

AGREEMENT
BETWEEN
THE CITY OF ALBANY
AND
SENSYS GATSO USA
TO FURNISH AND INSTALL
A CITY-WIDE TRAFFIC CONTROL SIGNAL
PHOTO VIOLATION MONITORING SYSTEM

AGREEMENT made and effective the 1st day of March, 2019 by and between the City of Albany, New York, (hereinafter referred to as the "CITY") a New York municipal corporation with its principal place of business located at 24 Eagle Street, Albany, New York 12207, and Sensys Gatso USA, Inc., (hereinafter referred to as "GATSO"), with its office located at 900 Cummings Center, Suite 222-T, Beverly, Massachusetts 01915.

WITNESSETH

WHEREAS, the CITY issued a Request for Proposals (hereinafter referred to as the "RFP", which is incorporated herein and made a part hereof by reference) numbered 2015-02 and dated January 8, 2015 to provide for the design, implementation, installation, maintenance and operation of a turnkey traffic-control signal photo violation-monitoring system capable of detecting and recoding red light violations, including the support process citations for the City of Albany, New York; and

WHEREAS, GATSO submitted a Proposal (hereinafter referred to as the "Proposal", which is incorporated herein and made a part hereof by reference) dated January 28, 2015, for providing said city-wide turnkey traffic-control signal photo violation-monitoring system; and

WHEREAS, the CITY awarded GATSO the contract to provide the aforementioned city-wide turnkey traffic-control signal photo violation-monitoring system, and the parties executed two amendments and three extensions of the initial agreement for services, all of which are superseded by the executing of this agreement; and

WHEREAS, GATSO filed with the Delaware Secretary of State a Certificate of Amendment of Certificate of Incorporation changing its name from GATSO USA, Inc. to Sensys Gatso USA, Inc., a copy of which is attached hereto as Exhibit A, and the parties wish to memorialize the same for the purposes of the agreement.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

ARTICLE I. SCOPE OF SERVICES

1.1 SYSTEM REQUIREMENTS

- a. GATSO personnel will obtain and review motor vehicle records available via the National Law Enforcement Telecommunications System ("NLETS") on behalf of the City in order to identify the owners of vehicles that will receive the Notice of Liability ("NOL"). GATSO shall comply with all applicable State of New York and NLETS requirements in connection with such access and review. To the extent required by NLETS, the City will provide written authorization (in a form reasonably acceptable to the City) for GATSO to perform MVD inquiries on behalf of the City.
- b. GATSO's Red Light Camera (RLC) system shall be capable of producing program monitoring reports that meet New York State traffic law requirements and include, but are not limited to:
 1. Number of violations by location,
 2. Number of violations where NOL were not issued,
 3. Number of NOLs issued,
 4. Summary of equipment hours of service, and
 5. Summary of equipment hours of malfunctions.
- c. GATSO shall use commercially reasonable efforts to maintain a proper chain of evidence that meets the requirements of the City, County, State and Federal traffic code enforcement policies and procedures.
- d. GATSO's RLC system shall be:
 1. In the event GATSO makes upgrades to the system or related performance capabilities generally available to its customers, GATSO will provide such upgrades without charge to the City;
 2. Equipment capable of producing still pictures and video feeds;
 3. Modular in construction to facilitate easy installation and transportability;
 4. Tamper and vandal proof; and
 5. Will have as little impact or reliance on existing traffic signal infrastructure as possible.
- e. GATSO's RLC system shall allow City personnel to view images in real time over an internet connection.
- f. GATSO shall ensure, to the extent practicable, that the digital images produced by the system shall not include images that identify the driver, passengers or contents of the vehicle.
- g. Except for reasonable scheduled and unscheduled downtime, including system maintenance and repairs as set forth in Article 1.3, and Force Majeure as set forth in Article 15.4, the RLC system shall operate 24 hours a day, 7 days a week, and shall record all pertinent data for each violation at time of capture that shall include, but is not limited to:

