

AWARD/CONTRACT		1. Reserved for later use		Page of Pages	
				1 30	
2. Contract Number DCEB-2012-0002		3. Effective Date 01/24/2012		4. Requisition/Purchase Request/Project No. RQ769556	
5. Issued By: Office of the Deputy Mayor for Planning and Economic Development Office of Contracts and Procurement 1100 4 th Street, S.W., Suite E500 Washington, D.C. 20024		Code		6. Administered by (If other than line 5) Office of the Deputy Mayor for Planning and Economic Development 1350 Pennsylvania Avenue, N.W., Suite 317 Washington, D.C. 20004	
7. Name and Address of Contractor (No. street, city, county, state and Zip Code) newBrand Analytics, Inc. 509 7 th Street, N.W. Washington, D.C. 20004		8. Delivery <input type="checkbox"/> FOB Origin <input checked="" type="checkbox"/> Other (See Section F.3)		9. Discount for prompt payment	
Code		Facility		10. Submit invoices to the Address shown in (2 copies unless otherwise specified) <input checked="" type="checkbox"/> Item Section G.2.1	
11. Ship to/Mark For SAME AS BLOCK 6		Code		12. Payment will be made by Code	
13. Reserved for future use		14. Accounting and Appropriation Data			

15A. Item	15B. Supplies/Services	15C. Qty.	15D. Unit	15E. Unit Price	15F. Amount
	Design, Development and Maintain GRADE.DC.GOV Website Project	1	Job	See Section B	\$170,000.00
Total Amount of Contract					\$170,000.00

(X)	Section	Description	Page	(X)	Section	Description	Page
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	Solicitation/Contract Form	1	X	I	Contract Clauses	23-29
X	B	Supplies or Services and Price/Cost	2	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS			
X	C	Description/Specifications/Work Statement	3-7	X	J	List of Attachments	30
X	D	Packaging and Marking	8	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	Inspection and Acceptance	9	K	Representations, Certifications and Other Statements of Offerors		
X	F	Deliveries or Performance	10-11	L	Instructions, conditions & notices to offerors		
X	G	Contract Administration data	12-16	M	Evaluation factors for award		
X	H	Special Contract Requirements	17-22				

Contracting Officer will complete Item 17 or 18 as applicable

17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return <u>1</u> copies to issuing office.) Contractor agrees to furnish and deliver all items, perform all the services set forth or otherwise identified above and on any continuation sheets, for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)	18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the additions or changes made by which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
--	---

19A. Name and Title of Signer (Type or print) LEONARD Kurtzman, CFO	20A. Name of Contracting Officer Jacque McDonald, CPPO, CPPB, SPSM, MBA, MST Director of Contracts and Procurement
---	--

19B. Name of Contractor <i>Leonard P. Kurtzman</i> (Signature of person authorized to sign)	19C. Date Signed 4-24-12	20B. District of Columbia <i>Jacque McDonald</i> (Signature of Contracting Officer)	20C. Date Signed 4-24-12
---	-----------------------------	---	-----------------------------

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

B.1 The District of Columbia Office of the Deputy Mayor for Planning and Economic Development (DMPED) (the “District”) engages newBrandAnalytics, Inc. (the “Contractor”) to provide a transparent online government service rating, analysis and evaluation interface.

B.2 The District awards a firm-fixed price contract for the contract line items (CLINs) listed in the schedule below.

B.3 PRICE SCHEDULE – FIRM FIXED PRICE

B.3.1 BASE YEAR – Phase I (Date of Award through September 30, 2012)

Contract Line Item No. (CLIN)	Item Description	Total Price
0001	Requirements Phase – survey questions, operational categories, data sources	\$18,000.00
0002	Product Development for Pilot demo and launch – includes Technical Design, Development, and Testing	\$55,000.00
0003	Product Development for Full Demo and Full Launch of remaining agencies – includes Technical Design, Development, and Testing	\$40,000.00
0004	Program Management	\$17,000.00
0005	Core nBA Software Costs – prorated costs for service subscription fee	\$40,000.00
Grand Total for B.3.1		\$170,000.00

B.2 OPTION YEAR ONE (October 1, 2012 through September 30, 2013)

Contract Line Item No. (CLIN)	Item Description	Total Price
1001	Annual software/data as a service subscription fee and support	\$250,000.00
Grand Total for B.3.2		\$250,000.00

B.3 OPTION YEAR TWO (October 1, 2013 through September 30, 2014)

Contract Line Item No. (CLIN)	Item Description	Total Price
2001	Annual software/data as a service subscription fee and support	\$250,000.00
Grand Total for B.3.3		\$250,000.00

SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE:

The Government of the District of Columbia, Office of the Deputy Mayor for Planning and Economic Development (DMPED) (the “District”) requires a contractor to provide a transparent online government service rating, analysis, and evaluation interface.

The Contractor shall be responsible for developing a customer feedback collection, analysis, evaluation and visualization web interface called grade.dc.gov consistent with the specifications and provisions described and incorporated by reference on J.7A (the “Deliverables Summary”) and subject to the key dependencies and assumptions described and incorporated by reference on J.7B (the “Key Dependencies and Assumptions”). This will involve developing a feedback collection tool that gathers data via text message (SMS), a web interface, and social media postings; analyzing qualitative and quantitative customer feedback from dedicated and open sources; deriving measurable comparable agency grades; and displaying grades and visualized data to the public. The primary focuses of grade.dc.gov are to capture feedback from constituents utilizing District government services from numerous sources; generate transparent evaluations of customer experiences; and provide agency leaders with real-time decision-making data.

Grade.dc.gov will be completed in multiple phases with an expected pilot launch by May 30, 2012, and contingent upon the exercise of option year one, an upgrade launch by October 31, 2012.

C.2 APPLICABLE DOCUMENTS

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

Item No.	Title	Date	Location
1	Standard Contract Provisions for use with District of Columbia Supply and Services Contracts	March 2007	Website: www.OCP.dc.gov Click “Solicitation Attachments”
2	Attachment J.7A – Deliverables Summary	--	Attached
3	Attachment J.7B – Key Dependencies and Assumptions	--	Attached

C.3 DEFINITIONS

These terms when used in this RFP and resultant contract have the following meanings:

Smart device: an electronic device that is cordless (unless while being charged), mobile (easily transportable), always connected (via WiFi, 3G, 4G etc.) and is capable of voice and

video communication, internet browsing, "geo-location" (for search purposes) and that can operate to some extent autonomously.

Text message: brief written text messages between fixed-line phone or mobile phone and fixed or portable devices sent using the Short Message Service (SMS).

Service attribute: a specific aspect of an agency's customer service that is identified through analysis of customer feedback. Examples include staff friendliness, wait time, or information consistency.

C.4 BACKGROUND

The District's customer service levels have risen significantly in recent years. Residents have enjoyed increasing access to online systems for payments, license and permit applications, and public information. To gather information about constituents' experiences with the local government, the District currently employs a simple quantitative customer service survey tool. The survey tool provides essential compartmentalized information, but no longer fits the on-demand comments and opinions constituents are accustomed to providing through smart device-enabled applications and social media websites. The creation of grade.dc.gov will enable constituents to provide real-time assessments of their experiences working with District government agencies. Moreover, the site will interpret and analyze qualitative feedback to provide an overall agency grade, specific categorical grades, and identify the root causes of customer satisfaction or dissatisfaction. Most importantly, grade.dc.gov will guide decision makers to allocate limited taxpayer resources to address the most burning issues cited by constituents.

C.5 REQUIREMENTS

The Contractor shall provide the management, labor, and services necessary to complete grade.dc.gov consistent with the provisions of this Section C.5, but subject in all cases to the Deliverables Summary (J.7A) and Key Dependencies and Assumptions (J.7B).

C.5.1 The contractor shall offer a tool to collect real-time feedback from customers who are using or have used District of Columbia government services.

C.5.1.1 The Contractor shall offer a tool that collects customer feedback from multiple sources.

C.5.1.1.1 The Contractor shall enable input collection through text message.

C.5.1.1.2 The Contractor shall offer a web interface accessible and fully functional from personal computers and smart devices run by any operating system. Customer input will be collected through this web interface.

C.5.1.1.3 The Contractor shall collect data from open sources including, but not limited to, Facebook postings; Twitter postings; prominent local blogs; neighborhood association listserv postings; and online newspaper editorials

and articles up to 15 total sources. The contractor shall provide proposed sources to DMPED.

