2019 (or on or after December 31, 2021 for governmental plans and collectively-bargained plans), where the life expectancy rules are not available for the calculation of the RMD either because the Contractor has not received the requisite information by the date for issuing RMD payments or the beneficiary is not an "Eligible Designated Beneficiary" entitled to receive RMDs under the life expectancy rules under Code Section 401(a)(9), the City directs the Contractor to apply the ten-year payout rule for each of the 401(a), 403(b) and 457(b) plans (as applicable) and force out a lump sum by December 31st of the tenth year following the year of the participant's death to the individual beneficiary. If the Participant's designated beneficiary is not an individual (i.e., an estate or in some cases, a trust) then the City directs the Contractor to substitute the five-year payout rule for the ten-year payout rule.
  - e. The City acknowledges that the Contractor shall not be responsible for any tax penalties or excise taxes the City, Plan participants, or beneficiaries may incur as a result of the Contractor's failure to calculate and distribute the RMD amount where the failure is due to the City's, the Plan participant's or the beneficiaries' failure to provide the required information to the Contractor in a timely manner.

22. Ongoing facilitation of communications between the Contractor, the City and the Plan participants based on mutually acceptable guidelines.

## **Contractor Exhibit for Goods and Services for Deferred Compensation Appendix I to Schedule A**

### **Unforeseeable Emergency Withdrawal Review and Approval Requirements**

The Contractor is responsible for the ongoing review and processing of participant unforeseeable emergency withdrawal requests on behalf of the City. The Contractor's process is based on the following procedures for the review, qualification and processing of these withdrawals under the Plan. The Contractor will review the request to determine whether it satisfies the IRS and Plan requirements for an unforeseeable emergency or hardship.

To request an unforeseeable emergency withdrawal, a participant must complete the relevant paperwork and provide the appropriate documentation to support the request.

#### **Unforeseeable Emergency Approval Requirements**

Specifically, an unforeseeable emergency means extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant including:

- severe financial hardship of the participant resulting from an illness or accident of a participant, the participant's spouse or of a participant's dependent (as defined in Code Section 152(a))\*;
- loss of the participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance); or
- other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

\*Effective in 2007, the Pension Protection Act of 2006 expanded this definition to include the participant's designated primary beneficiary.

In its evaluation, The Contractor will limit the withdrawal to the amount reasonably necessary to satisfy the financial need, which may include any amounts necessary to pay Federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution. In addition, a withdrawal shall be allowed only to the extent that such emergency is or may not be relieved through: 1) reimbursement or compensation from insurance or otherwise; 2) liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or 3) cessation of the participant's deferrals under the Plan.

The determination of whether a request qualifies as an unforeseeable emergency will be based on all the facts and circumstances of the participant's specific situation. While it is a subjective decision, the Contractor's process incorporates three underlying principles: consistent application of the IRS rules to similar situations; decisions must be reasonable and not arbitrary; and when there is a close call, we err on the conservative side.

The Contractor takes this review process very seriously and understands the importance of consistently administering the IRS and Plan requirements. The Contractor recognizes that failure to do so, and thus treating the Plan like a savings account, can result in adverse tax consequences to the participant and to the Plan.

Withdrawal requests will be reviewed in a timely manner. For requests which are approved, the Contractor will process the withdrawal as of the date of the approval. A participant, who has had a withdrawal request denied because of insufficient documentation, can resubmit his or her request to the Contractor for re-review with all applicable documentation.

A participant whose request has been denied after submission of all relevant documentation has the opportunity to appeal the decision to the City.

#### **Appeals of Denied Requests**

The City is the final authority for review of any withdrawal requests which have been denied by the Contractor.

1. A participant desiring to appeal the Contractor's decision must submit the appeal to the City or its designee within 30 days of receipt of the denied request. The participant must document in a letter the reason he or she feels the request should be reevaluated and why the circumstances qualify as an unforeseeable emergency.
2. Appeals must include all documentation submitted with the original request to the Contractor; the Contractor's determination letter and any additional supporting documentation not previously submitted.
3. The City will review a participant's request within 90 business days of the date of receipt of an appeal request.
4. In reviewing the original decision, the City will review the specific facts and circumstances of the participant's situation, the Contractor's analysis and the applicable IRS and Plan requirements. The City's focus is on ensuring that the Contractor's decision was made in accordance with all of the IRS and Plan guidelines, as summarized above. In its appeal review, the intent of the City is not to be more lenient than the law requires as this would jeopardize the favorable tax treatment for the participant and the Plan.
5. The City or its designee shall provide written notification to the participant, with a copy to the Contractor, as to whether its decision is to affirm the Contractor's original decision to deny the request, or reverse that decision, and approve the participant's request.
6. The City's decision shall be binding on the participant, and he or she shall have no further ability to have the City's decision overturned.

## **Contractor Exhibit for Goods and Services for Deferred Compensation**

### **Appendix II to Schedule A**

#### **Domestic Relation Order Review and Approval Requirements**

The Contractor is responsible for the ongoing review and processing of Domestic Relations Orders (DRO) on behalf of the City. The Contractor's process is based on the following procedures for the review, qualification and processing of DROs which has been reviewed and approved by the City. The City acknowledges that the Contractor will perform this service in a ministerial capacity only and will not exercise any discretion in performing this service. The Contractor's process if followed as specified below shall constitute a valid City direction to process the DRO.

#### **Definition of a Domestic Relations Order**

A Domestic Relations Order ("DRO" or "Order") is a court order, judgment, or decree issued under a state's domestic relations law that recognizes the right of a spouse, former spouse, child, or other dependent of a participant in an employee benefit plan to receive all or part of the participant's benefit in the plan.

A Qualified Domestic Relations Order ("QDRO") is a DRO that has met the specific requirements mandated by federal law and the provisions of the Plan as determined by the Plan Administrator or its designee. A QDRO requires a qualified plan to pay all or any part of a participant's benefits to an alternate payee. An alternate payee is a spouse, former spouse, or dependent of the participant who is entitled to a portion of the participant's benefits.

#### **Requirements for QDRO**

In order for a participant's benefit to be assigned to an alternate payee (i.e., the spouse, former spouse, child or other dependent of the participant), a DRO that constitutes a QDRO within the meaning of the internal Revenue Code Section 414(p) must contain the required elements as outlined below as well as the Contractor's Good Order requirements. In addition, certain state rules may be imposed on domestic relations orders by statute.

1. The Order must be an original or a court-certified copy of the original, signed by the judge or clerk of the court. A fax or a photocopy cannot be accepted as they are not in compliance with the Contractor's Good Order standards.
2. The Order must create or recognize the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable under the plan with respect to a participant.
3. The Order must constitute a judgment, decree or order (including approval of a property settlement agreement) that relates to provisions of child support, alimony payments or property rights to a spouse, former spouse, child or other dependent of a participant, made pursuant to a state domestic relations law (including a community property law).
4. The Order must clearly and unambiguously name each Plan to which the order applies. The Order must reflect the full Plan name as stated within the Plan document.
5. The Order must provide the following participant information:
  - Name (full legal name)
  - Social Security Number<sup>1</sup>
  - Last known mailing address
  - Date of Birth

<sup>1</sup>If state or local law prevents the inclusion of such information in the Order; this data must be provided to the Contractor in a letter and/or addendum, signed by the attorney that drafts the Order.

6. The Order must provide the following alternate payee<sup>1</sup> information:
  - Name (full legal name)
  - Social Security Number<sup>2</sup>



- Last known mailing address
- Date of Birth

<sup>1</sup>If the alternate payee is a minor child, the name of the custodial parent is needed in the Order.

<sup>2</sup>If state or local law prevents the inclusion of such information in the Order; this data must be provided to the Contractor in a letter and/or addendum, signed by the attorney that drafts the Order.

7. The Order must include the exact dollar amount or percentage of the participant's benefits to be paid by the Plan to each alternate.
8. If the participant has an outstanding and/or defaulted loan, the Order must indicate if the outstanding and/or loan balance should be used in determining the amount due.
9. The Order must specify the exact date or the payment period to which the Order applies (i.e., the determination or valuation date). Participant accounts are valued each business day the New York Stock Exchange is open.
10. The Order must clearly indicate if the dollar amount or percentage should be adjusted for any earnings (gains/losses) from the determination/valuation date to the date the assets are segregated, and if these should be segregated on behalf of the alternate payee.
11. The Order should clearly specify whether the participant's vested or total account balance is to be used in determining the alternate payee's portion he or she is entitled to. Generally, the vested account balance is used for calculation purposes. Account values fluctuate with market conditions. The Contractor will verify whether there are sufficient funds available for segregation from the participant's account in the amount of the court ordered award to the alternate payee(s). The Contractor will not be liable for any damage (actual or alleged) resulting from such actions. If the dollar amount specified is above the current balance, the Order may be rejected. Only vested benefits may be paid. If the participant is partially vested, and the award is for more than the presently vested amount, payment of the non-vested portion may not be made to the alternate payee until the participant has become vested in that amount.
12. If the Plan has non-core investment options (e.g., life insurance, self-directed brokerage account, certificate of deposit, etc.) the Order must not require that amounts be redeemed from non-core investment options. To the extent that amounts invested in the core investment options are not sufficient to satisfy the Order, the Contractor will not approve the Order until the participant has transferred from the non-core investment option into the core investment options the amount necessary to satisfy the Order.
13. The Order must provide that the calculation of the amount of the participant's benefit to which the alternate payee is entitled to be readily calculable and according to records currently available to the Contractor. Pursuant to this requirement, the Contractor will not accept any Order that requires calculations prior to the time the Contractor began providing services to the Plan.
14. A plan may specify a date as of which QDROs are allowed under the Plan (such as Orders dated after a specified date, e.g., January 1, 2002). Court orders which pre-date the allowance of QDROs under the Plan may not be accepted. If no date is specified, the presumption is the Plan has always allowed QDROs.
15. The Order must not require the Plan to provide any type or form of benefit or any option, not otherwise provided under the Plan. Also, the Order cannot require payment to an alternate payee in the form of a qualified joint and survivor annuity in favor of the alternate payee and his or her spouse.
16. The Order must not require the Plan to provide increased benefits (determined on the basis of actuarial value).
17. The Order must not require any payment of benefits to an alternate payee that are required to be paid to another alternate payee under a previously issued QDRO.
18. The Order must not provide for tax treatment of the account other than as required under federal law and regulations. If the Order is for a minor, taxes will be withheld from the amount that is ultimately paid from the minor's account unless the Order specifies otherwise.