1. License plate number
 2. Unique violation identifier
 3. Location of violation
 4. Date of violation (mm/dd/yyyy)
 5. Time of violation
 6. Elapsed time between images
 7. Direction of travel
 8. Traffic signal phase
 9. Time into the red phase
 10. Vehicle speed
 11. Duration of prior amber phase
 12. Vehicle lane of travel
 13. Camera ID, and
 14. Frame sequence numbers.
- h. GATSO shall retrieve the evidence of violations, and where necessary, replace the film and/or data storage components on a regular basis.
- i. The RLC system should be capable of generating NOLs that include, but are not limited to:
1. The name and address of the registered owner of the vehicle,
 2. Notice that the violation is pursuant to City ordinance,
 3. Images of the violation,
 4. Location of the violation,
 5. An image of the license plate number,
 6. The date and time into the red zone when the violation occurred,
 7. The speed of the vehicle,
 8. A statement that the recorded images are evidence of the infraction,
 9. The civil fine imposed and date by which payment must be made,
 10. The procedures for payment, and
 11. Instructions for viewing the images online.
- j. GATSO shall initially review the images and sort out images for categories the City has determined exempt, such as police, fire and ambulance vehicles, and funeral processions.
- k. GATSO shall then submit the images via a secure website to the Albany Police Department for review. After the Police Department has determined which images are legitimate violations they will be returned to GATSO for processing and mailing.
- l. Upon mailing of violations, GATSO shall transfer on a daily basis all ticket information to the Albany Parking Violations Bureau for subsequent payment, hearing, noticing and enforcement processing.
- m. All images recorded by the RLC system shall become the property of the City.

- n. GATSO shall provide a secure web site so the owners of vehicles that receive violations can view the images and video.
- o. The RLC system shall be capable of interfacing and exporting data and images to other City databases as required.
- p. To harness the benefits of cloud computing, the City has instituted a Cloud First policy. Similar to the Federal government the City of Albany is adopting a "Cloud First" strategy. Cloud computing has the potential to play a major part in improving government service delivery. The cloud computing model can significantly help our departments grappling with the need to provide highly reliable, innovative services quickly despite resource constraints. GATSO agrees to provide web-based XILIUM back-office software functionality, as more specifically set forth in the "Backoffice Solution" section of GATSO's Proposal, attached hereto and incorporated herein as Appendix "B."
- q. The RLC violation processing system shall be internet enabled and shall be available 24 hours a day, 7 days a week, for authorized users, except for reasonable scheduled and unscheduled downtime, including system maintenance and repairs as set forth in Article 1.3, and Force Majeure as set forth in Article 15.4.
- r. The RLC system shall be capable of producing regular statistical reports on RLC system operations.
- s. GATSO will use commercially reasonable efforts to notify the City and initiate repairs to the RLC system within forty-eight (48) hours after identification of any damage or a defect. Repairs shall be completed within seventy-two (72) hours from the initiation of repairs except in the event of a Force Majeure event.
- t. The RLC system must be compliant with all applicable local, state, and federal laws having jurisdiction in the use of RLCs for traffic enforcement. The CITY shall have ultimate responsibility for ensuring compliance and controlling program oversight. Accordingly, the CITY has identified the following responsibilities:

City / Contractor Responsibilities

Program Oversight	City
Planning	City/GATSO
Design	GATSO
Plan Review	City
Equipment Ownership	GATSO
Installation	GATSO
Inspection	City
Operation	GATSO
Maintenance	GATSO

Citation Processing	GATSO
Initial Citation Review	GATSO
Subsequent Citation Review	City
Citation Mailing	GATSO
Citation Enforcement	City
Testifying	GATSO/City
Public Awareness	GATSO/City

- u. RLCs shall be installed in and/or relocated to locations that are mutually agreed upon by the CITY and GATSO.
- v. Upon termination of the contract, and/or upon the findings of a court of competent jurisdiction that the RLC system is not permitted by law, or upon the expiration and non-renewal of the New York State legislation authorizing the use of a traffic-control signal photo violation-monitoring system in the City of Albany, GATSO shall remove all installed RLC system equipment at no cost to the City. Notwithstanding the foregoing, GATSO will not remove any camera pole foundation, which shall be left approximately flush with grade with no exposed bolts or other hazards. Installed underground conduit and other equipment shall not be required to be removed. GATSO shall use commercially reasonable efforts such that removal and restoration activities occur within forty-five (45) days after the effective date of termination and do not unreasonably interfere with or adversely affect traffic flow.

