CINCINNATI METROPOLITAN HOUSING AUTHORITY

PROFESSIONAL SERVICES AGREEMENT

General Terms and Conditions

FOR

Banking Services

Contract No. 2019-7008

This Professional Services Agreement (the "Agreement") is entered into between the Cincinnati Metropolitan Housing Authority ("CMHA") a body corporate and politic, organized and existing under the laws of the State of Ohio and Contractor for the purposes of Contractor providing Banking Services. Hereinafter, CMHA and Contractor are collectively referred to as the "Parties".

RECITALS

WHEREAS, CMHA published Request for Proposal No. 2019-7008 in order to competitively procure the services of a qualified Contractor to provide Banking Services;

WHEREAS, CMHA awarded the Contract to Contractor based on Contractor's proposal and pursuant to CMHA's Procurement Policy;

WHEREAS, Parties agree that CMHA and Contractor's contractual relationship is subject to all applicable state, local and federal requirements including, but not necessarily limited to, mandatory contract terms mandated by the United States Department of Housing and Urban Development; and

WHEREAS**,** Contractor represents that it is qualified and authorized to perform all services as set forth in RFP No. 2019-7008 and as set forth in the Contractor's Proposal and the Contractor's Fee Submission Form or Best and Final Offer, if applicable; and

WHEREAS, Parties agree that the following Agreement contains CMHA's General Terms and Conditions for Professional Services Agreement and said terms and conditions shall not be subject to further negotiation, modification or amendment.

NOW THEREFORE, in exchange for mutual consideration the Parties agree to the following general terms and conditions:

PROFESSIONAL SERVICES AGREEMENT

GENERAL TERMS AND CONDITIONS

1. **Services:** Contractor agrees to perform and carry out in a prompt, satisfactory, and professional manner all necessary services required to fulfill the obligations as set forth in the Scope of Work in RFP No. 2019-7008. Additionally, the services, materials, and products provided for by Contractor

are limited to the services, materials, and products as set forth in the Scope of Work. Any attempt to modify, alter, increase, or decrease the services provided for in CMHA's solicitation documents after execution of this Agreement shall constitute a breach of this Agreement, may be grounds for termination of this Agreement and may be subject to the liquidated damages provision provided for herein. The contents of the RFP and this Agreement will become contractual obligations if Contractor is awarded the Contract. Failure of Contractor to accept the terms and conditions contained herein may result in termination of this Agreement, may subject Contractor to the liquidated damages provision contained herein and Contractor may be removed from future opportunities.

2. <u>Contract Term:</u>

2.1. This Agreement shall become effective upon CMHA issuing a notice of contract commencement to Contractor and shall remain in effect for a term of one year with the option, at CMHA's sole discretion, to extend four one-year contracts. The notice of contract commencement may be delivered in the form of a letter, copy of signed contract or contract acknowledgement.

2.2. All Work will commence upon authorization of CMHA's Contracting Officer. All Work shall proceed in a timely manner without delays. The Contractor shall commence the Work upon receipt of a Notice to Proceed and/or Purchase Order Presented and shall perform said Work in accordance to the terms and conditions provided for and agreed upon herein.

3. <u>Mandatory HUD Terms:</u> Parties acknowledge and agree that *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I* contains the mandatory terms prescribed by the United States Department of Housing and Urban Development and that said terms are incorporated into this Agreement, attached hereto, and may not be modified or amended. Any term hereinafter, including without limitation any provisions contained in Contractor's Solicitation Response and/or any other contract documents, even if signed by CMHA, that conflict with the terms set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I* is void and unenforceable.

HUD Form 5370-C Section 1-5 is clarified by 2 CFR 200.315, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (F), and 37 CFR Part 401. Rights in Data refer to data and records which are the products produced under the contract and the only part in which CMHA has ownership rights. CMHA does not have rights in the existing software systems of the contractor.