C.5.1.1.4 The Contractor shall incorporate unstructured (text) survey data from existing District-operated customer service tools into agency feedback analysis and will incorporate overall ratings into the agency's grades.

C.5.1.2 The Contractor shall provide ample opportunity for unstructured qualitative feedback within the interface.

C.5.1.3 The Contractor shall coordinate with DMPED to devise, at most, ten (10) questions per agency regarding agency interactions for inclusion in grade.dc.gov.

C.5.1.4 The Contractor shall coordinate with DMPED to develop agency-specific customer service questions for inclusion in grade.dc.gov.

C.5.1.5 The Contractor shall coordinate with the Office of the Chief Technology Officer to integrate its data with the District's dc.gov site.

C.5.2 The Contractor shall launch a tool to collect real-time feedback from customers who are using or have used District of Columbia government

C.5.2.1 The Contractor shall launch a grade.dc.gov pilot program for the following five DC agencies: (1) Department of Public Works (DPW); (2) District Department of Transportation (DDOT); (3) Department of Motor Vehicles (DMV); (4) Department of Consumer and Regulatory Affairs (DCRA); and (5) Department of Parks and Recreation (DPR).

C.5.2.1.1 The Contractor shall demonstrate a beta version of the pilot grade.dc.gov interface.

C.5.2.1.2 The Contractor shall launch an interface appropriate for the five pilot agencies identified in C.5.2.1.

C.5.2.1.3 The Contractor shall announce, via live website, the first round of grades for the five (5) pilot District agencies as identified in C.5.2.1.

C.5.2.2 The Contractor shall launch a second phase grade.dc.gov program for 10 additional DC agencies.

C.5.2.2.1 The Contractor shall demonstrate a beta version of an upgraded grade.dc.gov interface.

C.5.2.2.2 The Contractor shall collect user and District government feedback during the pilot period, and upgrade the interface to include 10 additional agencies.

- C.5.2.3 The Contractor shall make modifications to grade.dc.gov throughout the duration of the contract to improve data collection.
- C.5.3** The Contractor shall offer a software program to analyze quantitative and qualitative customer feedback.
 - C.5.3.1 The Contractor shall develop a formula to interpret qualitative customer responses and extract key words, themes, and repetitive terminology.
 - C.5.3.2 The Contractor shall incorporate complete analysis functionality into each beta demonstration and launch described in C.5.1.
- C.5.4** The Contractor shall use the analysis described above to generate easily identifiable and measurable grades for working with DC government.
 - C.5.4.1 The Contractor shall, in partnership with DMPED, identify a grade ranging from A-F for each agency overall.
 - C.5.4.2 The Contractor shall use the analysis above to identify agency sub-grades ranging from A-F for key service attributes identified in feedback data. Examples of service attributes include staff friendliness, wait time, and information consistency.
 - C.5.4.3 The Contractor shall identify at least 4 service attributes that can be measured consistently across all participating agencies based on data analysis.
 - C.5.4.4 The Contractor shall incorporate complete evaluation functionality into each beta demonstration and launch described in C.5.1.
- C.5.5** The Contractor shall create a web interface to display synthesized customer service grades and visualized feedback data.
 - C.5.5.1 The Contractor shall create a web interface to display dynamic real-time agency grades and sub grades.
 - C.5.5.2 The Contractor shall create a web interface that is searchable and can be filtered by at least agency name, customer service grade, or service attribute.
 - C.5.5.3 The Contractor shall provide data visualizations (charts and graphs) of feedback that can be drilled down at least 3 levels. For example, an agency grade could be based on 5 service attributes displayed by weighted value. Upon clicking a single service attribute, a user should be able to see the categorical or raw data that generated the attribute.
 - C.5.5.4 The Contractor shall offer the needed data to enable the display grades per agency on grade.dc.gov.

C.5.5.5 The Contractor shall increase the data collection, analysis, and visualization complexity. Increased complexity can include added data sources, new service attributes, additional chart or graph displays, and added levels of data analysis.

C.5.5.6 The Contractor shall incorporate complete visualization functionality into each beta demonstration and launch described in C.5.1.

C.5.6 The Contractor shall participate in project review meetings every 30 days (or at such longer intervals as the District may request from time to time during the term) to demonstrate progress, discuss deliverables, and coordinate with DMPED staff.

Notwithstanding anything otherwise to the contrary, the project deliverables provided above in this Section C.5 are qualified by and subject in their entirety to the Deliverables Summary (J.7A) and Key Dependencies and Assumptions (J.7B).

SECTION D: PACKAGING AND MARKING

- D.1** The packaging and marking requirements for this contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007. (Attachment J.1)

SECTION E: INSPECTION AND ACCEPTANCE

- E.1** The inspection and acceptance requirements for this contract shall be governed by clause number six (6), Inspection of Services, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007. (Attachment J.1)

SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

The term of the contract shall be for a period from the date of award specified on the cover page of this contract through September 30, 2012.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of this contract for a period of two (2) one-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

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

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

F.2.4 The total duration of this contract, including the exercise of any options under this clause, shall not exceed two (2) years and six (6) months.

F.3 DELIVERABLES

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

Item No.	Deliverable	Qty.	Format and Method of Delivery	Due Date
0001	Monthly meeting attendance as described in C.5.6	1	In-person or conference call	Monthly beginning May 2012
0002	List of proposed feedback sources as described in C.5.1.1.3	1	Electronic-email to CA	May 4, 2012
0003	Universal survey questions (no more than 10) as described in C.5.1.3	10	Electronic-email to CA	May 4, 2012
0004	Grade.dc.gov pilot beta demonstration as described in C.5.2.1.1	1	In-person demonstration	May 23, 2012

0005	Grade.dc.gov pilot launch as described in C.5.2.1.2	1	Live website	May 30, 2012
0006	Announcement of first round of grades as described in C.5.2.1.3	1	Live website	June 27, 2012
0007	Grade.dc.gov upgrade beta demonstration as described in C.5.2.2.1	1	In-person demonstration	September 30, 2012
0008	Grade.dc.gov upgrade launch as described in C.5.2.2.2	1	Live website	October 31, 2012

Phasing Timeline

	Q2 2012	Q3 2012	Q4 2012	Q1 2013	Q2 2013	Q3 2013	Q4 2013	Q1 2014	Q2 2014	Q3 2014
Data source adoption										
Text messages										
Web submissions										
Social media posts										
Agency adoption										
5 pilot agencies										
10 preferred agencies										

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

SECTION G: CONTRACT ADMINISTRATION

G.1 INVOICE PAYMENT

- G.1.1** The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.
- G.1.2** The District will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.

G.2 INVOICE SUBMITTAL

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

Deputy Mayor for Planning and Economic Development
Office of the Controller/Agency CFO
1100 4th Street, S.W., Suite E500
Washington, D.C. 20024
Telephone: (202) 442-6934

- G.2.2** To constitute a proper invoice, the Contractor shall submit the following information on the invoice:
- G.2.2.1** Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);
- G.2.2.2** Contract number and invoice number;
- G.2.2.3** CA name
- G.2.2.4** Description, price, quantity and the date(s) that the supplies or services were delivered or performed;
- G.2.2.5** Other supporting documentation or information, as required by the Contracting Officer;
- G.2.2.6** Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- G.2.2.7** Name, title, phone number of person preparing the invoice;
- G.2.2.8** Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and

G.2.2.9 Authorized signature.

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

G.3.1 For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.

G.3.2 No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.4 PARTIAL PAYMENTS

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

- a) The amount due on the deliveries warrants it; or
- b) The Contractor requests it and the amount due on the deliveries is in accordance with the following:
 - "Payment will be made on completion and acceptance of each item for which the price is stated in the Schedule in Section B".
 - "Payment in connection with any annual option exercise (option year one and/or option year two) will be made promptly upon exercise of the District's option for which the price is stated in the Schedule in Section B, and not in arrears".
- c) Presentation of a properly executed invoice.