1.2 ROLE OF CITY DEPARTMENTS

Albany Police Department ("APD")

The APD shall be responsible for reviewing all photographic and/or electronic images to determine if a violation occurred. Prior to mailing the Notice of Liability to the vehicle owner, GATSO shall submit all images of the violation to the APD for review. Violations that the APD determines to be valid will be returned to GATSO for processing and mailing.

Traffic Engineering Unit

The Albany Police Department, Traffic Engineering Unit will provide GATSO with supervised access to the traffic signal control cabinets for inspection purposes. Only authorized Traffic Engineering Unit staff with prior review and approval will be permitted to make any changes to the traffic signal equipment.

At no time will GATSO have supervised or unsupervised access to the traffic signal controller for any purpose. GATSO may make suggestions to the Albany Police Department in reference to the traffic signal equipment but at no time will GATSO be allowed to make any changes to the traffic signal equipment.

At no time will GATSO have unsupervised access to the traffic signal control cabinets or the ability to change traffic signal timing.

City of Albany Parking Violations Bureau ("PVB")

The Parking Violations Bureau is responsible for providing the disposition of all summonses issued for RLC violations. The PVB shall respond to all public inquiries regarding RLC violations. The PVB shall also collect amounts due, send late notices and conduct hearings on contested tickets.

1.3 REQUIRED SERVICES

GATSO turnkey services shall include, but are not limited to the following:

System Planning

- a. GATSO shall provide additional site analysis and data as needed to assist the City with the intersections the City has selected for the system. The City shall make the final decision on which intersections shall have the system installed.
- b. GATSO shall provide the City with recommended City staffing levels and estimated labor hours for the City's program responsibilities.
- c. GATSO shall provide two (2) Customer Portal Kiosks at no charge to the CITY. The CITY shall be responsible for providing a safe and secure location for the kiosks, including power and suitable internet connectivity.
- d. GATSO agrees to work with the CITY regarding the potential implementation of an on-line payment system incorporating the CITY's on-line internet system. Any such services shall be subject to a separate agreement between the parties.

Site Design

- a. GATSO shall not have any control over traffic signal operations.
- b. The applicable elements of the RLC system shall meet or exceed the requirements of the latest edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), the New York State Supplemental to the MUTCD and the New York State Vehicle and Traffic Law (NYS VTL).
- c. GATSO shall prepare complete sets of design drawings and installation plans that are signed and sealed by licensed engineers registered in the State of New York.
- d. GATSO shall be responsible for obtaining all approvals, permits, certifications and clearances required by the City, County, State and Federal regulatory agencies having jurisdiction for any right-of-ways within the City.
- e. Prior to installation the City shall review and approve all design drawings and installation plans.

Installation

- a. GATSO shall not have any unsupervised access to City equipment.
- b. All construction/installation shall conform to the applicable City, County, State and Federal construction standards and guidelines, including the New York State Department of Labor Prevailing Wage laws.
- c. The installation and operation of the RLC system shall not
 1. adversely affect traffic signals,
 2. damage streets,
 3. impede street maintenance, or
 4. in any way restrict street operations.
- d. The RLC system shall be tested to the City's satisfaction. All testing results shall be documented and presented to APD, Traffic Engineering Services.
- e. Upon completion of all construction, as-built drawings for each intersection shall be delivered to APD, Traffic Engineering Services.