4. <u>Mandatory Housing Authority Terms:</u> Parties acknowledge and agree that this Agreement contains *Cincinnati Metropolitan Housing Authority's Professional Services Agreement General Terms and Conditions* and contains mandatory terms as set-forth by CMHA and said terms shall not be modified or amended without the express written approval of CMHA's Contracting Officer and without such approval the terms as forth in this Agreement are in full force and effect. Any term(s) hereinafter including, without limitation, any provisions contained in Contractor's Solicitation

Response and/or any other contract documents, that conflict with the terms as set forth in this Agreement is void and unenforceable. Any Provision(s) contained within the *Cincinnati Metropolitan Housing Authority Professional Service Agreement General Terms and Conditions* that is similar to any provision(s) or has the same or similar heading of any provision(s) of *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I* shall be considered supplemental provisions and are binding. Any Conflict in the language is unintentional and the HUD Provision(s) shall be applicable.

5. **Subject to Appropriation of Funds:** CMHA's funds are contingent upon the availability of lawful appropriations by the United States Congress and the United States Department of Housing and Urban Development. If the United States Congress and/or the United States Department of Housing and Urban Development fail at any time to continue funding for the payments or obligation due hereunder, the Work under this Contract that is affected by the lack of funding will terminate and CMHA will have no further obligation to make payments and will be released from its obligations on the date funding expires.

6. **Compensation and Payment:**

6.1. CMHA will pay Contractor directly at the rate specified in the Contractor's Fee Submission and/or Best and Final Offer in approximately thirty (30) days of receipt of a properly completed and accepted invoice. If Contractor fails to satisfactorily comply with any term or condition of this Agreement, CMHA may, in its sole discretion, withhold payments claimed by Contractor for services rendered. No payment will be made for incomplete, inaccurate, or defective work. CMHA shall not pay any fees or payments that are punitive in nature and/or are not contemplated in this Agreement, the Solicitation or the Contractor's Proposed Fee Submission including, without limitation, one-time fees, recurring fees, staging fees, training fees, annual fee increases, early termination fees, late fees and/or additional miscellaneous fees.

6.2. Unless expressly specified in the Contract Documents, the unit prices reflected in the Fee Submission and/or Best and Final Offer shall remain firm with no provision for price increases during the term of the Contract.

6.3. Unless otherwise specified within the RFP documents, any unit prices reflected in the Contract Documents shall remain firm with no provision for price increases during the term of the Agreement.

6.4. Contractor must submit an original invoice to the office designated to Contractor by CMHA. To be a proper invoice, the invoice must include a description of services and the date(s) services were provided.

6.5. CMHA shall not be obligated or be liable for any costs incurred prior to award of contract. All costs to submit and prepare a response to the solicitation documents shall be borne by the Proposer/Bidder.

7. **Warranties and Representations**: Contractor represents and warrants that its services and materials provided for under the terms of this Agreement will be of good quality and consistent with the professional skill and care ordinarily provided by professionals performing the same or similar service and such services and materials shall be provided in accordance with generally accepted industry standards. Additionally, Contractor represents and warrants the following:

7.1. Contractor has the right to enter into this Agreement.

7.2. All services, materials and products provided for under this Agreement are provided in accordance with the sound professional standards and the requirements of this Agreement and without any material defect.

7.3. No services or materials provided for by Contractor under this Agreement will infringe upon the intellectual property rights of any third party.

7.4. All services, materials and products provided for hereunder are merchantable and fit for the particular purpose described in this Agreement.

7.5. Contractor has the right and ability to grant the license for any materials and/or products in which title does not pass to CMHA.

7.6. Contractor will observe and abide by all applicable federal, state and local laws, rules, regulations, ordinances and codes and obtain any license(s), permit(s) or the like required to provide the services and materials under this Agreement.

7.7. Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Agreement.

7.8. Contractor warrants that all equipment, mechanical devices, hardware and software or other type of physical machinery ("equipment") fully complies with all governmental and environmental safety standards applicable to such equipment. The Contractor also warrants that the equipment will perform substantially in accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such equipment, and that such equipment will achieve any function described in such writings.

If any services of Contractor or any materials or products provided for by Contractor fail to comply with these representations and/or warranties, and Contractor is so notified in writing, Contractor shall either 1) correct such failure with all due speed, or 2) shall refund the amount of compensation paid for the services, materials or products. Contractor shall also indemnify CMHA for any direct damages and claims by third parties based upon a breach of these warranties.

8. **Non-Exclusivity:** This Agreement is a non-exclusive agreement. Either Party may perform or enter into agreements to perform the services and/or to provide any materials or products similar to those provided for herein so long as such agreements do not impede either Party's ability to perform under this Agreement.