19. The Order may state the segregated amount shall be distributed to the alternate payee, or the custodial parent for the benefit of a minor, if applicable, as soon as administratively feasible after the Contractor's acceptance of the Order as a QDRO. The custodial parent for the minor will need to contact the Contractor at (800) 584-6001 to obtain a distribution form. The distribution can only be made payable to the custodial parent for the benefit of the minor. Taxes of 10% will be withheld from the minor's distribution and the Form 1099-R will be reported to the participant.

NOTE: If this pertains to a Qualified Domestic Relations Order received from a state agency related to child support payments, the Contractor will 1) set up the alternate payee account AND 2) obtain sponsor authorization if required to process the check made payment to the alternate payee or if minor, to the custodial parent for the benefit of the minor child and mail directly to the state agency per instructions in the Order. Additional distribution paperwork and/or action from the alternate payee is not required.

If the Order meets all of the approval requirements listed above, it will be given effect and the Contractor will send notification of approval to the involved parties and their counsel.

If the order fails to meet one or more of the approval requirements listed above, it will be rejected. A letter notifying the involved parties of the rejection will be mailed, together with an explanation.

#### **Payments to the Alternate Payee**

The alternate payee may receive an immediate or deferred payment in accordance with the distribution options provided under the Plan.

The alternate payee must complete and submit applicable disbursement paperwork for such distributions. Such paperwork is available by contacting a customer service associate.

## **Contractor Exhibit for Goods and Services for Deferred Compensation**

### **Schedule B: Administrative Requirements**

For purposes of this Schedule, all references to "participant" are intended to apply equally to all account holders under the Plan. This includes participants, beneficiaries and alternate payees.

1. Participant account statements and reports prepared for the City shall reflect accurate information with regard to contributions, allocations, earnings and withdrawals. The City agrees to review plan statements, IRS filings and other report or documents produced by the Contractor and to promptly identify in writing any errors or discrepancies. The Contractor agrees to correct any errors it is promptly notified of without charge. The Contractor will not have any additional liability for errors, unless due solely to its gross negligence.
2. Participant account statements include detail regarding all transactions since the prior statement date.
3. Under normal circumstances and unless otherwise authorized by the City; participant statements shall be provided within 15 days of the end of a statement period. Where a participant has more than one Plan account subject to this Agreement, the account statement will reflect all Plan account balances, unless you direct the Contractor otherwise.
4. Contractor shall furnish eligible plan communications to participants in accordance with the requirements contained in the Department of Labor (DOL) Default Electronic Disclosure Final Rule. Those communications that cannot be provided electronically will be delivered in paper format via U.S. Postal Service. Except as otherwise provided by this Agreement, the Contractor will use its records to generate the following reports:
  - Participant statements will be generated and posted online quarterly, accessible via the Participant Website.
  - Participant activity confirmations for recurring and non-recurring transactions will be posted to the Participant Website.
  - Participants with an email address on file will be mailed an Initial Paper Notice identifying the email address to be used for electronic delivery notification. Participants can change their email address or opt out of electronic delivery by updating their preferences on the Participant Website or speaking with a customer service representative.
  - Subsequently, these Participants will receive an electronic Notice of Internet Availability, indicating a plan communication is ready for viewing on Participant Website.
  - If a Participant does not have an email address on file, or opts out of receiving communications electronically, then communications will be mailed to the participant's address of record using the U.S. Postal Service.
5. Information on payout options, including a notice which satisfies the requirements of Internal Revenue Code Section 402(f), will be made available to participants through the internet or a toll free telephone number. Additionally, upon a terminated participant's request, a licensed representative will provide to the participant education and assistance on the available payout options.
6. Contributions including loan repayments (if applicable) determined to be in Good Order on any day that the New York Stock Exchange is open (a "Business Day"), and prior to the close of the exchange, shall be applied to the appropriate account on that day's close of business of the New York Stock Exchange. Contributions received at any other time will be applied to the appropriate account on the next succeeding Business Day. Written confirmation of receipt and deposit will be provided to the City or its designee by mail. The Contractor shall notify the City or its designee by telephone within two business days of discovery of transactions received not in Good Order. If after five (5) business days, transactions remain not in Good Order, the Contractor will require the City to provide written consent for the Contractor to continue holding the amount of the contributions related to the not in Good Order transactions in a non-interest bearing suspense account. If after thirty (30) business days, the transactions remain not in Good Order, the amount of the contributions received not in Good Order will be refunded to the City.

8. All correspondence and marketing materials written specifically for the City, the Plan participants and the City's employees shall be provided to the City or its designee for approval prior to the scheduled date of publication or distribution.
9. A calendar year-end report shall be delivered to the City, by March 31<sup>st</sup> of the following year. The custom Plan Review book includes Plan-specific data on plan assets, participant counts and average balances, contribution and distribution activities, service utilization along with fund performance and Scorecard information. Industry benchmarking is available to help you compare your Plan to other comparable plans in the industry.
10. The Contractor will maintain appropriate records and documents for not less than six years from document creation. Upon reasonable prior notice, each party will make available to the other such records and documents relating to this Agreement as may be required for a Plan audit.

**Contractor Exhibit for Goods and Services for Deferred Compensation**  
Schedule C: Performance Standards

	<b>Standard</b>	<b>\$ at Risk</b>
<b>Statements</b>		
<b>Participant statements:</b>	Mailed or posted online within 15 calendar days after quarter end.	\$2,000
<b>Sponsor Activity Report (SAR):</b>	Sponsor Activity Report will be posted online within 15 calendar days after quarter-end.	\$2,000
<b>Investment Performance</b>	Investment performance information will be posted online within 10 business days after quarter-end.	\$2,000
<b>Participant Services</b>		
<b>Number of on-site service days:</b>	*Contractor will provide the City with 125 on-site service days per year.	\$2,000
<b>Number of on-site/virtual/office individual meetings:</b>	750 per year	\$2,000
<b>Number of on-site/virtual group meetings:</b>	24 per year	\$2,000
<b>Financial planning services:</b>	<ol style="list-style-type: none"> <li>1. 12 Certified Financial Planner service days per year.</li> <li>2. Financial plans delivered to participants within ninety (90) days of participant's signature on financial planning client agreement form.</li> </ol>	\$2,000
<b>Plan participation rate increases:</b>	Annually, as mutually agreed.	\$2,000
<b>Deferral rate increases:</b>	Annually, as mutually agreed.	\$2,000
<b>Average speed of answer:</b>	Incoming calls to the customer contact center during normal business hours will be answered within 45 seconds.	\$2,000
<b>Administration</b>		
<b>Contribution posting:</b>	Applied to participant accounts effective as of the date received in good order before the close of the NYSE on any day the NYSE is open for trading (usually 1:00 p.m. PT).	\$2,000
<b>Withdrawals processed:</b>	Withdrawals are processed effective as of the date received in good order before the close of the NYSE.	\$2,000
<b>Emergency withdrawals processed:</b>	Emergency withdrawals are processed effective as of the date received in good order before the close of the NYSE.	\$2,000
<b>Rollovers/transfers out:</b>	Rollovers/transfers out are processed effective as of the date received in good order before the close of the NYSE.	\$2,000
<b>Loan processing (if applicable):</b>	Loans are processed effective as of the date received in good order before the close of the NYSE.	\$2,000
<b>Plan Sponsor Services</b>		

	<b>Standard</b>	<b>\$ at Risk</b>
<b>Report Delivery:</b>	Reports for the City are made available within five business days.	\$2,000
<b>Training:</b>	Contractor will provide education and training to the City upon request: : 1. Education and guidance on changes associated with IRS guidelines regarding administering unforeseeable emergency withdrawal requests; 2. Fiduciary training on relevant issues; 3. Legislative and regulatory updates on a periodic basis; 4. Education and training regarding the DOL new regulations regarding plan sponsor and participant fee disclosure;	\$2,000
<b>Overall Satisfaction</b>		
<b>Draft and distribute survey:</b>	Upon request, Contractor commits to providing an online satisfaction survey for City participants.	\$2,000
<b>Satisfaction survey score:</b>	Contractor commits to a minimum satisfaction score of 80% based on measureable participant responses, e.g. very satisfied, somewhat satisfied, satisfied.	\$2,000

The Contractor measures performance against standards for all its defined contribution plan sponsors. Special consideration shall be granted by the City should circumstances beyond Contractor's control pre-empt Contractor's ability to achieve stated objectives.

The Contractor obligation under these performance guarantees is conditioned as follows:

The City shall provide the Contractor with written notice of any determination that the Contractor has failed to perform or has insufficiently performed to any of the standards listed above, together with a detailed explanation of how City arrived at its determination. In addition, a calendar year-end report shall be delivered by the Contractor to the City by March 31<sup>st</sup> of the following year, detailing whether the Contractor has failed to perform or has insufficiently performed to any of the standards listed above. Special consideration shall be granted by the City to the Contractor should circumstances beyond the Contractor's control pre-empt the delivery of any of the stated objections.

The Consultant shall have the option to correct a problem within a 30 business day "remedy period", following any notice or annual report. If the Consultant remedies the service failure to the City's satisfaction within the prescribed remedy period, it shall have no obligation to pay the performance penalty amount as to that failure. If the Consultant again fails to meet that specific standard again during the life of the contract, no additional remedy period shall be provided for that specific standard. Notwithstanding the above listed penalties, the Consultant's total payment for all service failures shall not exceed \$20,000 annually.