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

G.5.1 In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

G.5.2 Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

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

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

G.6 THE QUICK PAYMENT CLAUSE

G.6.1 Interest Penalties to Contractors

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

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

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

G.6.2 Payments to Subcontractors

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

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

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

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

- G.6.2.3** Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.
- G.6.2.4** A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.6.3 Subcontract requirements

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

G.7 CONTRACTING OFFICER (CO)

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

Jacque McDonald, CPPO, CPPB, SPSM, MBA, MST
Director, Contracts and Procurement
Office of the Deputy Mayor for Planning and Economic Development
1100 4th Street, S.W., Suite E500
Washington, D.C. 20024
Telephone (202) 724-8111
Email: jacque.mcdonald@dc.gov

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

- G.8.1** The CO is the only person authorized to approve changes in any of the requirements of this contract.
- G.8.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.
- G.8.3** In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

G.9 CONTRACT ADMINSTRATOR (CA)

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

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

- G.9.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;
 - G.9.1.2** Coordinating site entry for Contractor personnel, if applicable;
 - G.9.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;
 - G.9.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
 - G.9.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.
- G.9.2** The address and telephone number of the CA is:

Jenifer Huestis Boss
Business Development Specialist
Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, N.W., Suite 317
Washington, D.C. 20004
Telephone: (202) 257-5618
Fax: (202) 727-6703
Email: jenifer.boss@dc.gov

- G.9.3** The CA shall NOT have the authority to:
1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
 2. Grant deviations from or waive any of the terms and conditions of the contract;
 3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
 4. Authorize the expenditure of funds by the Contractor;
 5. Change the period of performance; or
 6. Authorize the use of District property, except as specified under the contract.
- G.9.4** The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

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

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

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

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 2005-2103, Revision No. 11, dated June 13, 2011, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 *et seq.*, and incorporated herein as Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with Section 24 of the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PUBLICITY

The Contractor shall at all times obtain the prior written approval from the CO before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

H.4 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act, at D.C. Official Code §2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the CA who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C.

Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the CA will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records

to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

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

- H.5.1** The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 *et seq.* (“First Source Act”).
- H.5.2** The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (Section J.4) in which the Contractor shall agree that:
- (1) The first source for finding employees to fill all jobs created in order to perform this contract shall be the DOES; and
 - (2) The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.
- H.5.3** The Contractor shall submit to DOES, no later than the 10th of each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) to verify its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:
- (1) Number of employees needed;
 - (2) Number of current employees transferred;
 - (3) Number of new job openings created;
 - (4) Number of job openings listed with DOES;
 - (5) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
 - (6) Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
 - (a) Name;
 - (b) Social security number;
 - (c) Job title;
 - (d) Hire date;
 - (e) Residence; and
 - (f) Referral source for all new hires.
- H.5.4** If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

H.5.5 With the submission of the Contractor's final request for payment from the District, the Contractor shall:

- (1) Document in a report to the CO its compliance with section H.5.4 of this clause; or
- (2) Submit a request to the CO for a waiver of compliance with section H.5.4 and include the following documentation:
 - (a) Material supporting a good faith effort to comply;
 - (b) Referrals provided by DOES and other referral sources;
 - (c) Advertisement of job openings listed with DOES and other referral sources; and
 - (d) Any documentation supporting the waiver request pursuant to section H.5.6.

H.5.6 The CO may waive the provisions of section H.5.4 if the CO finds that:

- (1) A good faith effort to comply is demonstrated by the Contractor;
- (2) The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
- (3) The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- (4) DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

H.5.7 Upon receipt of the contractor's final payment request and related documentation pursuant to sections H.5.5 and H.5.6, the CO shall determine whether the Contractor is in compliance with section H.5.4 or whether a waiver of compliance pursuant to section H.5.6 is justified. If the CO determines that the Contractor is in compliance, or that a waiver of compliance is justified, the CO shall, within two business days of making the determination forward a copy of the determination to the agency Chief Financial Officer and the CA.

H.5.8 Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.5.5, or deliberate submission of falsified data, may be enforced by the CO through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in this contract any decision of the CO pursuant to this section H.5.8.

H.5.9 The provisions of sections H.5.4 through H.5.8 do not apply to nonprofit organizations.

H.6 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits

discrimination against disabled people in federally funded programs and activities. See 29 U.S.C. § 794 *et seq.*

H.7 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 *et seq.*

H.8 WAY TO WORK AMENDMENT ACT OF 2006

H.8.1 Except as described in H.8.8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) (“Living Wage Act of 2006”), for contracts for services in the amount of \$100,000 or more in a 12-month period.

H.8.2 The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at www.ocp.dc.gov.

H.8.3 The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

H.8.4 The DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at www.ocp.dc.gov.

H.8.5 The Contractor shall provide a copy of the Fact Sheet attached as J.6 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.5 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

H.8.6 The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the contract.

H.8.7 The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*

H.8.8 The requirements of the Living Wage Act of 2006 do not apply to:

- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;

- (4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
- (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));
- (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
- (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

H.8.9 The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

H.9 DISTRICT RESPONSIBILITIES

H.9.1 DMPED will identify additional agencies.

H.9.2 DMPED will advertise text and URL addresses to the public.

H.9.3 DMPED will provide Contractor with prioritized list of social sites for harvesting.

H.9.4 DMPED will provide Project Lead who will be point of contact for contractor and coordinate getting input from all agencies.

H.10 CONTRACTOR RESPONSIBILITIES

H.10.1 The Contractor shall maintain its headquarters in the District of Columbia, and at least 25 staff members in the DC office on the day of contract award and for duration of the contract, unless the contractor has a change of control in ownership.

H.10.2 The Contractor shall have 1 year of experience conducting customer service consulting services.

H.10.3 The contractor shall provide 2 references describing their work in the area of qualitative and quantitative customer feedback collection and analysis.

H.11 SPECIAL EXCEPTIONS

In the event the District terminates this contract in whole or in part in accordance with the Standard Contract Provisions, Default Clause 8(b), the reprourement cost must be as reasonable as practicable for services identical to those terminated and District must minimize excess cost resulting from the default. The Contractor shall have no obligation to cover any unreasonable cost associated with any replacement services procured by the District.

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007 (“SCP”) are incorporated as part of the contract. To obtain a copy of the SCP go to www.ocp.dc.gov, click on “Solicitation Attachments”.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

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

I.3 CONFIDENTIALITY OF INFORMATION

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

I.4 TIME

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

I.5 RIGHTS IN DATA

I.5.1 “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information or computer software.

I.5.2 The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

I.5.3 [Intentionally Omitted].

I.5.4 [Intentionally Omitted].

I.5.5 All reports specifically prepared for the District and analyzing data reviewed in the performance of this Contract (the “DC Reports”) shall be the sole property of the District; provided, however, that all reporting formats and underlying methodologies shall be and remain the property of the Contractor. The District understands that it is acquiring rights to use and access a software-as-a-Service (“SaaS”) solution from the Contractor during the term and that the Contractor is not developing any software for the District. All right, title, and interest in and to the SaaS solution shall remain solely and exclusively with the Contractor in accordance with J.1A (the “Supplemental Contract Provisions Modifying the SCP”). The Contractor hereby acknowledges that all the DC Reports (but not any underlying data, which is pulled from publicly available sources) are works made for hire and are the sole property of the District; but, to the extent any such DC Reports may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such DC Reports, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the DC Reports and the execution of any instrument required to register the DC Reports as copyrights. The Contractor agrees not to assert any rights in common law or in equity in the DC Reports. The Contractor shall not publish or reproduce the DC Reports in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such DC Reports to the public; provided, however, that the District confirms and acknowledges that the Contractor may generate reports that are similar to the DC Reports using data collected, gathered and stored by the Contractor in connection with this Contract or otherwise. The Contractor and the District agree that the provisions of Section 4.2 of the Master Subscription Agreement (“MSA”) incorporated in this Contract as J.8 will apply in all cases except as otherwise expressly set forth in this Section I.5.5.

Upon final payment of all fees to the Contractor, the District shall have a perpetual, nonexclusive, nontransferable, fully paid-up right and license to use, copy and prepare derivative works of the items specifically developed by the Contractor for the District in the course of performing the services and specifically identified as deliverables in a Statement of Work (the “*Deliverables*”). All other rights in the Deliverables (and related intellectual property rights) will be owned exclusively by, remain in, and automatically are assigned to the Contractor by the District, which disclaims any rights therein other than pursuant to the above-referenced license. The Contractor and the District agree to cooperate in good faith to execute such instruments and take such other actions as may be necessary or advisable to perfect the rights of each party as contemplated hereunder.