9. **Indemnity:** Contractor shall indemnify and hold harmless CMHA and its officers, employees and agents for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities including all costs and expenses and fees of litigation that arise directly or indirectly from any acts or omissions related to this Contract performed or omitted by Contractor or its agents, and/or employees and includes, but it not limited to, claims related to breach of contract.

Contractor will also indemnify CMHA and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any copyright, patent, trade secret, or similar intellectual property right based upon CMHA's proper use of any products or supplies under this Contract. This obligation of indemnification will not apply where CMHA has modified or misused the products or supplies and the claim of infringement is based upon the modification or misuse. CMHA agrees to give Contractor notice of any such claim as soon as reasonably practicable and to give Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by CMHA's General Counsel. If a successful claim of infringement is made, or if Contractor reasonably believes that an infringement claim that is pending may succeed, Contractor shall take one of the following four actions:

9.1. Modify the service(s), material(s) and/or product(s) so that the service(s), materials(s), and/or product(s) are no longer infringing.

9.2. Replace material(s) and/or product(s) with an equivalent or better item.

9.3. Acquire the right for CMHA to use the infringing service(s), material(s) and/or product(s) as intended; or

9.4. Cease the related service(s) and/or remove the material(s) and/or product(s) and refund any amount CMHA paid for the service(s), material(s) and/or products(s) that required the availability of the infringing material(s) and/or product(s) for it to be useful to CMHA.

Nothing contained in this provision shall be construed to limit any indemnity obligations of Contractor as set forth within the provisions of the Contract Documents.

It is agreed and understood that in no event shall any CMHA official, officer, employee, or agent be held personally liable or responsible for any covenant or agreement whether expressed or implied.

10. **Insurance:**

10.1. Contractor shall obtain and maintain during the performance of any services under this Agreement the following insurance and the amount of such coverage shall be in an amount to cover all indemnity obligations and shall include, but not necessarily be limited to, the following:

10.1.1. Commercial general liability insurance, including a contractual liability endorsement, in an amount not less than: $1,000,000 each occurrence; $2,000,000 general aggregate;

$50,000 damage to premises and fire damage; and $5,000 medical expenses for any one person.

10.1.2. Automobile Liability Insurance with CMHA named as an additional insured with minimum limits as follows: $1,000,000 combined single limit; $50,000/$100,000 for vehicles utilized during the contract when not owned by the Contractor; $5,000 medical pay.

10.1.3. Workers' Compensation Insurance as required by state statute and Employer's Liability Insurance covering all of Contractor's employees acting within the course and scope of this Contract.

10.1.4. Excess Liability Insurance (Umbrella Policy**):** may compensate for a deficiency in general liability or automobile insurance coverage limits.

10.2. The coverages provided to CMHA shall be primary and not contributing to or in excess of any existing CMHA insurance coverages.

10.3. The Insurance shall contain provisions preventing cancellation or non-renewal without at least 45 days' notice to CMHA and stating that the carrier will waive all rights of recovery, under subrogation or otherwise, against CMHA, its office, agents, employees or Board of Commissioners.

10.4. Contractor shall provide certificates evidencing the coverage required herein to CMHA upon execution of this Agreement and annually, thereafter, evidencing renewals thereof. At any time during the term of this Agreement, CMHA may request, in writing, and the Contractor shall thereupon, within 10 days, supply to CMHA evidence satisfactory of its compliance.

11. <u>Limitation of Liability:</u> Notwithstanding any limitation provisions contained in the Contract Documents and materials incorporated by reference, the Parties Agree as follows, unless specified otherwise in this Agreement:

11.1. In no event shall CMHA be liable for any indirect, incidental, or consequential loss or damage of any kind, including but not necessarily limited to lost profits, even if CMHA had been advised, knew or should have known of the possibility of such damages.

12. <u>Amendments:</u> No oral representations will be made as to the meaning of the Contract Documents. No amendment or modification of this Agreement will be effective unless it is in writing, on CMHA letterhead and signed by both Parties. At no time shall an amendment or modification be effective that conflicts with any mandatory provision set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I.*

13. <u>Confidentiality:</u> Contractor will be privy to sensitive information, documents, data, records, or other material that is confidential under this Agreement. Contractor may not disclose any information

obtained by it as a result of this Agreement without the express written permission of CMHA. Contractor shall assume that all information, documents, data, records, or other material provided for under this Agreement is confidential.