**Contractor Exhibit for Goods and Services for Deferred Compensation**  
Schedule D: Plan Stability of Principal

The City has selected the Voya Fixed Plus III - 457/401 as the Stability of Principal Option. Voya's guaranteed committed rate shall be 3.00% from September 1, 2023 through August 31, 2024 and 2.75% from September 1, 2024 through August 31, 2028.

The Stability of Principal option is not a mutual fund. It is a fixed interest option offered through a group annuity contract issued by Voya Retirement Insurance and Annuity Company (VRIAC). Guarantees are based on the claims paying ability of VRIAC. VRIAC will notify the City of the calendar year minimum rate(s) through the December 31<sup>st</sup> Fund Performance report (the rates will be shown in the Additional Notes section following the performance tables). This report will be available in the first few days of January through the Sponsor Website in the Investment Information section. The City may also obtain the rate(s) by contacting the Consultant's Primary Contact identified in Appendix L in the latter part of December. The actual credited interest rate will be the greater of the declared interest rate, the calendar year floor rate in effect and the minimum guaranteed interest rate set forth in the group annuity contract. All other investment options are mutual funds or collective investment trusts offered under a trust agreement or custodial agreement. Equity wash will not apply to all investment options currently offered under the Plan.

**Stability of Principal Withdrawal Restrictions**

**Participant Withdrawal Option (choose one)**

- Option 1, Transfer and Withdrawal Limit
- Option 2, Equity Wash (waived)

**Plan Sponsor Withdrawal**

Upon the City's election to terminate this Agreement, the plan assets invested in the Stability of Principal option on the effective date of the termination will be subject to the provisions of Section 3.04 of the Group Annuity Contract, as modified in endorsement E-TIK-13

Contractor will track the yield to maturity of a blended benchmark based on the Bloomberg Intermediate U.S. Corporate Index (80% weighting) and the Bloomberg Long U.S. Corporate Index (20% weighting) on a monthly basis using month end values. At the end of each quarter, Contractor will compare the credited interest rate on the Plan to the Net Index value and provide confirmation to the City that the average over five years of the difference is less than or equal to an allowable spread of 125 basis points. Should the Contractor's stability of principal option (Voya Fixed Plus III - 457/401) credited interest rate for the plan fail to outperform the aforementioned blended index, the City would have the option to replace the Voya Fixed Plus III - 457/401 with a capital preservation investment option of its choice without increasing the recordkeeping fee charged by Contractor.

For additional information on the Stability of Principal investment option, including all withdrawal rules and restrictions, please refer to the Voya Retirement Choice II Information Booklet or to the group annuity contract.

**Contractor Exhibit for Goods and Services for Deferred Compensation**  
**Schedule E: Investment Provider Minimum Standards Disclosure Statement**

The following items summarize the minimum administrative requirements required in order for the Contractor to transact with an investment provider on the Plan's behalf:

1. Pricing Deadlines: The investment provider must furnish the Contractor with confirmed net asset value information as of the close of trading (generally 4:00 p.m., Eastern Time) on the New York Stock Exchange ("Close of Trading") on each business day that the New York Stock Exchange is open for business ("Business Day") or at such other time as the net asset value of the fund is calculated as disclosed in the relevant then current prospectus(es) in a format that includes (i) the fund's name and the change from the last calculated net asset value, (ii) dividend and capital gains information as it arises, and (iii) in the case of a fixed income fund, the daily accrual or the distribution rate factor. Such information shall be provided to the Contractor by 6:30 p.m. Eastern Time. "Net" means after all management, service and administrative expenses are deducted.
2. Pricing Error Reimbursements: The investment provider shall agree to hold the Plan harmless for any amounts erroneously credited to participant accounts due to (i) an incorrect calculation of the fund's daily net asset value ("NAV"), dividend rate, or capital gains distribution rate or (ii) incorrect or late reporting of the daily net asset value, dividend rate, or capital gains distribution rate of a fund, by reimbursing the Contractor, on the Plan's behalf. In addition, the fund shall be liable to the Contractor for systems and out of pocket costs incurred by the Contractor in making the Plan's or the participant's account whole, if such costs or expenses are a result of the fund's failure to provide timely or correct net asset values, dividend and capital gains or financial information and if such information is not corrected by 4:00 p.m. Eastern Time of the next Business Day after releasing such incorrect information provided the incorrect NAV as well as the correct NAV for each day that the error occurred is provided. If a mistake is caused in supplying such information, which results in a reconciliation with incorrect information, the amount required to make a Plan's or a participant's account whole shall be borne by the investment provider providing the incorrect information, regardless of when the error is corrected.
3. Sales Literature: The investment provider will provide to the Contractor at least one complete copy of all prospectuses, statements of additional information, annual and semiannual reports and proxy statements, other related documents, and all amendments or supplements to any of the above documents that relate to the fund promptly after the filing of such document with the SEC or other regulatory authorities. The investment provider agrees to provide to the Contractor, in electronic format, performance updates and portfolio updates for the fund within 10 business days after the end of each calendar quarter.
4. Advertising: Advertising and literature with respect to the fund prepared by the Contractor for use in marketing shares of the fund to the Plan shall be submitted to the investment provider for review and approval before such material is used with the Plan. The investment provider shall advise the Contractor in writing within three (3) Business Days of receipt of such materials of its approval or disapproval of such materials.
5. Expense Reimbursement: The investment provider shall make available for reimbursement certain out-of-pocket expenses the Contractor incurs in connection with providing shareholder services to the Plan. These expenses include actual postage paid by the Contractor in connection with mailing updated prospectuses, supplements and financial reports to participants, and all costs incurred by the Contractor associated with proxies for the fund, including proxy preparation, group authorization letters, programming for tabulation and necessary materials (including postage).
6. Excessive Trading: The investment provider shall use its best efforts and shall reasonably cooperate with the Contractor to generally prevent any market timing and frequent trading activity under the Plan. See the Contractor's "Excessive Trading" Policy, Schedule F.



## **Contractor Exhibit for Goods and Services for Deferred Compensation**

### **Schedule F: Voya Financial® “Excessive Trading” Policy**

The Voya Financial® family of insurance companies (“Voya®”), as providers of multi-fund variable insurance and retirement products, has adopted this Excessive Trading Policy to respond to the demands of the various fund families which make their funds available through our variable insurance and retirement products to restrict excessive fund trading activity and to ensure compliance with Section 22c-2 of the Investment Company Act of 1940, as amended. Voya’s current definition of Excessive Trading and our policy with respect to such trading activity is as follows.

1. Voya actively monitors fund transfer and reallocation activity within its variable insurance and retirement products to identify Excessive Trading.

**Voya currently defines Excessive Trading as:**

- a. More than one purchase and sale of the same fund (including money market funds) within a 60 calendar day period (hereinafter, a purchase and sale of the same fund is referred to as a “round-trip”). This means two or more round-trips involving the same fund within a 60 calendar day period would meet Voya’s definition of Excessive Trading; or
- b. Six round-trips within a 12 month period.

**The following transactions are excluded when determining whether trading activity is excessive:**

- a. Purchases or sales of shares related to non-fund transfers (for example, new purchase payments, withdrawals and loans);
  - b. Transfers associated with scheduled dollar cost averaging, scheduled rebalancing or scheduled asset allocation programs;
  - c. Purchases and sales of fund shares in the amount of \$5,000 or less;
  - d. Purchases and sales of funds that affirmatively permit short-term trading in their fund shares, and movement between such funds and a money market fund; and
  - e. Transactions initiated by a member of the Voya family of insurance companies.
2. If Voya determines that an individual has made a purchase of a fund within 60 days of a prior round-trip involving the same fund, Voya will send them a letter warning that another sale of that same fund within 60 days of the beginning of the prior round-trip will be deemed to be Excessive Trading and result in a six month suspension of their ability to initiate fund transfers or reallocations through the Internet, facsimile, Voice Response Unit (VRU), telephone calls to Customer Service, or other electronic trading medium that Voya may make available from time to time (“Electronic Trading Privileges”). Likewise, if Voya determines that an individual has made five round-trips within a 12 month period, Voya will send them a letter warning that another purchase and sale of that same fund within 12 months of the initial purchase in the first round-trip in the prior twelve month period will be deemed to be Excessive Trading and result in a six month suspension of their Electronic Trading Privileges. According to the needs of the various business units, a copy of the warning letters may also be sent, as applicable, to the person(s) or entity authorized to initiate fund transfers or reallocations, the agent/registered representative or investment adviser for that individual. A copy of the warning letters and details of the individual’s trading activity may also be sent to the fund whose shares were involved in the trading activity.
  3. If Voya determines that an individual has used one or more of its products to engage in Excessive Trading, Voya will send a second letter to the individual. This letter will state that the individual’s Electronic Trading Privileges have been suspended for a period of six months. Consequently, all fund transfers or reallocations, not just those which involve the fund whose shares were involved in the Excessive Trading activity, will then have to be initiated by providing written instructions to Voya via regular U.S. mail. During the six month suspension period, electronic “inquiry only” privileges will be permitted where and when possible. A copy of the letter restricting future transfer and reallocation activity to regular U.S. mail and details of the individual’s trading activity may also be sent to the fund whose shares were involved in the Excessive Trading activity.
  4. Following the six month suspension period during which no additional Excessive Trading is identified, Electronic Trading Privileges may again be restored. Voya will continue to monitor the fund transfer and reallocation activity, and any future Excessive Trading will result in an indefinite suspension of the Electronic Trading Privileges. Excessive Trading activity during the six month suspension period will also result in an indefinite suspension of the Electronic Trading Privileges.