Competitive Products; General Knowledge, Skills. Nothing in this Contract will preclude the Contractor from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided hereunder, irrespective of their similarity to materials which may be delivered to client pursuant to this Contract (including, without limitation, Deliverables). In addition, nothing in this Agreement shall preclude the Contractor from using any general consulting, data processing, software, principles, concepts, ideas, skills, tools, methodologies or other knowledge that the Contractor may acquire during the course of providing or making available the software or services hereunder.

Preexisting Materials. All (x) existing software, systems of the Contractor and (y) all copyrights, patents, trade secrets, or other intellectual property rights associated with ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the Contractor or its personnel prior to, during, or after commencement of services and provision of software to the District hereunder will remain the sole and exclusive property of the Contractor. The Contractor shall at all times retain ownership of its preexisting materials and proprietary methodologies used in the delivery of the services and provision of software to the District including, but not limited to: descriptions of its methodologies, strategies and practices; skills; concepts; designs; processes; and project tools. The District acknowledges that the foregoing items shall be considered and treated for all purposes as confidential information of the Contractor.

Grade.DC.gov Ownership and Licenses. The District will have and retain all ownership rights in and to the Grade.DC.gov website and URL as developed by the District or its contractors or vendors (and excluding the Deliverables). During the term of this Contract, the District grants to the Contractor and the Contractor will have and hold a nonexclusive, nontransferable, fully paid-up right and license to use, access, and update the Grade.DC.gov website and all associated systems, code, and software of the District or its contractors or vendors as the Contractor reasonably deems necessary or appropriate in connection in connection with providing or making available the software or services hereunder.

I.5.6 [Intentionally Omitted]

I.5.7 [Intentionally Omitted]

I.5.8 The Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, under any copyright owned by the Contractor, in any work of authorship constituting a DC Report and prepared for or acquired by the District under this Contract.

I.5.9 Whenever any data are to be obtained from a subcontractor under this Contract, the Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data which is required for the District.

I.5.10 For all computer software furnished to the District with the rights specified in Section I.5.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

I.5.11 The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, for third party claims (expressly excluding claims by the District or their) (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data created entirely by nBA and furnished to the District under this Contract , or based upon libelous or other unlawful matter contained in such data, it being agreed and understood that nBA collects publicly available third party data and expressly is not liable or responsible for the nature or content of any such data and will not provide or be obligated to provide any indemnification in respect thereof.

I.5.12 Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.

I.5.13 Paragraphs I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract.

I.6 OTHER CONTRACTORS

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

I.7 SUBCONTRACTS

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

I.8 INSURANCE

- A. **GENERAL REQUIREMENTS.** The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide

that the CO shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium.

1. Commercial General Liability Insurance. The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed under this contract.
2. Automobile Liability Insurance. The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. Workers' Compensation Insurance. The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Employer's Liability Insurance. The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

4. Umbrella/Excess Liability Insurance. The Contractor shall provide Umbrella/Excess liability (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$2,000,000 per occurrence. **The policy must name the District as an additional insured, contain a waiver of subrogation, and state that coverage is primary and non-contributory.**

B. DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District, and shall carry the required General Liability; any required Professional Liability; and any required Employment Practices Liability insurance for five (5) years following final acceptance of the work performed under this contract.

C. LIABILITY.

- a. These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE**

REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.

- b. The provisions of Section 6.3 of the MSA are expressly incorporated by reference and will apply to this Contract as if fully set forth herein, *mutatis mutandis*.

- D. **CONTRACTOR'S PROPERTY.** Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. **A waiver of subrogation shall apply in favor of the District of Columbia.**

- E. **MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

- F. **NOTIFICATION.** The Contractor shall immediately provide the CO with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the CO.

- G. **CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to:

**Office of the Deputy Mayor for Planning
and Economic Development
Office of Contracts and Procurement
1100 4th Street SW, Suite E500
Washington, DC 20024**

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

I.9 EQUAL EMPLOYMENT OPPORTUNITY

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

I.10 ORDER OF PRECEDENCE

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

ORDER OF PRECEDENCE

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

- (1) An applicable Court Order, if any
- (2) Contract document (inclusive of Attachments J.7A and J.7B)
- (3) Standard Contract Provisions (as modified by J.1A, the Supplemental Contract Provisions Modifying the SCP)
- (4) Contract attachments other than the Standard Contract Provisions (including, without, limitation, the MSA)
- (5) RFP, as amended
- (6) Proposal

I.11 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS

Any contract in excess of \$1,000,000 shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia and signed by the CO.

I.12 GOVERNING LAW

This contract, and any disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

SECTION J: ATTACHMENTS

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

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (March 2007) (the “SCP”) available at www.ocp.dc.gov click on “Solicitation Attachments”
J.1A	Supplemental Contract Provisions Modifying the SCP
J.2	U.S. Department of Labor Wage Determination No. 2005-2103, Revision No. 11, dated June 13, 2011
J.3	Reserved
J.4	Reserved
J.5	Way to Work Amendment Act of 2006 – 2010 Living Wage Notice
J.6	Way to Work Amendment Act of 2006 - 2010 Living Wage Fact Sheet
J.7	Contractor’s Technical and Price Proposals, dated March 21, 2012
J.7A	Updated Extract of Deliverables from J.7 using the numbering scheme from Section C. of this Contract
J.7B	Updated Extract of Key Dependencies and Assumptions
J.8	Contractor’s Master Subscription Agreement (MSA)

J.1A – Supplemental Contract Terms Modifying SCP.

General:

These Supplemental Contract Terms Modifying SCP expressly override any contrary provisions of the Standard Contract Provisions Applied to District of Columbia Government Supplies and Services Contracts (March 2007 version) (the “*Standard Contracts Provisions*” or “*SCP*”). Clause or paragraph references below refer to applicable clauses or paragraphs of the Standard Contract Provisions.

Specifically, the Contractor and the District have agreed as follows:

Clause 3:

Clause 3 of the Standard Contract Provisions is hereby amended by adding a new sentence thereto stating: “Notwithstanding the provisions of this Clause 3 or anything otherwise to the contrary the Contractor’s maximum, aggregate liability under this Clause 3 and for any and all related claims is and will be capped at an amount equal to two (2) times the total amounts paid by the District to Contractor in connection with the agreement to which any claim made by the District, its officers, agents, servants or employees under this Clause 3.”

Clause 10:

Clause 10 of the Standard Contract Provisions is hereby modified by adding a new sentence at the end of Clause 10 that reads as follows: “Notwithstanding the foregoing, the Contractor may assign this contract to any person acquiring all or substantially all of the Contractor’s stock or assets, whether by merger, consolidation, stock or asset sale, or other form of transaction so long as the District is given at least ten (10) days advance notice of such transaction.”

Clause 15:

The first sentence in Clause 15 of the Standard Contract Provisions (starting “The Contracting Officer may ...”) is hereby modified by adding the words “; *provided, however*, that no such changes will be effective against or binding on the Contractor unless the Contractor explicitly agrees thereto in a written amendment to this contract signed by each of the District and the Contractor” immediately prior to the end of such sentence.

The second sentence in Clause 15 of the Standard Contract Provisions (starting “If such change ...”) is hereby modified by adding the words “unless any amendment agreed to in the immediately preceding sentence provides otherwise for specific additional consideration to be paid to the Contractor, in which case such amendment will control” immediately prior to the end of such sentence.

The reference in the third sentence in Clause 15 of the Standard Contract Provisions to “ten (10) days” is hereby deleted and replaced with “thirty (30) days”.

The last sentence in Clause 15 of the Standard Contract Provisions (starting “Nothing in this clause...”) is hereby modified by adding the words “with the Contractor’s mutual written agreement” immediately prior to the end of such sentence.

newBrand Analytics, Inc.
Contract No. DCEB-2012-C-0002

J.7A - Updated Extract of Deliverables from J.7 using the numbering scheme from Section C. of this Contract.