System Maintenance

- a. GATSO shall operate the RLC system on a continuous, 24-hour basis, seven (7) days per week, except for reasonable scheduled and unscheduled downtime, including system maintenance and repairs as set forth in this Article 1.3, and Force Majeure as set forth in Article 15.4.
- b. GATSO will use commercially reasonable efforts to notify the City and initiate repairs to the RLC system within forty-eight (48) hours after identification of any damage or a defect. Repairs shall be completed within seventy-two (72) hours from the initiation of repairs except in the event of a Force Majeure event.
- c. GATSO shall inspect all cameras remotely once per day and on-site at least twice per year and provide the City with copies of all inspection and maintenance reports on a monthly basis.

Public Awareness

- a. GATSO shall assist the City with the content and design of a public education program and associated materials.
- b. GATSO shall participate in any ongoing and/or future media campaign.

- c. GATSO shall attend public meetings as required and assist the City in demonstrating the RLC system and program if necessary.
- d. All associated materials shall be produced and distributed at GATSO's cost.
- e. For a period of the first ten (10) days following the day upon which the first camera is installed and functional pursuant to this contract (the "Warning Period"), the City may elect to have Gatso issue warning notices rather than NOLs to violators.

Administrative Hearing Requirements

- a. The City's PVB shall maintain control of the hearing process. GATSO shall provide support to the hearing process, including providing fact testimony if required.
- b. GATSO shall make available evidence packages for every hearing within five (5) days notification from the PVB.
- c. The evidence packages shall include, but are not limited to:
 - 1. date, time and location of violation,
 - 2. digital image of first violation,
 - 3. digital image of second violation,
 - 4. digital image of license plate,
 - 5. video clip of violation, and
 - 6. inspection/maintenance reports indicating that the equipment was properly functioning at time of violation.

Training

GATSO shall provide the City with all necessary training as it relates to the City's role in the system's operation. Such training shall include, but is not limited to camera operations, image processing, web applications and violation processing system.

Technical Requirements

GATSO shall provide an overview of the technical environment required to support GATSO's RLC system and identify where conflicts may exist between their system and technologies being used in the City as described in Appendix "A" - Information Technology Policy.

1.4 PROJECT MEETINGS

There will be bi-weekly progress meetings held during the design and implementation of the RLC system at a time, day of week and location mutually agreed to by the CITY and GATSO. Additional meetings as necessary can be scheduled by either the CITY or GATSO at no additional cost to the project

1.5 THIRD PARTY COLLECTIONS

The CITY may enter into an agreement with a third party collections agency (the "Agency") to provide collections services in connection with RLC system citations (the "Collection Services"). GATSO may share the names, addresses, and amounts past due from delinquent citation recipients ("Program Data") with the Agency through the web-based Xilium back-office software system to facilitate the Collection Services during the Term of the Agreement. The parties acknowledge and agree that GATSO may suspend or terminate the Agency's access to the System at any time if the Agency fails to comply with GATSO policies and procedures, and that GATSO shall have no liability to the CITY for any such suspension or termination.

The CITY represents and warrants that it has authorized GATSO to permit the Agency to access and use the System to obtain the Program Data to perform Collection Services. At the CITY's discretion, GATSO will discontinue all Agency access to the System within 24 hours of GATSO's receipt of a written request from the CITY.

ARTICLE II. TERM OF CONTRACT

The term of this Agreement shall be five (5) years and shall commence on March 1, 2019 and expire on February 29, 2024. The parties shall have the option to extend the Agreement for two (2) additional one (1) year periods (each a "Renewal Term" and, collectively with the Initial Term, the "Terms").

ARTICLE III. FEES

In consideration for the services described in this Agreement, the CITY shall pay to GATSO a fee equal to seventy percent (70%) of total citation fees collected by or on behalf of the CITY by GATSO. The fees required pursuant to this Article III shall be GATSO's sole compensation for the services described herein. Except as explicitly set forth herein, all costs and expenses associated with the supply, installation, commissioning, operation, maintenance, repair, replacement, and removal of the System and all related hardware and equipment shall remain the responsibility of GATSO.