5. Voya reserves the right to limit fund trading or reallocation privileges with respect to any individual, with or without prior notice, if Voya determines that the individual's trading activity is disruptive, regardless of whether the individual's trading activity falls within the definition of Excessive Trading set forth above. Also, Voya's failure to send or an individual's failure to receive any warning letter or other notice contemplated under this Policy will not prevent Voya from suspending that individual's Electronic Trading Privileges or taking any other action provided for in this Policy.
6. Each fund available through Voya's variable insurance and retirement products, either by prospectus or stated policy, has adopted or may adopt its own excessive/frequent trading policy. Voya reserves the right, without prior notice, to implement restrictions and/or block future purchases of a fund by an individual who the fund has identified as violating its excessive/frequent trading policy. All such restrictions and/or blocking of future fund purchases will be done in accordance with the directions Voya receives from the fund.

**Contractor Exhibit for Goods and Services for Deferred Compensation)**  
Schedule G: Additional Plan Services & Fees

**Miscellaneous Plan Service Charges**

1. Express mailing of termination, withdrawal and loan checks & related paperwork to participant (on exception basis only).  
\$50.00 per occurrence, to be assessed against the participant's account.
  - a. EFT and ACH Credit are free of charge.
2. Stop payment.  
\$50.00 per occurrence, to be assessed against the participant's account.
3. Other Charges. In addition to any other charges described herein, an additional charge will be incurred if the Contractor agrees to provide other special services at the City's request. The charge will be based on the Contractor's standard charge for such service or will be based on a formula for time spent to provide the service. The City will be notified at the time of a request if an additional charge is applicable.

## Contractor Exhibit for Goods and Services for Deferred Compensation

### Schedule H: General Compensation Provisions

1. Direct and Indirect Compensation:

This Schedule describes compensation received by the Contractor for services rendered to the Plan and Plan participants, including fees and revenue derived from both direct and indirect sources.

**Direct Compensation** includes compensation paid directly by City or the Plan to the Contractor for plan recordkeeping and administrative services including certain transaction fees that are charged directly to participant accounts.

**Indirect Compensation** includes compensation from sources other than direct fees that the Contractor may collect from third parties, including revenue derived from service arrangements with mutual funds, revenue sharing and other indirect compensation that may be generated in servicing the Plan.

2. Assumptions:

As provided in Section 1 of the Agreement, the Contractor has agreed to perform certain services. Based on the assumptions outlined in the Agreement, the Contractor agrees to supply the Services for the compensation specified in Section 3.01 of the Agreement, as supplemented by any additional compensation or transaction fees as specified within Schedule G.

3. Fund Specific Revenue:

Indirect compensation received by the Contractor represents revenue from investment companies based on the investment of assets held in the Plan pursuant to agreements between the applicable investment companies and the Contractor. They represent fees payable from such investment companies for shareholder services, sub-transfer agency services, or pursuant to a 12b-1 plan adopted by such investment companies.

In the case of investment options of VRIAC affiliates or former affiliates, Contractor compensation represents revenue assumptions made by the Contractor's defined contribution business for purposes of product pricing. Gross revenues from such investment options generally include payments for investment management and for certain administrative services. Pricing assumptions are derived from gross fund revenues, less the internally transferred costs of fund management and administration. The pricing assumptions for certain investment options of VRIAC affiliates or former affiliates reflect the approximate weighted average of the net fund revenues of each portfolio within a given VRIAC fund complex.

In the case of the fixed income fund, the Contractor does not derive revenue at a fixed rate. As is the case with similar insurance company general account investment options, over the long-term we expect to earn a spread between the investment return on the underlying general account assets and amounts credited to contracts that utilize the Fixed Account. This spread is intended to cover our investment related expenses, a portion of product administration expenses that would otherwise be covered by explicit charges, and the risks associated with the minimum monthly, annual (if applicable), and lifetime interest rate guarantees, including those associated with asset defaults, as well as to provide a profit margin for the Contractor.

4. Changes in Investment Options:

To the extent the Contractor's compensation is derived in whole or in part from revenue from the City's selection of certain investment products offered by or through the Contractor, the Contractor reserves the right to amend the Agreement, including this Schedule, in the event such revenue is reduced by a change in the investment products or options available under the Plan.

**Contractor Exhibit for Goods and Services for Deferred Compensation**  
Schedule I: Expense Account for Service Expenditures (“EASE Account”)

The EASE Account is a funding source that can be directed towards the payment of allowable plan administrative expenses or allocated to participant accounts. The annual amount allocated to the EASE Account is directly attributable to The Plan Administrative Fee as directed and will exclude any outstanding loan balances and/or assets in a Self Directed Brokerage Account, if applicable.

Please refer to your separate Expense Account for Service Expenditures Agreement for complete details regarding the administration of this optional account.

Changes to the amount allocated to the EASE Account may be made by (i) the City’s submission of such change to the Contractor on such form as Contractor may prescribe from time to time, or (ii) the Contractor by written notice to the City.

## **Contractor Exhibit for Goods and Services for Deferred Compensation**

### **Schedule J: VRIAC's Policy for Correction of Inadvertent Processing Errors**

As your Plan's administrative service provider, Voya Retirement Insurance and Annuity Company ("VRIAC") has agreed to process transaction orders received in good order prior to market close from the plan and plan participants accurately and on a timely basis. We seek to avoid transaction processing errors to the greatest extent possible, but inadvertent errors do occur from time to time. Inadvertent processing errors are exclusively defined as incorrect or untimely processing by VRIAC employees of transactions that are received in good order. Inadvertent processing errors do not include errors made by plan sponsors or third parties.

VRIAC will correct any identified inadvertent processing error caused by VRIAC (a "VRIAC inadvertent processing error") as soon as practicable, typically no later than five (5) business days after VRIAC has identified sufficient information to correct the error. VRIAC represents that in no event will VRIAC exercise discretionary authority or control over the correction of inadvertent processing errors in order to maximize gain or correct such error for VRIAC's own benefit or interest.

Once a VRIAC inadvertent processing error has been identified, we promptly take corrective action to put the plan and its participants in a position financially equivalent to the position they would have been in if the processing error had not occurred. This means that VRIAC will make the plan whole for any loss to a plan resulting from correcting a VRIAC processing error. If any gain to a plan results in connection with a corrected transaction, VRIAC will keep that gain. The following examples illustrate the effect of the policy:

- When a plan participant directs that a certain dollar amount be contributed to his or her plan account, VRIAC credits the number of investment units that dollar amount will purchase to the participant's account on Day 1, the day the contribution is processed.

The number of units is based on the unit's dollar value on Day 1, as set by the investment fund and communicated to VRIAC after market close. If an inadvertent error occurs, and VRIAC does not process the contribution until Day 2, VRIAC will determine the number of units that should have been credited on Day 1, using Day 1's unit price. If, on Day 2, the unit price has gone up, the dollar amount of the contribution will not be enough to cover the number of units the participant should have received. VRIAC will make up the difference such that the participant receives the number of units he or she would have received on Day 1 and VRIAC will absorb the loss. The participant is not charged for any additional cost.

However, if, on Day 2, the unit price has gone down, the amount of the contribution would purchase more units on Day 2 than it would have purchased on Day 1. In that circumstance, the participant will receive the number of units he or she would have received on Day 1 had the transaction been processed and VRIAC will keep the excess as part of its overall fee for services under the contract.

Regardless of whether there is a gain or a loss, the participant receives the benefit of what he or she requested.

- When a plan participant makes a withdrawal request of a certain dollar amount from his or her account, VRIAC liquidates or sells the number of investment units needed in order to make the distribution. Thus, on Day 1, VRIAC typically would sell or liquidate investment units in the participant's investment fund at Day 1's price to make the distribution. If, due to a VRIAC inadvertent processing Error, VRIAC processes the instructions a day late, VRIAC will make sure that the participant receives the dollar amount he/she requested. VRIAC will sell or liquidate the same number of units that would have been sold on Day 1 had the transaction been accomplished on Day 1. If the unit price has declined, liquidated units will have a lower value on Day 2 than they had on Day 1, which means that VRIAC must make up the difference so that the participant receives the requested amount in full. In doing so, VRIAC will incur a loss, which it absorbs. On the other hand, if the market has gone up and the units have increased in value, VRIAC will sell the same number of units as it would have sold on Day 1, but the sales amount will be higher than the requested withdrawal. VRIAC will keep the excess as part of its overall fee. In either circumstance, the participant receives the benefit of what he or she requested and bears no additional cost.

VRIAC tracks the net financial experience of VRIAC's Correction Account and the effect of the corrections for each affected plan on an annual basis and will make that information available in accordance with ERISA Section 408(b)(2). Any gains kept

by VRIAC constitutes additional compensation for the services provided by VRIAC under its contract and VRIAC will report it in accordance with ERISA Section 408(b)(2).

By executing an administrative services agreement with VRIAC, you are authorizing VRIAC's application of the error correction policy as described above to your Plan in connection with the plan administrative services that VRIAC will provide. You have the right to terminate VRIAC's services in accordance with the terms of the administrative services agreement.

**Contractor Exhibit for Goods and Services for Deferred Compensation**  
Schedule K: Contractor's Primary Contact

The Contractor designates the following individual(s) to serve as its primary point of contact to the City with respect to this Agreement.

**Jonathan Zujiko**  
Plan Manager  
Voya Retirement Insurance and Annuity Company  
One Orange Way  
Windsor, CT 06095

Shelley Fredrick  
Vice President, Strategic Relationship Manager  
Voya Retirement Insurance and Annuity Company  
One Orange Way  
Windsor, CT 06095



## Contractor Exhibit for Goods and Services for Deferred Compensation

### Schedule L: Servicing Representatives

The Contractor and/or the City designate the following individual(s) to serve as its representatives with respect to this Agreement. Representatives are designated as one of the following:

**Agent, including Career Agent** – Insurance licensed and Company appointed with Voya Retirement Insurance and Annuity Company, registered representative of Voya Financial Advisors, Inc. and receives salary and/or commission based compensation.

**Broker** – (Non Voya FA Only) – Insurance licensed and Company appointed with Voya Retirement Insurance and Annuity Company, but affiliated with a broker-dealer other than Voya Financial Advisors, Inc. and receives commission based compensation.