Section of Contract	Title	DC Gov Requirements	newBrandAnalytics Capability
C.5	DC Gov Requirements	The contractor shall provide the management, labor, and services necessary to complete grade.dc.gov.	nBA will offer a grading and scoring system that enables the DC Government to collect feedback from residents on select agencies. nBA's services include set up, configuration and ongoing support of the system that delivers customer feedback via a grading based performance solution.
C.5.1	Collect feedback	The contractor shall offer a tool to collect real-time feedback from customers who are using or have used District of Columbia government	nBA offers a unique solution for gathering customer feedback. The solution assembles unsolicited feedback found in social channels (e.g., Google, Facebook, Twitter) and offers the ability to solicit feedback directly from users via text or browser-based channels. Our approach to open-ended feedback allows users to determine the areas of importance while our processing over this data ensures that the results are tallied for operational improvement. The result allows customers to steer DC Gov agencies towards changes that will increase resident satisfaction with services provided.
C.5.1.1	Multiple sources	The contractor shall offer a tool that collects customer feedback from multiple sources.	Feedback can be collected from various sources to create a complete picture of the customers' impressions and insights. These insights are found in multiple sources including social media sites, blogs, and other published feedback channels and can be solicited directly from the customer via text and browser.
C.5.1.1.1	Collect feedback from text	The contractor shall enable input collection through text message.	nBA offers the ability to collect text-based feedback. Each agency will be supplied with a local, unique number. The agency will be responsible for 'advertising' the number to customers.

			This text-based feedback is processed through the same channels described below.
C.5.1.1.2	Collect feedback from browser	The contractor shall offer a web interface accessible and fully functional from personal computers and smart devices run by any operating system. Customer input will be collected through this web interface.	nBA offers the ability to collect web-based feedback from any device with internet access including PC's, tablets and smart phones. Each agency will be supplied with a custom URL. The agency will be responsible for 'advertising' the web address/URL to customers. Customers who go to the site will be asked open-ended questions like "How was your overall experience?" DMPED and nBA together will determine these questions per agency. This web-based feedback is processed through the same channels described below.
C.5.1.1.3	Collect feedback from open sources	The contractor shall collect data from open sources including, but not limited to, Facebook postings; Twitter postings; prominent local blogs; neighborhood association listserv postings; and online newspaper editorials and articles up to 15 total sources. The contractor shall provide proposed sources to DMPED.	nBA will collect data from agency defined sources. nBA will work with DMPED to define up to 15 total sources for this data. Once defined, nBA will harvest the data from these sources regularly (at least daily) and will process this through the same channels described below.
C.3.5.1.4	Collect feedback from District customer service tools	The contractor shall incorporate unstructured (text) survey data from existing District-operated customer service tools into agency feedback analysis and will incorporate overall ratings into the agency's grades.	nBA will integrate unstructured data supplied by the agency and map it to the corresponding categories and grading areas. Digitized data supplied by the agency will be mapped to the corresponding categories and grading areas. The data from these internal feedback mechanisms will be imported at the predefined and agreed upon schedule
C.5.1.2	Collect unstructured	The contractor shall provide ample opportunity for unstructured qualitative feedback within the interface.	nBA will allow DC Gov (residents) customers to provide unstructured feedback to each agency. Feedback will be processed using a technique called Natural Language Processing and categorized to apply it to the

			predefined operational categories. The feedback solution will categorize the overall polarity of the response, determining the overall grade and calculate total grades across multiple reviews. Agency users and DMPED will be able to understand the overall customer sentiment and drill into details to determine necessary action to continuously improve customer satisfaction.
C.5.1.3	Survey construction	The contractor shall coordinate with DMPED to devise at most 10 questions per agency regarding agency interactions for inclusion in grade.dc.gov.	nBA will work with DMPED to define a standard set of questions per agency. In order to drive customer responses to these unstructured surveys, nBA will keep the list of questions presented to the customer via text or browser to a minimum number (recommend no more than 3-4 per customer). These 10 potential questions will be devised by reviewing the operational categories, the agencies focus and the customer feedback. This approach to questioning the customer ensures the customer's feedback is top-of-mind rather than subconsciously directed via a static survey and results in more targeted and relevant feedback for the agency.
C5.1.4	Survey construction	The contractor shall coordinate with DMPED to develop agency-specific customer service questions for inclusion in grade.dc.gov.	nBA will work with DMPED to develop agency specific questions that are offered to customers . Customers are likely to supply the most appropriate feedback when offered non-leading questions and provided the opportunity to take the review/response in the direction that is most relevant to their experience. nBA has experience in processing this unstructured feedback while providing the overall customer sentiment and how that maps to the areas of interest (categories) of the agency.
C.5.1.5	Integration	The contractor shall coordinate	nBA will work with the CTO and his

		with the Office of the Chief Technology Officer to integrate its data with the District's dc.gov site.	office to ensure the data gathered and summarized in the surveys is made available at regular intervals for integration with the dc.gov site via data integration, API's, web services or enterprise application integration.
C.5.2	Feedback Tool	The contractor shall launch a tool to collect real-time feedback from customers who are using or have used District of Columbia government	nBA will offer customers the ability to provide their feedback to the agency. The agency will be responsible for advertising to the customer how to provide this feedback (e.g., phone numbers for text, URL for browser based feedback). The presentation of the questions to customers will allow customers to drive the feedback while ensuring the agency understands the overall sentiment of the customer base.
C5.2.1	Five Agencies	The contractor shall launch a grade.dc.gov pilot program for the following five DC agencies: (1) Department of Public Works (DPW); (2) District Department of Transportation (DDOT); (3) Department of Motor Vehicles (DMV); (4) Department of Consumer and Regulatory Affairs (DCRA); and (5) Department of Parks and Recreation (DPR).	nBA will launch a pilot program with the five agencies stated here. nBA will work with DMPED to complete the configuration required for these agencies. The pilot will include gathering data from social sites and processing data submitted by customers via text and browser. The agency will be responsible for advertising text numbers and URL's for browser based feedback.
C5.2.1.1	Demonstrate for 5 Agencies	The contractor shall demonstrate a beta version of the pilot grade.dc.gov interface.	nBA will work with 5 agencies selected by DMPED to gather feedback in the above specified ways. The beta project will include defining agency-specific questions and categories, gathering sample feedback, presenting feedback for DMPED and Agency demonstration and adjusting questions asked as needed before go-live. nBA will ensure the agencies feedback is categorized into the most important operational areas for that agency. The feedback provided and analyzed will be consistently categorized across all locations of each agency participating in the beta.
C5.2.1.2	Pilot Interface	The contractor shall launch an	For the five agencies selected, nBA

		interface appropriate for the five pilot agencies identified in C.3.2.1.	will offer the ability for select users of the system to view the grades, drill into details about the grades and watch grade trends over time. The application is role based, allowing access to only the data for which the user has privileges. For example, DMV staff with access to the grades will only see DMV data. DMPED will have access to all the agency grades and data.
C5.2.1.3	Launch 5 Agencies to Pilot	The contractor shall announce, via live website, the first round of grades for the five (5) pilot District agencies as identified in C.3.2.1.	nBA offers a web-based tool that allows user to see the live grades. All 5 pilot agencies will have access to these grades for the pilot. nBA will supply the grades in electronic form to the Office of the CTO for publishing on grade.dc.gov website.
C5.2.2	Launch 10 Additional Agencies	The contractor shall launch a second phase grade.dc.gov program for 10 additional DC agencies.	nBA will work with DMPED to define 10 more agencies to launch in a second wave.
C.5.2.2.1	Demonstrate for 10 More Agencies (total of 15)	The contractor shall demonstrate a beta version of an upgraded grade.dc.gov interface.	nBA will work with DMPED to set up 10 additional agencies. nBA will gather feedback in the above specified ways. The beta project will include defining agency locations, designing the questions and categories, gathering sample feedback, presenting feedback for DMPED and agency demonstration and adjusting questions asked as needed before go-live. nBA will ensure the agencies feedback is categorized into the most important operational areas for that agency. The feedback provided and analyzed will be consistent across all locations of each agency participating in the second phase.
C.5.2.2.2	Launch 10 More Agencies to Live (total of 15)	The contractor shall collect user and District government feedback during the pilot period, and upgrade the interface to include 10 additional agencies.	Upon successful demonstration and pilot with the first five agencies, nBA will go live with the feedback solution with 10 more agencies (for a total of 15) including gathering customer feedback, processing feedback into categories and grades, presenting feedback including grades to select