In the event a violator fails to pay or contest a NOL within sixty (60) days of receipt, the CITY shall refer such matters to the Agency to recover all costs of the fines, including collections costs and expenses for failure to pay in a timely manner. For any amounts collected as a result of the Agency's collection efforts: (a) the CITY will report such collected amounts to GATSO;; and (b) the fee payable to GATSO shall be fifty percent (50%) of total citations fees collected in this manner.. In the event that the City fails to timely engage the Agency, GATSO may, at its option and expense, retain such a collections agency to recover such fines and costs.

GATSO shall submit to the CITY itemized bills, properly executed claim forms, vouchers and such other necessary information or supporting documentation as may be required by the CITY in order to process payment for the above-mentioned fees. GATSO agrees that no

additional fees and expenses will be charged to the City of Albany without prior written consent by the CITY.

GATSO agrees NOT to charge a convenience fee of more than \$3.00 for credit or debit card payments by offenders.

In the event the CITY elects to use automated enforcement in school zones during the Term, GATSO will renegotiate in good faith the compensation terms associated with such GATSO services.

ARTICLE IV. RELATIONSHIP

GATSO is, and will function as, an independent contractor under the terms of this Agreement and shall not be considered an agent or employee of the CITY for any purposes.

ARTICLE V. LICENSURE & CERTIFICATION

GATSO shall at all times obtain and maintain any and all licenses and certifications required by the State of New York to perform the services contemplated by this Agreement.

ARTICLE VI. ASSIGNMENTS

GATSO is, as per Section 109 of the New York General Municipal Law, prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of its right, title or interest therein without the previous consent in writing of the CITY.

ARTICLE VII. INDEMNIFICATION

GATSO will indemnify, hold harmless and defend the City, its elected officials, officers, employees, agents, attorneys, representatives, and permitted assignees and all persons acting by, through, under or in concert with them (the "City Indemnitees") from and against any and all third party claims arising out of or related to: (i) any material breach of the representations and warranties of the GATSO set forth in Article XV; (ii) negligence or misconduct of GATSO or its employees, contractors, subcontractors, or agents that results in bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the negligence or misconduct of the City or any City Indemnitee; and (iii) a claim that the system infringes the copyright or U.S. patent of a third party. In the event a claim of infringement is made or appears likely to be made, GATSO will either: (a) enable the City to continue to use the system, (b) modify the system to render it non-infringing; or (c) replace the system with a replacement system at least functionally equivalent. After consultation with the City, if GATSO determines that none of these alternatives is reasonably available, GATSO will have the right to terminate this Agreement upon sixty days' notice to the City. In the event GATSO terminates this Agreement due to a claim of infringement that cannot be remedied to the satisfaction of the City during the Initial Term, GATSO shall pay the City a termination fee of \$160,000. The provisions of this Article shall survive any termination or expiration of this Agreement.

ARTICLE VIII. INSURANCE

GATSO shall procure and maintain throughout the term of this Agreement, without any additional expense to the CITY the following insurance coverage:

- (a) **General Liability Insurance:** A policy or policies of general liability insurance with limits of not less than three million dollars (\$3,000,000.00) for each occurrence;
- (b) **Automobile Liability Insurance:** A policy or policies of automobile liability insurance with limits of not less than one million dollars (\$1,000,000.00) for each accident because of bodily injury, sickness or disease, including death at any time, resulting therefrom, sustained by any person caused by accident and with limits of not less than one million dollars (\$1,000,000.00) for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of any automobiles.
- (c) **Workers' Compensation and Employer's Liability Insurance:** A policy or policies of workers' compensation and employer's liability insurance providing protection for employees in the event of job-related injuries.
- (d) **Errors and Omissions Insurance:** A policy or policies of error and omissions insurance. Said insurance must be issued by an insurer licensed to do business in the State of New York and must have an A.M. Best rating of not less than "A."
- (e) **Professional Liability Insurance:** A policy or policies with limits of not less than one million dollars (\$1,000,000.00).

Each policy of insurance required shall be in form and content satisfactory to the City of Albany Corporation Counsel, and shall provide that:

- (a) The City of Albany shall be named an additional insured, on a primary and non-contributing basis.
- (b) The insurance policies shall not be cancelled until the expiration of thirty (30) days after written notice to the City of Albany Corporation Counsel's Office.
- (c) The insurance policies shall be automatically renewed upon expiration and continued in force unless the City of Albany Corporation Counsel's Office is given sixty (60) days written notice to the contrary.