**Salaried Enroller** – Voya Retirement Insurance and Annuity Company employees who will not receive commission based salary and are registered representatives of Voya Financial Advisors, Inc.

<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Broker <input type="checkbox"/> Salaried Enroller Representative Name <u>Melinda Lewis</u> Last 4 Digits SSN <u>7316</u> Broker Dealer Affiliation <u>Voya Financial Advisors, Inc.</u> Office Code <u>045</u> Rep # <u>108</u> % Participation <u>100%</u>
<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Broker <input type="checkbox"/> Salaried Enroller Representative Name <u>Wendy Stefani</u> Last 4 Digits SSN <u>6289</u> Broker Dealer Affiliation <u>Voya Financial Advisors, Inc.</u> Office Code <u>045</u> Rep # <u>128</u> % Participation <u>100%</u>

**Contractor Exhibit for Goods and Services for Deferred Compensation**  
Schedule M: Legacy Life Insurance Policy Support

1. The Contractor agrees to accept life insurance premiums as part of the Plan's routine payroll contributions and to forward any life insurance premiums received to the designated life insurance carrier(s) on behalf of the City and its participants.
2. The Contractor agrees to periodically provide participant address data to the designated life insurance carrier(s) in a mutually agreed upon electronic format, for use by the carrier in communicating and interacting with participants investing amounts in the life insurance option under the Plan.
3. The City agrees to direct the designated life insurance carrier(s) to:
  - (a) Make no life insurance policy changes during the Plan's implementation/transition blackout period;
  - (b) Provide the Contractor with participant life insurance premium information in the electronic format and frequency prescribed by the Contractor;
  - (c) Actively service life insurance policy holders. Scope of services is to include, but not be limited to:
    - i) Ongoing provision of a toll free telephone number, through which participants may obtain updated account and policy information, and engage in policy transactions authorized by the City;
    - ii) Ongoing maintenance and distribution of any forms necessary to administer life policy transactions authorized by the City.
    - iii) Processing policy cancellations and remitting any resulting cash surrender value to the Contractor for deposit to the participant's Plan account pursuant to then current investment allocation instructions;
    - iv) Producing and mailing grace and lapse letters to affected participants; and
    - v) Producing and mailing annual statements to applicable participants.
4. The Contractor will not integrate life insurance values provided by the life insurance carrier(s) into its record keeping system. Life insurance policy information will not appear on the participants' quarterly statements, and it will not be available through the Contractor's electronic internet site or toll free participant information service line.
5. This life insurance option is grandfathered and no new participants will be accepted.

**Contractor Exhibit for Goods and Services for Deferred Compensation**  
**Schedule N: Voya Data Security Addendum**

**1. Definitions.**

“**Affected Persons**” means Client’s and its Affiliate’s former and current employees whose Personal Information (“PI”) may have been disclosed or compromised as a result of an Information Security Incident.

“**Affiliates**” means any entities that, now or in the future, control, are controlled by, or are under common control with Client. An entity will be deemed to control another entity if it has the power to direct or cause the direction of the management or policies of such entity, whether through ownership, voting securities, contract, or otherwise.

“**Confidential Information**” means (a) non-public information concerning the Disclosing Party, its affiliates, and their respective businesses, products, processes, and services, including technical, marketing, agent, customer, financial, personnel, and planning information; (b) PI; (c) trade secrets; and (d) any other information that is marked confidential or which, under the circumstances surrounding disclosure, the Non-Disclosing Party should know is treated as confidential by the Disclosing Party. Except with respect to PI, which will be treated as Confidential Information under all circumstances, Confidential Information will not include (A) information lawfully obtained or developed by the Non-Disclosing Party independently of the Disclosing Party’s Confidential Information and without breach of any obligation of confidentiality; or (B) information that enters the public domain without breach of any obligation of confidentiality. All Confidential Information will remain the property of the Disclosing Party.

“**Information Security Incident**” means any breach of security or cyber security incident impacting Voya that has a reasonable likelihood of (a) resulting in the loss or unauthorized access, use or disclosure of Client PI; (b) materially affecting the normal operation of Voya; or (c) preventing Voya from complying with all of the privacy and security requirements set forth in this Agreement.

“**Law**” means all U.S. and non-U.S. laws, ordinances, rules, regulations, declarations, decrees, directives, legislative enactments and governmental authority orders and subpoenas.

“**Personal Information (PI)**” means any information or data that (a) identifies an individual, including by name, signature, address, telephone number or other unique identifier; (b) can be used to identify or authenticate an individual, including passwords, PINs, biometric data, unique identification numbers (e.g., Social Security numbers), answers to security questions or other personal identifiers; (c) is “non-public personal information” as defined in the Gramm-Leach-Bliley Act 15 U.S.C. § 6809(4) or “protected health information” as defined in 45 C.F.R. § 160.103; (d) is an account number or credit card number or debit card number, in combination with any required security code, access code, or password, that would permit access to an individual’s financial account; or (e) is “Personal Information” as defined in The California Consumer Privacy Act of 2018 (Cal. Civ. Code Division 3, Part 4, Title 1.81.5).

“**Services**” means the services that Voya provides to Client pursuant to this Agreement.

“**Voya Personnel**” means Voya’s employees and subcontractors engaged in the performance of Services.

**2. Data Security.**

2.1. Security Standards and Controls.

- (a) Voya will establish and maintain:
  - (i) administrative, technical, and physical safeguards against the destruction, loss, or alteration of confidential Information; and
  - (ii) Appropriate security measures to protect Confidential Information, which measures meet or exceed the requirements of all applicable Laws relating to personal information security.
- (b) In addition, Voya will implement and maintain the following information security controls:
  - (i) Privileged access rights will be restricted and controlled;

- (ii) An inventory of assets relevant to the lifecycle of information will be maintained;
- (iii) Network security controls will include, at a minimum, firewall and intrusion prevention services;
- (iv) Detection, prevention and recovery controls to protect against malware will be implemented;
- (v) Information about technical vulnerabilities of Voya's information systems will be obtained and evaluated in a timely fashion and appropriate measures taken to address the risk;
- (vi) Detailed event logs recording user activities, exceptions, faults, access attempts, operating system logs, and information security events will be produced, retained and regularly reviewed as needed;and
- (vii) Development, testing and operational environments will be separated to reduce the risks of unauthorized access or changes to the operational environment.

2.2. Information Security Policies. Voya will implement and maintain written policies, standards or procedures that address the following areas:

- (a) Information security;
- (b) Data governance and classification;
- (c) Access controls and identity management;
- (d) Asset management;
- (e) Business continuity and disaster recovery planning and resources;
- (f) Capacity and performance planning;
- (g) Systems operations and availability concerns;
- (h) Systems and network security;
- (i) Systems and application development, quality assurance and change management;
- (j) Physical security and environmental controls;
- (k) Customer data privacy;
- (l) Patch management;
- (m) Maintenance, monitoring and analysis of security audit logs;
- (n) Vendor and third party service provider management;and
- (o) Incident response, including clearly defined roles and decision making authority and a logging and monitoring framework to allow the isolation of an incident.

2.3. Subcontractors. Voya will implement and maintain policies and procedures to ensure the security of Confidential Information and related systems that are accessible to, or held by, third party service providers. Voya will not allow any third parties to access Voya's systems or store or process sensitive data, unless such third parties have entered into written contracts with Voya that require, at a minimum, the following:

- (a) The use of encryption to protect sensitive PI in transit, and the use of encryption or other mitigating controls to protect sensitive PI at rest;
- (b) Prompt notice to be provided in the event of a cyber security incident;
- (c) The ability of Voya or its agents to perform information security assessments; and
- (d) Representations and warranties concerning adequate information security.

2.4. Encryption Standards, Multifactor Authentication and Protection of Confidential Information.

- (a) Voya will implement and maintain cryptographic controls for the protection of Confidential Information, including the following:
  - (i) Use of an encryption standard equal to or better than the industry standards included in applicable National Institute for Standards and Technology Special Publications (or such higher encryption standard required by applicable Law) to protect Confidential Information at rest and in transit over un-trusted networks;
  - (ii) Use of cryptographic techniques to provide evidence of the occurrence or nonoccurrence of an event or action;
  - (iii) Use of cryptographic techniques to authenticate users and other system entities requesting access to or transacting with system users, entities and resources;and
  - (iv) Development and implementation of policies on the use, protection and lifetime of cryptographic keys through their entire lifecycle.

- (b) In addition to the controls described in clause (a) above, Voyawill:
    - (i) Implement multi-factor authentication for all remote access to Voya’s networks;
    - (ii) Ensure that no Client PI is (A) placed on unencrypted removable media, mobile devices, computing equipment or laptops or (B) stored outside the United States;and
    - (iii) Ensure that media containing Confidential Information is protected against unauthorized access, misuse or corruption duringtransport.
  
- 2.5. Information Security Roles and Responsibilities. Voya will employ personnel adequate to manage Voya’s information security risks and perform the core cyber security functions of identify, protect, detect, respond and recover. Voya will designate a qualified employee to serve as its Chief Information Security Officer (“CISO”) responsible for overseeing and implementing its information security program and enforcing its information security policies. Voya will define roles and responsibilities with respect to information security, including by identifying responsibilities for the protection of individual assets, for carrying out specific information security processes, and for information security risk management activities, including acceptance of residual risks. These responsibilities should be supplemented, where appropriate, with more detailed guidance for specific sites and information processing facilities.
  
- 2.6. Segregation of Duties. Voya must segregate duties and areas of responsibility in order to reduce opportunities for unauthorized modification or misuse of Voya’s assets and ensure that no single person can access, modify or use assets without authorization or detection. Controls should be designed to separate the initiation of an event from its authorization. If segregation is not reasonably possible, other controls such as monitoring of activities, audit trails and management supervision should be utilized. Development, testing, and operational environments should be separated to reduce the risks of unauthorized access or changes to the operational environment.
  