			DMPED and agencies and providing weekly digests (summary reports of feedback) per agency.
C.5.2.3	Continuous Improvement	The contractor shall make modifications to grade.dc.gov throughout the duration of the contract to improve data collection.	nBA will work closely with the DMPED project team to improve the solution offered and ensure it accurately and effectively portrays the customer's feedback. nBA and the DMPED project team will work together to determine reasonable dates for overall improvement to the solution.
C.5.3	Analyze Customer Feedback	The contractor shall offer a software program to analyze quantitative and qualitative customer feedback.	nBA will offer a feedback solution that allows DMPED and agency users to review and measure overall customer satisfaction including presenting both quantitative and qualitative data assessed from the unique processing offered by the nBA platform. Unstructured feedback is a specialty of nBA and as such we will gather unstructured feedback and channel the response/review to a set of defined operational categories for the agency. This results in both quantitative and qualitative feedback for the agency. Using the nBA dashboard, the agency will understand its overall scores and the variations in scores over time. Additionally the agency has the ability to drill into detail found in the customer reviews. This provides the agency leads with the opportunity to determine possible changes in process and services that will improve overall customer satisfaction with the agency.
C.5.3.1	Extract Qualitative	The contractor shall develop a formula to interpret qualitative customer responses and extract key words, themes, and repetitive terminology.	nBA will offer a feedback solution that completely dissects customers survey responses and social media feedback to extract performance, positive and negative themes, and keywords while allowing users to understand the overall sentiment of the DC Gov customers.
C.5.3.2	Analysis	The contractor shall incorporate complete analysis functionality into	nBA will offer a combination of a browser-based analysis tool and

		each beta demonstration and launch described in C.3.1.	standard reports and digests delivered via email that offer DC Gov agency leaders the opportunity to understand the overall sentiment of DC Gov customers.
C.5.4	Measurable Grades	The contractor shall use the analysis described above to generate easily identifiable and measurable grades for working with DC government.	nBA will evaluate and decompose all submitted customer responses to surveys and select social sources, derive grades from the insights gathered and present these in the categories defined in conjunction with the DC Gov team.
C.5.4.1	Grading Algorithm	The contractor shall, in partnership with DMPED, identify a grade ranging from A-F for each agency overall.	nBA will use its industry proven grading scheme to evaluate the appropriate grades per category for each location of each agency. Additionally, nBA will roll these grades up to a summary grade. nBA will also show the trends in the grades over time. nBA will offer the ability to compare grades within and across agencies for those with security privileges to see this data.
C.5.4.2	Grade Attributes	The contractor shall use the analysis above to identify agency sub-grades ranging from A-F for key service attributes identified in feedback data. Examples of service attributes include staff friendliness, wait time, and information consistency.	nBA will categorize the reviews by key measurements to be defined jointly between nBA and DMPED team. Once identified, reviews gathered will be processed using our Natural Language Processing to identify overall polarity of the customer response and detailed attributes including detailed service level analysis like friendliness, wait-time, agency office cleanliness/organization, clarity of process, and information consistency and dissemination and so on. Using this information, agency leads will have the insight required to make changes to process and service that can result in increased customer satisfaction with the agency.
C.5.4.3	Attributes Consistency	The contractor shall identify at least 4 service attributes that can be measured consistently across all participating agencies based on data	nBA will work with all the agencies to determine the best categories for feedback but will insure that at least 4 of the categories are similar across all

		analysis.	15 agencies in our project. Each agency will have one set of categories for all locations. This will allow for comparison across agencies for key performance indicators.
C.5.4.4	Demonstration of Functionality	The contractor shall incorporate complete evaluation functionality into each beta demonstration and launch described in C.3.1.	nBA will demonstrate the summary of all data gathered in the ways defined in section 3.1.
C5..5	Web Based Tooling	The contractor shall create a web interface to display synthesized customer service grades and visualized feedback data.	The nBA application will present the grades and offer access to the detailed survey responses and social media reviews for all agencies. The grades will be calculated per insight per response/review and rolled up into categories, which are rolled up into overall agency grades. Via a browser-based interface, agency users will have immediate and consistent access to the grades and charts that depict overall performance along with the detailed reviews that back up these rankings. Further, the users will be able to review standard reports and digests emailed periodically.
C.5.5.1	Grade Presentation	The contractor shall create a web interface to display dynamic real-time agency grades and sub grades.	nBA will offer users access to all data processed through our solution via a web based interface that offers near real-time availability of the customer overall sentiment including performance, comparisons and the verbatim responses/reviews. Additionally, nBA will make the data available to DMPED and the CTO to optionally present this data to the public on grade.dc.gov. DMPED will be responsible for making these grades available to the public and approving the push of this data to the public.
C.5.5.2	Search and Filter	The contractor shall create a web interface that is searchable and can be filtered by at least agency name, customer service grade, or service attribute.	nBA's solution will offer users the ability to search through customer responses/reviews for keywords and terminology. Users will be able to filter the views of data by agency,

			location, category and time.
C.5.5.3	Charts/Visualization	The contractor shall provide data visualizations (charts and graphs) of feedback that can be drilled down at least 3 levels. For example, an agency grade could be based on 5 service attributes displayed by weighted value. Upon clicking a single service attribute, a user should be able to see the categorical or raw data that generated the attribute.	<p>nBA’s feedback solution will allow users to drill from overall grade, to grade per category, to grade per location, to grade per insight and finally to the actual review. These visualizations will be presented as a snap shot in time or over time. Users will be able to present this information textually or in a variety of charts. Users with security access will be able to compare grades between agencies and between locations of one agency. Users will be able to drive to the actual responses/reviews with ease.</p> <p>The nBA dashboard offers real-time availability of the customer overall sentiment including performance, comparisons and the verbatim responses/reviews. These grades are presented in a variety of ways including “word clouds” indicating polarity of reviews, performance over time and review source charts to name a few.</p>
C.5.5.4	Display Grades	The contractor shall offer the needed data to enable the display grades per agency on grade.dc.gov.	<p>nBA will make the data available to DPMED and the CTO to present the agencies grades to the public on grade.dc.gov.</p> <p>nBA will offer DPMED recurring access to all data processed through our solution via export or web services. DPMED may elect to implement an approval process for grades posted to grade.dc.gov.</p>
C.5.5.5	Increase Complexity	The contractor shall increase the data collection, analysis, and visualization complexity. Increased complexity can include added data sources, new service attributes, additional chart or graph displays, and added levels of data analysis.	nBA will work closely with the DMPED team to ensure their success with the data gathered, how it is processed and how it is presented to users of the application both online and in reports. nBA will increase the data sources, user functionality, reports and/or services as needed with

			reasonable agreed upon priority and dates defined.
C.5.5.6	Incorporate Functionality	The contractor shall incorporate complete visualization functionality into each beta demonstration and launch described in C.3.1.	nBA will incorporate any additional demonstrated functionality into the solution with an agreed schedule derived through collaboration between the parties.
C.5.6	Project Meetings	The contractor shall participate in project review meetings every 30 days to demonstrate progress, discuss deliverables, and coordinate with DMPED staff.	nBA will meet regularly, every 30 days, with the DPMED project team to discuss milestones, next steps and joint responsibilities of the team to ensure mutual success.

J.7B - Updated Extract of Key Assumptions and Dependencies

Key Assumptions and Dependencies (on DMPED, other DC Government Agencies, or Third Party personnel)

As used herein, references to (x) “DMPED” and “DC Government” mean generally and refer to the District and any applicable agencies thereof, and (y) to “nBA” refer to the Contractor.

- DMPED will designate one person from their team as Project Lead and will serve as our chief point of contact. This Project Lead will be responsible on the DC Government team side for coordinating with the appropriate agencies in terms of getting their participation and sign off on key deliverables and milestones.
- DMPED will be responsible for marketing/promoting the new text-based and web-based customer feedback tools for both the pilot agencies and all subsequent agencies to ensure that we are building on the content available.
- The DC Government Team (Office of the Chief Technology Officer and the Web Development Team) will be responsible for the Grade.DC.Gov website. nBA will supply the agency grades via a data file (format TBD) that then can be displayed on the Grade.DC.Gov website.
- The Grade.DC.Gov website will display links to the Customer Feedback sites that nBA will manage. These sites will allow the public to answer brief survey questions (determined with the DMPED and each agency) that will then feed into the nBA application.
- Only designated DC Government employees will have access to the nBA platform. The general public will use and access the Grade.DC.Gov website.
- Section 508 – the DC Government team will be responsible for the compliance of the Grade.DC.Gov website. The nBA platform, accessed only DC Government employees, will not be compliant at launch but nBA will work with the DC Government Web Development Team to ensure appropriate compliance over time.