13.1. The Contractor will be liable for the disclosure of any confidential information. The Parties agree that the disclosure of confidential information obtained under this Agreement may cause CMHA and/or its officers and/or employees irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of such breach, CMHA shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to assert claims and/or to recover damages.

13.2. When applicable, Contractor agrees to complete with the Privacy Act of 1974 and all rules and regulations issued under the Privacy Act of 1974.

14. **Ohio Public Records Law**: Correspondence, materials and documents received pursuant to the RFP/Proposal Documents may become public records subject to the provisions of Ohio Public Records access law.

15. **Publicity:** Contractor agrees to submit to CMHA all advertising and publicity related matter relating to this Agreement wherein CMHA's name is mentioned or language used from which the connection of CMHA's name may, in CMHA's judgment, be inferred or implied. Contractor shall not publish or use such advertising and publicity matters without prior express written consent of CMHA.

16. **Non-Waiver of Rights:** If either party does not seek compensation for breach or insist upon strict performance of any provision of this Agreement, that Party is not prevented from seeking compensation or insisting upon strict performance for a future breach of the same or similar provision. Failure of CMHA to take any action or to assert any right hereunder shall not be deemed a waiver of such right.

17. **Taxes:** CMHA is exempt from state and local sales tax and does not agree to pay any taxes.

18. **Remedies:**

18.1. **Actual Damages:** Contractor is liable to CMHA for all actual and direct damages caused by Contractor's default. In the event Contractor fails to provide services or material as provided for in the Contract Documents, CMHA may substitute the services and/or material from a third party. CMHA may recover the costs associated with acquiring substitute services and/or materials, less any expense or costs saved by Contractor's default, from Contractor.

18.2. **Liquidated Damages:** If actual or direct damages are uncertain or difficult to determine, CMHA may recover liquidated damages in the amount of 1% of the total value of this Agreement as contemplated within the Contract Documents for every day that the default is not cured by the Contractor. Additionally, if the default is the result of a breach contemplated for

in Provision 1 of this Agreement and such default leads to the necessity for CMHA, as determined by CMHA, to re-solicit for the services, materials, and/or products contemplated for under this Agreement, Contractor shall pay to CMHA the sum of $2,200 for such costs related to the re-solicitation and procurement of another provider. Parties agree that this sum reasonably reflects the cost associated with the re-solicitation contemplated for under this Provision.

18.3. Deduction of Damages from Contract Price: Upon prior written notice being issued to the Contractor, CMHA may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on this Agreement.

19. <u>Contractor Suspension</u>: If Contractor fails to perform any one of its obligations under the Contract Documents it will be in default and CMHA, at its sole discretion, may suspend rather than terminate this Agreement when CMHA believes that doing so would better serve its interest. In case of a suspension, the amount of compensation due to Contractor will be determined in the same manner as provided for in the Termination for Convenience provision set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I* less any damage to CMHA resulting from Contractor's breach or other default.

20. <u>Additional Services/Purchases by Other Public Agencies ("Piggy-Back")</u>: Contractor acknowledges that other Public Agencies may seek to "Piggy-Back" under the same terms and conditions, during the effective period of Agreement. The services and/or purchases being offered in the Contract Documents, Fee Submission and/or Best and Final Offer and for the same prices and/or terms proposed therein. Contractor has the option to agree or disagree to allow contract Piggy-Backs on a case-by-case basis. Before CMHA permits another Public Agency to Piggy-Back any contract, CMHA shall first obtain the awarded Contractor's approval. Without the Contractor's approval, CMHA can not permit the requesting Public Agency the right to Piggy-Back. In the event the awarded Contractor allows another Public Agency to join the CMHA Contract, it is expressly understood that CMHA shall in no way be liable for the joining Public Agency obligations to the awarded Contractor in any manner whatsoever.

21. <u>Survivorship:</u> All provision hereunder relating to payment, confidentiality, warranties, limitations on damages, publicity, and indemnity shall survive the termination of this Agreement.

22. <u>Governing Law</u>: This Agreement shall be governed and construed exclusively by its terms and by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the court of appropriate jurisdiction in Hamilton County, Ohio.