- 2.7. Information Security Awareness, Education and Training. Voya will provide regular information security education and training to all Voya Personnel, as relevant for their job function. In addition, Voya will provide mandatory training to information security personnel and require key information security personnel to stay abreast of changing cyber security threats and countermeasures.
  
- 2.8. Vulnerability Assessments. Voya will conduct monthly vulnerability assessments that meet the following criteria:
  - (a) All production servers and network devices must be scanned at least monthly;
  - (b) All vulnerabilities must be rated;
  - (c) All vulnerability remediation must be prioritized based on risk;
  - (d) All tools used for scanning must have signatures updated at least monthly with the latest vulnerability data; and,
  - (e) Voya will implement and maintain a formal process for tracking and resolving issues in a timely fashion.
  
- 2.9. Penetration Testing. If any Services to be provided by Voya include the hosting or support of one or more externally facing applications that can be used to access systems that store or process Client data, the terms of this Section will apply.
  - (a) At least once every 12 months during the Term and prior to any major changes being moved into production, Voya will conduct a Valid Penetration Test (as defined below) on each internet facing application described above. As used herein, a “Valid Penetration Test” means a series of tests performed by a team of certified professionals, which tests mimic real-world attack scenarios on the information system under test and include, without limitation, the following:
    - (i) Information-gathering steps and scanning for vulnerabilities;
    - (ii) Manual testing of the system for logical flaws, configuration flaws, or programming flaws that impact the system’s ability to ensure the confidentiality, integrity, or availability of Client’s informationassets;
    - (iii) System-compromise steps;
    - (iv) Escalation-of-privilege steps;and
    - (v) Assignment of a rating for each issue based on the level of potential risk exposure to

- (b) Client's brand or information assets.  
Upon Client's request, Voya will provide to Client an executive summary of any material issues or vulnerabilities identified by the most recent Valid Penetration Test along with the scope of systems tested. The report may be redacted to ensure confidentiality.

2.10 Physical and Environmental Security. Voya will ensure that all sites are physically secure, including the following:

- (a) Sound perimeters with no gaps where a break-in could easily occur;
- (b) Exterior roof, walls and flooring of solid construction and all external doors suitable protected against unauthorized access with control mechanisms such as locks, bars, alarms, etc.;
- (c) All doors and windows to operational areas locked when unattended;
- (d) Equipment protected from power failures and other disruptions caused by failures in supporting utilities;
- (e) Closed-circuit television cameras at site entry/ exit points; badge readings at all site entry points, or other means to prevent unauthorized access; and
- (f) Visitor sign-in/ mandatory escort at site; and
- (g) With respect to remote work environments, if the foregoing controls are not present, then Voya will use commercially reasonable efforts to mitigate any increased risk associated with such remote work environments, by, for example, limiting the types of access and functional roles eligible for a remote work environment, restricting access to a virtual private network (vpn) or virtual desktop infrastructure (vdi), providing formal guidance and standards for workspace security, and enhancing data protection controls such as data masking, logging and monitoring.

2.11 Information Security Incident Notification.

- (a) In the event of any Information Security Incident, Voya will, at its sole expense promptly (and in any event within 72 hours after Voya confirms an Information Security Incident) report such Information Security Incident to Client by sending an email to Client Contact Information, summarizing in reasonable detail the effect on Client, if known, and designating a single point of contact at Voya who will be:
  - (i) Available to Client for information and assistance related to the Information Security Incident; investigate such Information Security Incident, perform a root cause analysis, develop a corrective action plan and take all necessary corrective actions;
  - (ii) Mitigate, as expeditiously as possible, any harmful effect of such Information Security Incident and cooperate with Client in any reasonable and lawful efforts to prevent, mitigate, rectify and remediate the effects of the Information Security Incident;
  - (iii) Provide a written report to Client containing all information necessary for Client to determine compliance with all applicable laws, including the extent to which notification to affected persons or to government or regulatory authorities is required; and
  - (iv) Cooperate with Client in providing any filings, communications, notices, press releases or reports related to such Information Security Incident.
- (b) In addition to the other indemnification obligations of Voya set forth in this Agreement, Voya will indemnify, defend and hold harmless Client from and against any and all claims, suits, causes of action, liability, loss, costs and damages, including reasonable attorneys' fees, arising out of or relating to any Information Security Incident, which may include, without limitation:
  - (i) Expenses incurred to provide notice to Affected Persons and to law-enforcement agencies, regulatory bodies or other third parties as required to comply with law;
  - (ii) Expenses related to any reasonably anticipated and commercially recognized consumer data breach mitigation efforts, including, but not limited to, costs associated with the offering of credit monitoring or a similar identity theft protection or mitigation product for a period of at least twelve (12) months or such longer time as is required by applicable laws or any other similar protective measures designed to mitigate any damages to the Affected Persons; and
  - (iv) Fines or penalties that Client pays to any governmental or regulatory authority under legal or regulatory order as a result of the Information Security Incident.

2.12. Risk Assessments. Upon Client's request no more than once per year, Voya will complete an industry standard information security questionnaire and provide relevant Service Organization Control ("SOC") audit reports, when available. Voya's standard security requirements are set forth in Exhibit A. Voya

represents and warrants that, as of the Effective Date, the statements in Exhibit A are true and correct in all material respects.

### **3. Privacy and PII**

- 3.1. With respect to any PI, Voya will:
- (a) Comply with the Voya Privacy Notice at [www.voya.com/privacy-notice](http://www.voya.com/privacy-notice);
  - (b) Retain, use, process and disclose all PI accessed, obtained or produced by Voya only to perform its obligations under this Agreement and as specifically permitted by this Agreement, or as otherwise instructed by Client, and not for any other purpose;
  - (c) Refrain from selling such PI or using such PI for any other purpose, including for its own commercial benefit;
  - (d) Treat all PI as Confidential Information;
  - (e) Comply with the provisions of this Agreement to return, store or destroy the PI; and
  - (f) Comply with all applicable Laws with respect to processing of PI.

Voya hereby certifies to Client that it understands the restrictions and obligations set forth above and will ensure that Voya and all Voya Personnel comply with the same.

- 3.2 As needed to comply with applicable Laws concerning the processing of PI or personal information security, or to the extent required by any changes in such Laws or the enactment of new Laws, the Parties agree to work cooperatively and in good faith to amend this Agreement in a mutually agreeable and timely manner, or to enter into further mutually agreeable agreements in an effort to comply with any such Laws applicable to the Parties. If the Parties cannot so agree, or if Voya cannot comply with the new or additional requirements, Client may terminate this Agreement upon written notice to Voya.

### **4. Confidential Information.**

- 4.1. Confidential Information. Either Party ("Disclosing Party") may disclose Confidential Information to the other Party ("Non-Disclosing Party") in connection with this Agreement.
- 4.2. Use and Disclosure of Confidential Information. The Non-Disclosing Party agrees that it will disclose the Disclosing Party's Confidential Information only to its employees, agents, consultants, and contractors who have a need to know and are bound by obligations of confidentiality no less restrictive than those contained in this Agreement. In addition, Voya agrees that it will use the Disclosing Party's Confidential Information only for the purposes of performing its obligations under this Agreement. The Non-Disclosing Party will use all reasonable care in handling and securing the Disclosing Party's Confidential Information and will employ all security measures used for its own proprietary information of similar nature. These confidentiality obligations will not restrict any disclosure of Confidential Information required by Law or by order of a court, regulatory authority or governmental agency; provided, that the Non-Disclosing Party will limit any such disclosure to the information actually required to be disclosed. Notwithstanding anything to the contrary, Client may fully comply with requests for information from regulators of Client and the Client Affiliates.
- 4.3. Treatment of Confidential Information Following Termination. Promptly following the termination or expiration of this Agreement, or earlier if requested by the Disclosing Party, the Non-Disclosing Party will return to the Disclosing Party any and all physical and electronic materials in the Non-Disclosing Party's possession or control containing the Disclosing Party's Confidential Information. The materials must be delivered via a secure method and upon such media as may be reasonably required by the Disclosing Party.

Alternatively, with the Disclosing Party's prior written consent, the Non-Disclosing Party may permanently destroy or delete the Disclosing Party's Confidential Information and, if requested, will promptly certify the destruction or deletion in writing to the Disclosing Party. Notwithstanding the foregoing, if the Non-Disclosing Party, due to requirements of applicable Law, must retain any of the Disclosing Party's Confidential Information, or is unable to permanently destroy or delete the Disclosing Party's Confidential Information as permitted above within 60 days after termination of this Agreement, the Non-Disclosing Party will so notify the Disclosing Party in writing, and the Parties will confirm any extended period needed for permanent destruction or deletion of the Disclosing Party's Confidential Information. All Confidential Information in the Non-Disclosing Party's possession or control will continue to be subject to the confidentiality provisions of this Agreement. The

methods used to destroy and delete the Confidential Information must ensure that no Confidential Information remains readable and cannot be reconstructed so to be readable. Destruction and deletion must also comply with the following specific requirements:

MEDIUM	DESTRUCTION METHOD
Hard copy	Shredding, pulverizing, burning, or other permanent destruction method
Electronic tangible media, such as disks and tapes	Destruction or erasure of the media
Hard drive or similar storage device	Storage frame metadata removal to hide the organizational structure that combines disks into usable volumes and physical destruction of the media with a Certificate of Destruction (COD)

- 4.4 **Period of Confidentiality.** The restrictions on use, disclosure, and reproduction of Confidential Information set forth in this Section will, with respect to PI and Confidential Information that constitutes a “trade secret” (as that term is defined under applicable Law), be perpetual, and will, with respect to other Confidential Information, remain in full force and effect during the term of this Agreement and for three years following the termination or expiration of this Agreement.
- 4.5 **Injunctive Relief.** The Parties agree that the breach, or threatened breach, of any of the confidentiality provisions of this Agreement may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, the Disclosing Party will be entitled to injunctive relief to prevent the Non-Disclosing Party from commencing or continuing any action constituting such breach, without having to post a bond or other security and without having to prove the inadequacy of other available remedies. Nothing in this Section will limit any other remedy available to either Party.
5. **Cyber Liability Insurance.** During the Term, Voya will, at its own cost and expense, obtain and maintain in full force and effect, with financially sound and reputable insurers, cyber liability insurance to cover Voya’s obligations under this Addendum. Upon execution of the Agreement, Voya will provide Client with a certificate of insurance evidencing the following coverage and amount with such insurer:

**Risk Covered: Network Security (a.k.a. Cyber/IT) Limits:  
\$50,000,000**

6. **Disaster Recovery and Business Continuity Plan.** Voya maintains, and will continue to maintain throughout the Term, (a) a written disaster recovery plan (“Disaster Recovery Plan”), which Disaster Recovery Plan is designed to maintain Client’s access to services and prevent the unintended loss or destruction of Client data; and (b) a written business continuity plan (“BCP”) that permits Voya to recover from a disaster and continue providing services to customers, including Client, within the recovery time objectives set forth in the BCP. Upon Client’s reasonable request, Voya will provide Client with evidence of disaster recovery test date and result outcome.