No work shall be commenced under the contract until GATSO has delivered to the Corporation Counsel or his designee proof of issuance of all policies of insurance required by this Agreement to be procured by GATSO. If at any time, any of said policies shall be or become unsatisfactory to the City GATSO shall promptly obtain a new policy and submit proof of insurance of the same to the City. Upon failure of GATSO to furnish, deliver and maintain such insurance as above provided, this Contract may, at the election of the City, be forthwith

declared suspended, discontinued or terminated. Failure of GATSO to procure and maintain any required insurance shall not relieve GATSO from any liability under the Contract, nor shall the insurance requirements be constructed to conflict with the obligations of GATSO concerning indemnification.

ARTICLE IX. TERMINATION OF AGREEMENT

9.1 TERMINATION BY AGREEMENT

This Agreement may be terminated at any time by the mutual written agreement of GATSO and the City.

9.2 TERMINATION FOR CAUSE

Either party may terminate this Agreement for cause if: (a) the other party has breached its obligations under this Agreement; (b) applicable state or federal law is amended to prohibit or substantially restrict the operation of automated traffic law enforcement systems, including the system being provided by GATSO; or (c) any court of competent jurisdiction rules that the system, or other similar systems, violates applicable state or federal law or cannot otherwise be used to enforce notices of violation or citations issued hereunder. The terminating party must provide thirty (30) days advance notice to the other party of its intent to terminate, which notice must include the reasons for the termination. In the case of a breach of this Agreement, the notice must provide the other party with an opportunity to cure the breach within thirty (30) days after receipt of the notice. Notwithstanding the foregoing, in the event of termination based upon (b) or (c) above, GATSO may suspend the system and all associated services immediately upon the effective date of such amendment or ruling, as applicable.

ARTICLE X. MODIFICATIONS

This Agreement may only be modified by a formal written amendment executed by the CITY and GATSO.

ARTICLE XI. PARTIAL INVALIDITY

If any term, part, provision, section, subdivision or paragraph of this Agreement shall be held unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions or paragraphs thereof.

ARTICLE XII. CONTRACT DOCUMENTS

It is understood and agreed by the parties hereto that the following documents are incorporated into and form part of this Agreement:

- i. The CITY's RFP numbered 2015-02 and dated January 8, 2015; and,
- ii. GATSO's response to the CITY's RFP dated January 28, 2015.

In the event of any discrepancy, disagreement or ambiguity among the documents referenced above, said documents shall be given preference in the following order to interpret and to resolve any such discrepancy, disagreement or ambiguity:

- i. This Agreement;
- ii. The CITY's RFP numbered 2015-02 and dated January 8, 2015; and,
- iii. GATSO's response to the CITY's RFP dated January 28, 2015.

ARTICLE XIII. NOTICES

All notices required under this AGREEMENT shall be in writing and either hand-delivered or properly mailed by certified mail, return receipt requested, to the addresses set forth below:

City of Albany
Corporation Counsel's Office
24 Eagle Street, Room 106
Albany, New York 12207

Sensys Gatso USA, Inc.
900 Cummings Center, Suite 222-T
Beverly, Massachusetts 01915

ARTICLE XIV. GOVERNING LAW

This Agreement shall be governed by and construed according to the law of the State of New York and any conflicts relating thereto shall be heard in a court of competent jurisdiction in the County of Albany, State of New York.