23. <u>Federal Requirement:</u> The Work to be performed under this Agreement will be paid for in part by federal funds and therefore is subject to federal statutes, rules, regulations, laws, orders and directives applicable to work paid for by federal funds. In the event an applicable federal requirement conflicts with any provision of the Contract Documents, the federal requirement shall prevail and take precedence over and against such conflicting provisions. Federal requirements may include, but are not limited to:

23.1. Executive Order 11061, as amended which directs the Secretary of HUD to take all action necessary and appropriate to prevent discrimination by agencies that utilize federal funds;

23.2. Title VI of the Civil Rights Act of 1964, which provides that no person shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance.

23.3. Title VIII of the Civil Rights Act of 1968;

23.4. The Age Discrimination Act of 1975;

23.5. Anti-Drug Abuse Act of 1988

23.6. HUD Bulletin 909-23.

24. **Force Majeure**: Neither party shall be liable for failure to perform if such failure is caused by conditions beyond its control including, but not limited to, Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

25. **Severability**: If any provision of this Agreement is determined by a court having appropriate jurisdiction to be unenforceable to any extent, the rest of the provisions of this Agreement and the Contract Documents will remain enforceable to the fullest extent permitted by law.

26. **Ownership and Use of Documents:** All documents, materials, data, and records generated as a result of this Agreement shall remain the property of CMHA. If this Agreement results in any material to be copyrighted, the author may copyright the work. However, CMHA and the United States Department of Housing and Urban Development will have the right to a royalty free, not exclusive and irrevocable license to reproduce, publish, use and authorize others to use the work for government purposes.

27. **Order of Precedence:** The term "Contract Documents" shall include the documents listed in this Provision. Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to provide for the entire agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be:

27.1. Applicable Federal and State of Ohio statutes and regulations
27.2. Form HUD-5370-C Section I General Conditions for Non-Construction Contracts
27.3. This Agreement
27.4. The Request for Proposal No. 2019-7008, including all addenda and attachments
27.5. The Contractor's Fee Submission and/or Best and Final Offer
27.6. Contractor's Proposal subject to any limitations set forth in this Agreement
27.7. Contractor form of Agreement, if applicable
27.8. Other Documents incorporated by reference (if applicable)

28. <u>Additional Terms and Conditions</u>: No additional terms and conditions included with Contractor's Proposal that modify the order of precedence as listed above, and/or that impose additional liability(ies), obligation(s), or indemnity(ies) upon CMHA, and/or that limit the liability(ies), obligations, or indemnity(ies) of Contractor shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this Agreement. If any additional term conflicts with the terms or intent of this Agreement, such term(s) is void and unenforceable. If additional terms and conditions are submitted either purposefully through intent or design or inadvertently appearing separately in transmitting letters, specifications, boilerplate agreements, literature, price lists or warranties, it is understood and agreed the general and special conditions in this Agreement and RFP 2019-7008 are the only conditions applicable to this proposal and the Proposer's authorized signature affixed to the proposal attests to this.

If Contractor, in the ordinary course of its business, requires any type of or form of agreement that provides for Contractor's general terms and conditions and such term(s) and condition(s) are contrary to or conflict with any term(s) or conditions(s) provided for herein, Parties unequivocally acknowledge and agree that the term(s) and condition(s) provided for herein shall take precedence and prevail including, but not limited to, instances when 1) the Contractor's form of agreement is signed subsequent to Contractor's Proposal submission and/or 2) the Contractor's form of agreement expressly states that its terms and provisions take precedence and/or supersedes all other Contract Documents. Such terms and conditions will effectively be void and unenforceable. Although, such terms and conditions may remain in Contractor's form of agreement, Parties acknowledge and agree that said terms and conditions have no effect, are void and are hereby expressly rejected.

29. <u>Contract Award/Commencement:</u> Upon submittal of its response to CMHA's Solicitation, Contractor is accepting the terms of this Agreement. Upon issuance of award to Contractor, CMHA is accepting Contractor's offer contained in the Fee Submission and/or Best and Final Offer. No **other contractual documents will be necessary or accepted** unless specifically expressed in the notification of contract commencement. The Contract commences upon CMHA's issuance of a notice of contract commencement, which may or may not be in the form of a copy of the Contract Documents, unless said noticed expressly states otherwise, in those instances, Contract Commencement occurs in accordance with the notification.