**Exhibit A**



## Security Requirements

FC: Foundation Controls	
FC-1: Information Asset Management	
FC-1.1	Voya implements and maintains an inventory list and assigns ownership for all computing assets including, but not limited to, hardware and software used in the accessing, storage, processing, or transmission of Client PI.
FC-1.2	Voya reviews and updates the inventory list of assets for correctness and completeness at least once every 12 months and updates the inventory list as changes are made to the computing assets.
FC-2: Data Privacy and Confidentiality	
FC-2.1	Voya will maintain an Information and Risk Management policy that is reviewed and approved by management at least annually.
FC-2.2	Voya protects the privacy and confidentiality of all Client PI received, disclosed, created, or otherwise in Voya's possession by complying with the following requirements:
FC-2.2A	Such information is encrypted at rest on mobile devices (including mobile storage devices), portable computers, and in transit over un-trusted networks with an encryption standard equal to or better than Advanced Encryption Standard (AES) 256 bit encryption or such higher encryption standard required by applicable law.
FC-2.2B	All hardcopy documents and removable media are physically protected from unauthorized disclosure by locking them in a lockable cabinet or safe when not in use and ensuring that appropriate shipping methods (tamper-proof packaging sent by special courier with signatures) are employed whenever the need to physically transport such documents and removable media arises.
FC-2.2C	All media is labeled and securely stored in accordance with Voya policies.
FC-2.2D	All electronic media is securely sanitized or destroyed when no longer required in accordance with industry standards.
FC-3: Configuration Management	
FC-3.1	Voya implements and maintains accurate and complete configuration details (e.g., Infrastructure Build Standards) for all computing assets used in accessing, storing, processing, or transmitting Client PI.
FC-3.2	Voya reviews configuration details of the computing assets at least once every 12 months to validate that no unauthorized changes have been made to the assets.
FC-3.3	Voya updates the configuration details of all computing assets used to access, process, store, or transmit Client PI as configuration changes take place.
FC-4: Operating Procedures and Responsibilities	
FC-4.1	<p>Voya implements and maintains operational procedures for information processing facilities and designates specific roles or personnel responsible for managing and maintaining the quality and security of such facilities, including, but not limited to, formal handover of activity, status updates, operational problems, escalation procedures and reports on current responsibilities.</p> <p>Voya IT policies and standards document the policies and procedures for job scheduling processes and tools.</p>
FC-4.2	Voya updates the operational procedures as changes take place and performs a comprehensive review and update of the procedures at least once every 2 years.
FC-5: Security Awareness and Training	

FC-5.1	Voya performs pre-employment background checks, including criminal history for 7 years, credit score and history (if applicable), credentials verification (if applicable), and educational background.
FC-5.2	Voya implements and maintains a documented security awareness program for all Voya Personnel which covers access to Client PI.
FC-5.3	Voya's security awareness program includes security requirements, acceptable use of computing assets, legal responsibilities, and business controls, as well as training in the correct use of information processing facilities and physical security controls.
FC-5.4	Voya ensures that all Voya Personnel complete security awareness training prior to being provided access to Client PI and at least annually thereafter. Voya provides mandatory annual training programs that include security awareness training to all Personnel.
<b>UA: User Access Controls</b>	
<b>UA-1: User Access Controls</b>	
UA-1.1	Voya implements and maintains identity management system(s) and authentication process(es) for all systems that access, process, store, or transmit Client PI.
UA-1.2	Voya ensures that the following user access controls are in place:
UA-1.2A	The "Least Privilege" concept is implemented ensuring no user has more privileges than they require in performing their assigned duties.
UA-1.2B	Users requiring elevated privileges as a normal part of their job responsibilities have a regular, non-privileged account to perform regular business functions.
UA-1.2C	All users have an individual account which cannot be shared
UA-1.2D	Account Names/IDs are constructed not to reveal the privilege level of the account or position of the account holder.
UA-1.2E	System- or application-level service accounts are owned by a member of management or an IT system administration delegate and only have the privileges necessary to function as required by the application, system, or database for which the account has been created.
UA-1.2F	Automated processes disable access upon 24 hours of termination and initiate manager review on employee position changes, in accordance with Voya policies.
<b>UA-2: Access Control Management</b>	
UA-2.1	Voya maintains a comprehensive physical security program. Access to Voya facilities is restricted and logs are maintained for all access. Physical security and environmental controls are present in Voya buildings.
UA-2.2	Voya ensures that access to systems that access, process, store, or transmit Client PI is limited to only those personnel who have been specifically authorized to have access in accordance with the users' assigned job responsibilities.
UA-2.3	Voya ensures that accounts for systems that access, process, store, or transmit Client PI are controlled in the following manner:
UA-2.3A	Users must provide a unique ID and Password for access to systems. Access to applications/systems is limited to a need-to-know basis, and is enforced through role based access controls.
UA-2.3B	Accounts are protected on computing assets by screen-savers that are configured with an inactivity time-out of not more than 15 minutes.
UA-2.3C	Accounts are locked after no more than 5 consecutive failed logon attempts, depending upon the system and platform.
UA-2.3D	Accounts remain locked until unlocked by an Administrator or through an approved and secure end-user self-service process.

UA-2.3E	Accounts are reviewed on a periodic and regular basis to ensure that the account is still required, access is appropriate, and the account is assigned to the appropriate user.
UA2.4	Voya ensures that wireless mobile devices are secured against threats coming from these wireless networks and wireless connections are required to be encrypted.
<b>UA-3:</b>	<b>User Access Management</b>
UA-3.1	Voya ensures that passwords for all accounts on systems that access, process, store, or transmit Client PI are configured and managed in accordance with industry standards:
<b>UA-4:</b>	<b>Information Access Restriction</b>
UA-4.1	Voya implements information access restrictions on all systems used to access, process, store, or transmit Client Information.
UA-4.2	Voya ensures the following Information Access Restrictions are in place:
UA-4.2A	Access to underlying operating systems and application features that the user does not require access to in the performance of their assigned responsibilities are strictly controlled.
UA-4.2B	Access to source code and libraries are restricted to only those individuals who have been specifically approved to have access. A person who develops code changes cannot be the same person who migrates the code change into production.
UA-4.2C	Access between Development, Test, and Production environments are strictly controlled. The version management system provides segregation of code, data and environments.
UA-4.2D	Temporary privileged access to production data is granted to authorized personnel based on job function for emergency support and only via access control and logging security tools.
<b>PS:</b>	<b>Platform Security Controls</b>
<b>PS-1:</b>	<b>Computer System Security (Servers and Multi-user System only)</b>
PS-1.1	Voya implements and manages a formal process for ensuring that all computer systems that access, process, store, or transmit Client PI are protected and configured as follows prior to and while remaining in a production status:
PS-1.1A	Systems are assigned to an asset owner within Voya's organization.
PS-1.1B	Systems are located in a data center or similarly controlled environment with appropriate physical security mechanisms and environmental controls to ensure systems are protected from theft, vandalism, unplanned outages, or other intentional or unintentional hazards.
PS-1.1C	All systems are configured to meet Voya standards, monitored to ensure a compliant state, and patched as required to maintain a high degree of security. Issues found to be out of compliance are required to be tracked to closure.
PS-1.1D	Systems are configured with commercially available and licensed anti-virus software which is set to perform active scans, perform scans of uploaded or downloaded data/files/web content, and is updated on at least on a daily basis.
PS-1.1E	System clocks are configured to synchronize with a reputable time source (e.g., NTP).
PS-1.1F	Systems display a warning banner to all individuals during the logon process that indicates only authorized users may access the system.
PS-1.1G	Systems that have been implemented into a production environment are routinely tested for vulnerabilities and risks using industry best practice tools and methods.