ARTICLE XV. WARRANTIES; FORCE MAJEURE

15.1 GATSO REPRESENTS AND WARRANTS THAT AT ALL TIMES DURING THE TERM:

- a. it has the legal power to enter into the Agreement;
- b. the systems are provided and will continue to perform in accordance with this Agreement;
- c. the services described herein will be performed in a workmanlike and professional manner with due care and skill;
- d. it will perform the services described herein in compliance with all applicable federal, state and local laws including without limitation the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex or other prohibited classification including without limitation the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101;

- e. it is not barred by law from contracting with the City or with any other unit of state or local government as a result of (a) a delinquency in the payment of any tax administered by the New York Department of Revenue unless GATSO is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax;
- f. the only persons, firms or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement and that this Agreement is made without collusion with any other person, firm or corporation. If at any time it shall be found that GATSO, in procuring this Agreement, has colluded with any other person, firm or corporation, then GATSO will be liable to the City for all loss or damage that the City may suffer thereby, and this Agreement will be null and void, at the City's option; and
- g. neither it nor any of its principals, shareholders, members, partners or affiliates, as applicable, is a person or entity named as a Specifically Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specifically Designated National and Blocked Person. GATSO further represents and warrants to the City that GATSO and its principals, shareholders, members, partners or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specifically Designated National and Blocked Person.

15.2 THE CITY REPRESENTS AND WARRANTS THAT AT ALL TIMES DURING THE TERM:

- a. it has the legal power to enter into and perform its obligations under the Agreement and that it has complied with any and all applicable federal, state and local procurement requirements in connection therewith; and
- b. it will utilize the system and the services in compliance with all applicable federal, state and local laws and in accordance with this Agreement.

15.3 EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE 15:

- a. Due to the nature of this Agreement being for services, the parties expressly disclaim all warranties of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, as well as all warranties arising by usage of trade, course of dealing or course of performance.
- b. Except for the requirements set forth in Article 1.1 and 1.3, GATSO makes no warranty that the services and/or system will meet the City's requirements or that the services and/or system will be uninterrupted, timely, secure or error free; nor does

GATSO make any warranty as to the results that may be obtained from the use of the services and/or system.

15.4 FORCE MAJEURE

Neither party shall be liable for delays in the performance of its obligations hereunder due to a Force Majeure Event. "Force Majeure Event" means conditions or other circumstances, such as acts of God, that: (i) were not foreseen, and could not have been reasonably foreseen, by the party obligated to perform, (ii) are beyond the control of the party obligated to perform, and (iii) materially hinder or interfere with the ability of the party obligated to perform to complete performance; provided, however, that no such condition or circumstance will be a Force Majeure Event if it is the result of the fault, negligence, or material breach of this Agreement by the party obligated to perform. Examples of Force Majeure events include wars, floods, strikes and labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, severe adverse weather conditions not reasonably anticipated, and delays in permitting.

ARTICLE XVI. LIMITATION OF LIABILITY

Except for amounts payable with respect to the indemnification obligations set forth in Article VII: (A) neither party shall be liable to the other for lost profits or for any indirect, incidental, consequential, special, punitive or exemplary damages in connection with this Agreement, the services or the system, however caused, under any theory of liability; and (B) the aggregate liability of either party for direct damages arising out of the Agreement and the transactions contemplated hereby shall be limited to the fees paid or payable by the City to GATSO pursuant to Article III during the twelve (12) months prior to the event giving rise to such claim. This provision will survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement and make it effective as of the day and year first written above.

THE CITY OF ALBANY

By: _____

Katherine M. Sheehan, Mayor

SENSYS GATSO USA, INC.

By: _____

Andrew Noble, President

NOTARY ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF ALBANY)SS.:
CITY OF ALBANY)


On this 22 day of March, 2019, before me personally came Katherine M. Sheehan, to me known and known to me to be the Mayor of the City of Albany, New York and the same person who executed the foregoing instrument; and she acknowledged that she executed the foregoing instrument on behalf of the City of Albany, New York as said Mayor pursuant to the authority vested in her.

David Galin
Notary Public State of New York
Greene County
Lic. #02GA6329068
Commission Expires August 17, 2019


Notary Public

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF ESSEX)SS.:
CITY OF BEVERLY)

On this 24 day of March, 2019, before me personally came Andrew Noble, to me known, who being by me duly sworn, did depose and say that he is the individual described herein, and that he is duly authorized to bind Sensys Gatso USA, Inc., and which executed the foregoing instrument and that he signed his name thereto.


Notary Public