J.8 – Contractor’s Master Subscription Agreement



MASTER SUBSCRIPTION AGREEMENT

1. NATURE OF AGREEMENT/PARTIES

This **Master Subscription Agreement** (this “*MSA*”) relates to and governs your subscription to and use of Services provided by newBrandAnalytics, Inc. (“*nBA*”). Except as the context otherwise requires, references herein to the “*MSA*” mean and are deemed to include and encompass this MSA, the Agreement (and all exhibits and attachments) entered into between nBA and the Government of the District of Columbia (the “*District*”) (the “*Agreement*”). As used herein “*Client*” or “*you*” means the District. Capitalized terms not otherwise defined below are defined as set forth in Section 11 of this MSA.

2. USE OF SERVICE

2.1 Initiation of Service. nBA will make Subscribed Services available to Client on a subscription basis during the term set forth in the corresponding Agreement and subject to the terms, conditions and limitations set forth in this MSA or the Agreement.

2.2 Client Users. Client may grant Client Users access to the Subscribed Services solely and exclusively for the purpose of using Subscribed Services through the nBA Site for Client’s internal business purposes. nBA will issue to the Company the number of unique sets of login credentials (each consisting of a user name and password) provided for in the Agreement and, unless otherwise approved in writing by nBA in its sole discretion, Client will ensure that no more than one Client User will have access to or will use each set of login credentials. Without prejudice to any other rights or remedies it may have, nBA may, at any time and without any liability to Client, suspend and/or terminate (x) any Client User’s access (or the access of any unauthorized user using a Client User’s login credentials) to the Subscribed Services in the event any such Client User (or any unauthorized user using a Client User’s login credentials) (i) violates any provision of this MSA, or (ii) uses the Subscribed Services for any purpose other than for the internal business of the Client; or (y) access by any unauthorized user (or suspected unauthorized user) to the Subscribed Services; *provided, however* that nBA will in its sole discretion consider the restoration of access to or use of any suspended or terminated login credentials if requested by Client and if

Client provides assurances acceptable to nBA that Client will closely monitor use of such login credentials so as to ensure compliance with the provisions and requirements set forth above.

2.3 Implementation and Training. nBA will provide any Services Implementation and Training contracted for by Client at substantially the times and in substantially the manner as shown or described in the Agreement and subject to Client’s fulfillment of any related Client payment, assistance, or other obligations as shown or described in the Agreement.

3. [INTENTIONALLY OMITTED]

4. LICENSES & RESPONSIBILITIES

4.1 Right to Use Subscribed Services. Subject to the other terms and conditions set forth in this MSA, nBA hereby grants to Client a nonexclusive and nontransferable right to use the Subscribed Services during the subscription term set forth in the Agreement, solely and exclusively for Client’s internal business purposes. Except as expressly provided in this MSA, Client may not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise make the Subscribed Services, the Content, or the Technology available to any third party, (ii) copy, modify or make derivative works based upon the Technology or the Content; or (iii) "frame" or "mirror" any Content contained in, or accessible from, the Subscribed Services on any other website, server, wireless or Internet-based device; or (iv) attempt to do any of the foregoing or assist or acquiesce to any third party doing or attempting to do any of the foregoing.

4.2 Use of Client-Related Data. Client acknowledges, understands and accepts that nBA gathers, compiles, stores and uses (and will continue to gather, compile, store, and use) certain data and information regarding Client and certain aspects of Client’s business from a variety of sources and that such data gathering, compilation, storage, and use will occur with or without Client’s subscription to or use of any Subscribed Services. To the extent any Client-Related Data is gathered or compiled from Client’s social media sites or similar third party sources using any Client supplied login or user credentials (which if supplied nBA is fully authorized to

use in connection with this MSA), then Client expressly confirms and agrees that it will be impractical for nBA to segregate such Client-Related Data from other Client-Related Data gathered by nBA from other sources and hereby grants to nBA an irrevocable, perpetual, royalty-free and worldwide right and license to gather, compile, store, use, display, disseminate, and create derivative works from any and all such Client-Related Data, which right and license will survive the termination or expiration of this MSA or the Agreement, or Client's subscription to or use of any Subscribed Services. To the extent that Client gives access to nBA to any Client-Supplied Data (defined below), nBA agrees that it will segregate such data and will use such Client-Supplied Data solely for purposes of providing or delivering Subscribed Services under this MSA or under any other agreements between Client and nBA.

4.3 Restrictions and Unauthorized Use. Client will restrict use of the Subscribed Services to the specific Client Users specified as provided in Section 2.2, above. Client and Client Users may not attempt to access any Services other than the Subscribed Services for which Client is then subscribed and may not obtain or attempt to obtain information other than Client-Related Data or Content, or interfere, disrupt, or attempt to interfere with or disrupt the operation any Subscribed Services or other elements thereof or of any other systems or Services of nBA. Client agrees to promptly report to nBA all attempts of unauthorized access to the Subscribed Services, any other Services, or any other systems of nBA, or to any data other than Client-Related Data or Content, of which Client or any of its personnel become aware. Client further agrees that neither Client nor any Client User or other Client personnel will use any Subscribed Services to store, distribute or transmit any unlawful, harmful, threatening, defamatory, obscene or harassing material or information, including, but not limited to any computer virus or other harmful software. Client will cooperate with nBA in nBA's investigation and remediation of any security, unauthorized use or misuse issues arising from or related to use of any Subscribed Services by Client, Client Users, or any other persons using any login credentials provided to Client. Client shall not modify the Technology, or attempt to decompile, cross compile, disassemble, reverse engineer, or use any other means to decode the Technology, or permit affiliates, Client contractors, Client Users or any third parties to do so.

4.4 [Intentionally Omitted]

4.5 Third Party Software Or Services. nBA may provide the ability to create hyperlinks through the nBA Site or the Subscribed Services solely as a convenience to its Client and in no way shall nBA be responsible or liable for third party sites (including, without limitation the content of

such sites) accessible via any such hyperlinks. Client acknowledges that it may need to acquire (at Client's sole cost and expense) licenses or subscriptions to such third party sites or otherwise may need to register as a user with such third party sites.

4.6 Reservation of Rights. Subject to the limited rights expressly granted to Client in this MSA, nBA hereby reserves all right, title and interest in and to the Services, Subscribed Services, the nBA Site, the Technology, and the Content, including, without limitation, to all related intellectual property rights and other assets and properties of nBA.

5. CONFIDENTIALITY.

5.1 Confidential Information. Each party may receive information from the other party in connection with this MSA that is confidential and not generally available to the public. "**Confidential Information**" means (i) any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, including, without limitation, algorithms, business plans, customer data, customer lists, customer names, financial analysis, forecasts, know-how, ideas, inventions, market information, marketing plans, processes, products, product plans, research, specifications, software, source code, trade secrets or any other information which is designated as "confidential", "proprietary" or some similar designation in connection with its disclosure, and (ii) any information otherwise obtained, directly or indirectly, by a receiving party through inspection, review or analysis of the materials described in clause (i). Information disclosed orally shall be considered Confidential Information only if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information of a third party that is in the possession of one of the parties and is disclosed to the other party in connection with this MSA. As to nBA, Confidential Information includes, without limitation, the Technology, related documentation, specifications, pricing, disclosures in connection with professional services or support and the terms and conditions of this MSA and the Agreement, as well as all reports and data generated for Client or by Client in connection with or as part of the Subscribed Services. As to Client, Confidential Information includes, without limitation, Client-Supplied Data to the extent that such Client-Supplied Data is not in the public domain is not excluded from the definition of Confidential Information pursuant to any of the provisions of Section 5.2, below.

5.2 Use of Confidential Information. Except for the Technology and the Subscribed Services, information and materials will not be considered as Confidential Information if the receiving party can establish by documentary evidence that the information is or was: (i) lawfully available to the public through no act or omission of the receiving party; (ii) in the receiving party's lawful possession prior to disclosure by the disclosing party and not obtained either directly or indirectly from the disclosing party; (iii) lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) independently developed by the receiving party. The parties agree, both during the term of this MSA and for a period of five (5) years (or, as applicable, with respect to Confidential Information that is a trade secret, for an indefinite period) after its termination, subject to compliance with the Freedom of Information Act, to hold each other's Confidential Information in confidence and not to disclose such information in any form to any third party without the express written consent of the disclosing party, except to employees and consultants performing services for the benefit of the receiving party who are under a written non-disclosure agreement protecting the applicable Confidential Information in a manner no less restrictive than provided for in this MSA. Subject to compliance with the Freedom of Information Act, each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of this Section 5. A receiving party facing legal action to disclose Confidential Information of the disclosing party shall promptly notify and provide the disclosing party the opportunity to oppose such disclosure or obtain a protective order and shall continue to treat such information as Confidential Information. This Section 5.2 shall not be construed as granting or conferring any rights to either party by license or otherwise, expressly or implicitly, to any Confidential Information.