PS-1.1H	All high and medium vulnerability and risk issues identified are remediated utilizing a risk based approach and in alignment with application team code release schedules.
PS-1.1I	Voya ensures that only authorized and trained personnel have access to configure, manage, or monitor systems.
<b>PS-2:</b>	<b>Network Security</b>
PS-2.1	To ensure systems accessing, processing, storing, or transmitting Client PI are protected from network related threats, Voya implements the following network security controls prior to connecting any network component to a production network and for the duration that the component remains in a production status.
PS-2.1A	Networks are constructed using a defense-in-depth architecture, are terminated at a firewall where there are connections to external networks, and are routinely scanned for unapproved nodes and networks.
PS-2.1B	Business-to-Business (B2B) and Third Party network connections (Trusted) to systems accessing, processing, storing, or transmitting Client PI are permitted only after a rigorous risk assessment and formal approval by Voya management. Network connections from un-trusted sources to internal resources are not permitted at any time.
PS-2.1C	Network components (switches, routers, load balancers, etc.) are located in a data center or a secure area or facility.
PS-2.1D	Voya systems are configured to provide only essential capabilities and restrict the use of any unneeded functions, ports, protocols and services.
PS-2.1E	Intrusion detection/prevention technologies, firewalls, and proxy technologies are implemented, monitored and managed to ensure only authorized and approved traffic is allowed within and between segments of the network.
PS-2.1F	Internal Voya wireless networks are configured with the most robust security standards available, including but not limited to, 802.11i/n, strong authentication, IP/MAC address filtering, firewall protection, and intrusion detection/prevention.
PS-2.1G	Wireless networks are not used to access Client Information unless the information is encrypted at either the file or transport level.
PS-2.1H	Network components that have been implemented into a production environment are routinely tested for vulnerabilities and risks using industry best practice tools and methods.
PS-2.1I	Voya ensures that only authorized and trained personnel have access to configure, manage, or monitor network components.
<b>PS-3:</b>	<b>Generic Application and Database Security</b>
PS-3.1	Voya implements and maintains an application security certification and assurance process that ensures that all applications that access, process, store, or transmit Client PI provide the following:
PS-3.1A	Application and database design ensures security, accuracy, completeness, timeliness, and authentication/authorization of inputs, processing, and outputs.
PS-3.1B	All data inputs are validated for invalid characters, out of range values, invalid command sequences, exceeding data limits, etc. prior to being accepted for production. Voya implements static source code analysis tools to validate data inputs.
PS-3.1C	Application source code developed in house by Voya is protected through the use of a source code repository that ensures version and access control. The version management system provides segregation of code, data and environments.

PS-3.1D	Applications and databases are tested for security robustness and corrective measures are applied prior to the application being placed into a production environment. All systems are configured to meet Voya standards, monitored to ensure compliance state, and patched as required to maintain a high degree of security.
PS-3.1E	Applications and databases are implemented into a production environment with minimal privileges and critical configuration files and storage subsystems are protected from unauthorized access.
PS-3.1F	Applications and databases that have been implemented into a production environment are routinely tested for vulnerabilities and risks using industry best practice tools and methods.
PS-3.1G	Voya ensures that Consumer/Internet facing applications have been designed and implemented using multi-factor authentication architecture. Web sessions require the use of an HTTPS (encrypted) connection, as well as authorization to approved data and services.
PS-3.1H	Voya ensures that only authorized and trained personnel have access to configure, manage, or monitor applications and databases.
<b>PS-4: Workstation and Mobile Devices Security (End User Devices)</b>	
PS-4.1	Voya ensures that the following security controls have been implemented and are maintained to protect Client PI accessed, processed, stored, or transmitted on workstations and mobile devices.
PS-4.1A	Workstations are located in a physically secure environment with mechanisms in place to prevent unauthorized personnel from accessing data stored on the device, reconfiguring the BIOS or system components, or from booting the device from unauthorized media. Portable devices are configured for boot-up encryption.
PS-4.1B	Laptops/portable computers and other mobile devices are assigned to an owner who is responsible for physically securing the device at all times, and the owner of the device must receive adequate awareness training on mobile device physical security.
PS-4.1C	Portable devices are configured for boot-up encryption. All laptop hard drives are encrypted using AES 256. Any device deemed "remote" requires hard drive encryption.
PS-4.1D	All workstations, laptops/portable computers and other mobile devices (where applicable) are configured with commercially available and licensed anti-virus software which is set to perform active scans, to perform scans of uploaded or downloaded data/files/web content, and is updated on at least a daily basis.
PS-4.1E	All workstations, laptops/portable computers and other mobile devices (where applicable) are configured with a commercially available and licensed operating system, patched according to manufacturer's recommendations, hardened according to best industry practices and standards and configured so that regular users do not have administrative privileges.
PS-4.1F	Laptops/portable computers and other mobile devices (where applicable) are configured with personal firewall technology.
PS-4.1G	Workstations, laptops/portable computers and other mobile devices (where applicable) display a warning banner to all individuals during the logon process that indicates that only authorized users may access the system or device.
PS-4.1H	Voya implements and maintains processes for recovering laptops/portable computers and mobile devices from terminated Voya Personnel.
<b>PS-5: Backup and Restore</b>	
PS-5.1	Voya implements and maintains backup and restore procedures to ensure that all Client PI received, disclosed, created, or otherwise in the possession of Voya is appropriately protected against loss.

PS-5.2	Voya ensures that backups are securely stored and storage systems are physically and logically protected.
PS-5.3	Voya implements a backup and availability schedule to meet business and regulatory requirements.
<b>PS-6:</b>	<b>Remote Network Access Controls</b>
PS-6.1	Voya implements and maintains a remote network access control strategy or process.
PS-6.2	Voya ensures the following remote network access controls are in place:
PS-6.2A	Users requiring remote access are appropriately authorized by Voya management.
PS-6.2B	Remote access connections are established through the use of Virtual Private Networking (VPN) or secure VDI mechanisms that provide transmission security, encryption and connection timeout (e.g. split-tunneling disabled.)
PS-6.2C	Only Voya approved and controlled (managed) computing devices are used when remotely accessing (where applicable) Voya's computing environments where Client PI is held. Any device deemed "remote" requires data encryption. Encrypted communications are required for all remote connections.
PS-6.2D	Users are thoroughly authenticated using multi-factor authentication prior to being provided remote access.
<b>ITR:</b>	<b>IT Resilience Controls</b>
<b>ITR-1:</b>	<b>Architecture</b>
ITR-1.1	Voya ensures that the architecture of computing environments where Client PI is accessed, processed, stored, or transmitted incorporates reasonable industry best practices for authentication/authorization, monitoring/management, network design, connectivity design, firewall and intrusion prevention technologies and storage and backup capabilities.
<b>ITR-2:</b>	<b>Hardware and Software Infrastructure Resilience</b>
ITR-2.1	Voya ensures all hardware and software components classified with an availability rating of "critical" used in the accessing, processing, storage, or transmission of Client PI is: <ul style="list-style-type: none"> <li>• Identified and cataloged</li> <li>• Supported by the manufacturer of the component (or if developed in- house, follows Voya's SDLC Policy which includes quality/security)</li> <li>• Applications and systems classified as A4 may be designed with high availability features and have no single point of failure</li> <li>• Reviewed on a regular basis for capacity implications (at minimum once every 12 months)</li> </ul>
ITR-2.2	Voya maintains Business Continuity Plans to address business unit and departmental actions to be undertaken before, during and after an incident or disaster. Voya's Disaster Recovery Plan addresses the recovery and availability of systems and data.
<b>ITR-3:</b>	<b>Capacity Assurance</b>
ITR-3.1	Voya ensures that computing environments used to access, process, store, or transmit Client PI are assessed for capacity and performance on a periodic basis (at minimum once every 12 months) and appropriate corrective actions are taken to make the environment sufficiently robust enough to perform its stated mission.
<b>CM:</b>	<b>Change Management Controls</b>
<b>CM-1:</b>	<b>Change Management Process</b>
CM-1.1	Voya implements and maintains a change control process to ensure that all changes to the environment where Client PI is accessed, processed, stored, or transmitted is strictly documented, assessed for impact, and approved by personnel authorized by Voya to provide approval for such changes, thoroughly tested, accepted by management, and tracked.

CM-1.2	Voya implements an emergency change control process to manage changes required in an emergency situation where a computing system is down or there are imminent threats/risks to critical systems involving Client PI.
<b>CM-2:</b>	<b>Separation of Environments</b>
CM-2.1	Voya maintains physically and/or logically separate development, test, and production computing environments. Development, testing, and acceptance environments are separate from the production environment.
CM-2.2	Voya ensures that Client data used for development or testing purposes is completely depersonalized/desensitized of confidential values prior to entering a development or test environment. Data is depersonalized in non-production controlled environments for testing purposes with required approvals. PI elements are required to be depersonalized in non- production environments.
<b>SM:</b>	<b>Security Monitoring Controls</b>
<b>SM-1:</b>	<b>Security Event Monitoring and Incident Management</b>
SM-1.1	Voya implements and maintains a security event monitoring process and associated mechanisms to ensure events on computing systems, networks, and applications that can impact the security level of that asset or the data residing therein are detected in as close to real-time as possible for those assets used to access, process, store, or transmit Client PI.
SM-1.2	Voya implements and maintains an incident management process to ensure that all events with a potential security impact are identified, investigated, contained, remediated, and reported to Client effectively and in a timely manner.
SM-1.3	Voya has implemented monitoring controls that provide real-time notifications of events related to loss of confidentiality, the integrity, or the availability of systems.
SM-1.4	Event logs (audit trails) are stored for analysis purposes for a minimum period of 3 years.
<b>SM-2:</b>	<b>Technical State Compliance</b>
SM-2.1	Voya ensures computing environments that access, process, store, or transmit Client PII are continually in compliance with quality and security requirements including, but not limited to, authentication/authorization, monitoring/management, network design, connectivity design, firewall and intrusion prevention technologies, and storage and backup capabilities.
SM-2.2	Voya ensures IT Risk Management facilitates risk assessments of information technology processes and procedures in accordance with the annual IT Risk Assessment Plan approved by the IT/Privacy Risk Committee. Risk Assessment results are communicated to management for awareness and resolution or risk acceptance of findings based on management's risk appetite.
<b>SM-3:</b>	<b>Security and Penetration Testing</b>
SM-3.1	Voya implements and maintains vulnerability and penetration testing (Ethical Hacking) processes to ensure the computing environment where Client PII is accessed, processed, stored, or transmitted is continually protected from internal and external security threats.
SM-3.2	Voya implements and maintains a process for vulnerability scanning on at least a monthly basis and ensures issues are remediated, utilizing a risk based approach within a reasonable timeframe.
SM-3.3	Penetration testing (Ethical Hacking) of Internet facing systems or systems exposed to un- trusted networks is conducted prior to the system being deployed into a production status, after any significant changes, and then at least once every 12 months thereafter.