6. WARRANTY AND LIMITATIONS

6.1 Warranty. nBA warrants that the Subscribed Services will function substantially as set forth or described at <http://newbrandanalytics.com/products-and-solutions.php>, in each case as such services may change or re-direct from time to time. In the event of any breach of this warranty, as nBA's sole obligation and Client's sole remedy nBA will use commercially reasonable efforts to implement such modifications or other remedies as are reasonably necessary to resolve the nonconformity in the Subscribed Services. The foregoing warranty and the associated remedy are the sole and exclusive warranty and remedy with respect to the Subscribed Services, the nBA Site, the Content, the Technology and all other products and services provided

under this MSA.

6.2 Disclaimer of Other Warranties. All other warranties, express or implied, are hereby expressly disclaimed by nBA, including without limitation, any warranty of merchantability, satisfactory quality, infringement, or fitness for a particular purpose or use.

6.3 Limitation of nBA Liability / Remedies

(a) Nothing in this MSA will serve to exclude or limit either party's liability to the other for death or personal injury caused by its negligence or fraud.

(b) Except as set forth in Section 6.3(a), in no event will nBA's liability of any kind include any special, indirect, incidental or consequential losses or damages (including, without limitation, actual or anticipated loss of revenue, turnover, sales or profits, or any loss caused by a delay in furnishing the services hereunder), even if nBA has been advised of the possibility of such potential loss or damage.

7. [INTENTIONALLY OMITTED]

8. FORCE MAJEURE

Upon giving notice to the other party, a party affected by an event of Force Majeure will be released without any liability on its part from the performance of its obligations hereunder, excluding payment obligations, but only to the extent, and only for the period, for which its performance of such obligations is prevented by the event of Force Majeure. During the period that the performance by one of the parties of its obligations hereunder has been suspended by reason of an event of Force Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable. To the extent such event of Force Majeure should extend for more than sixty (60) consecutive days, either party may terminate this MSA (subject to any applicable survival provisions) without liability to the other party, except for payments due to and through such date, upon giving written notice to the other party.

9. [INTENTIONALLY OMITTED]

9.1 Survival. Sections 4.6, 5, 6.2, 6.3, 10 and 11, as well as this Section 9.1, any additional terms set forth in this MSA that by their express provisions and nature contemplate effectiveness following expiration or termination of this MSA each will remain in effect in accordance with their terms notwithstanding the termination or expiration of this MSA.

10. GENERAL

10.1 Publicity. Client agrees that nBA may use Client's name and logos in nBA's customer list and may publish information identifying Client as a user of nBA products in advertisements and press releases (including releases to

professional and trade publications). Client will have the right to approve each such release or advertisement prior to its placement, but hereby agrees not to unreasonably condition or withhold its approval.

10.2 Assignment. Client may not sublicense, assign or otherwise transfer this MSA, the Agreement or any of Client's rights or obligations under this MSA or the Agreement (including, without limitation, by operation of law) except with the prior written consent of nBA in its sole discretion. Any prohibited assignment will be null and void.

10.3 Notice. Any notice will be deemed sufficient if and when personally delivered in writing or if and when given by (i) United States registered or certified mail (postage prepaid, return receipt requested), (ii) prepaid, recognized overnight courier, (iii) confirmed facsimile transmission, or (iv) email, in each case properly addressed to the respective addresses, facsimile numbers, or email addresses of the parties as set forth in the Agreement or as either party may have notified the other from time to time in accordance with the provisions of this Section 10.3.

10.4 Entire Agreement. This MSA and the Agreement constitute the entire agreement between the parties with respect to the specific subject matter hereof, and supersedes any and all other agreements between the parties related thereto, as well as all proposals, oral or written, and all negotiations, conversations or discussions between the parties related to this MSA. In the event of an irreconcilable conflict between any provisions of this MSA and any provisions of the Agreement, the provisions set forth in the Agreement control and prevail. No product or service specifications, or terms and conditions that are additional or contrary to the terms of this MSA or other communication from Client or any third party, will be construed as, or constitute a waiver of these terms and conditions, or acceptance of any such additional terms, conditions or specifications. nBA hereby expressly rejects and objects to such additional or contrary terms, conditions or specifications and Client agrees that any such additional or contrary terms, conditions or specifications are and will be null, void and unenforceable.

10.5 Modification of MSA. This MSA may not be altered, amended or otherwise modified without the written agreement signed by both Client and nBA.

10.6 No Waiver. No failure by either party to take any action or assert any right hereunder will be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

10.7 Severability. In the event that any of the terms of this MSA are in conflict with any rule of law or statutory provision or otherwise unenforceable under applicable

the laws or regulations, such terms will be deemed stricken from this MSA, but such invalidity or unenforceability will not invalidate any of the other terms of this MSA and this MSA will continue in force as if such stricken provisions were not a part hereof.

10.8 Governing Law. This MSA will be governed by, and interpreted and construed in accordance with, the internal, substantive laws of the State of Delaware without regard to conflict of laws principles.

10.9 Each Counterpart an Original. The MSA may be executed and delivered in two or more counterparts, including facsimile, PDF, or other electronic counterparts, and each such counterpart will be deemed an original hereof and all such counterparts together will form one and the same instrument.

10.10 Construction. Titles, captions, and headings in this MSA are for informational purposes and ease of reference only and are not to be utilized (or intended to be utilized) in the construction or interpretation of any provisions of this MSA.. The parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this MSA. As used herein, Whenever the words "include," "includes" or "including" are used in this MSA, they shall be deemed to be followed by the words "without limitation" whether or not actually followed by such words. References to "or" in this MSA shall be read, interpreted and construed if the context permits as "and/or". For purposes of this MSA, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

11. DEFINITIONS. For purposes of this MSA, the following capitalized words, terms and phrases, shall have the following meanings:

"Content" means any information or materials provided or made available to the Client in the course of using the nBA Site and any Subscribed Services, including, without limitation, any written or electronic data, information, reports, reporting templates, documents, downloadable or online software modules, and other products and services of or supplied by or through nBA.

"Client-Related Data" means any and all data, information, or material relating to Client or Client's business that nBA or its affiliates or vendors gather or assemble in connection with nBA's business.

"Client-Supplied Data" means internal data, information, or material of Client relating to Client or Client's business

and supplied by Client directly to nBA (and not obtained or obtainable by nBA by means of the Subscribed Services, nBA's other internal or external data and information gathering and collection tools or services, or any third party resources or databases, including, without limitation, social media sites).

"Client Users" means employees of Client who are expressly designated as users of any Subscribed Services in accordance with applicable provisions of this MSA.

"Exhibit" means any exhibit to this MSA that nBA has accepted in writing.

"Force Majeure" means an act or occurrence beyond the reasonable control of the affected party, including without limitation: strikes, lock-outs or other industrial action, or any litigation; embargo, civil commotion, riot, invasion, terrorist action, war (whether declared or not) or threat of or preparation for war; fire, explosion, storm, flood, earthquake, subsidence, epidemic, nuclear accident or other natural disaster; compliance with any law or governmental order, rule, regulation or direction or any nationalization, confiscation, appropriation, seizure or destruction of property by or under any government; breakdown of plant, machinery, systems or network, and/or default of suppliers or sub-contractors.

"nBA Site" means the web site operated by nBA, through which the Subscribed Services are made available to Client.

"Services" means services available via the nBA Site from time to time.

"Subscribed Services" means those specific Services indicated in the Agreement to which this MSA relates and made accessible to Client via the nBA Site or any other designated web site or IP address, or ancillary services rendered to Client by nBA, to which Client is being granted access under this MSA from time to time, including without limitation the Technology and the Content.

"Technology" means all software used in the operation, management or maintenance of the Subscribed Services or the nBA Site, and all other software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Client by nBA in providing the Subscribed Services.

"Term" means the period during which this MSA is effective in accordance with the provisions hereof.

* * * *

