

FIRST AMENDMENT OF CONTRACT FOR SERVICES

THIS FIRST AMENDMENT to the Contract for Services (the "First Amendment"), is made and entered into on July 15, 2014 between MSA Investigations, Inc., having its principal office at 9 Murray Street, New York, New York 10007 ("Contractor"), and the HOUSING TRUST FUND CORPORATION, having its principal office at 38-40 State Street, Albany, New York 12207 ("HTFC").

WITNESSETH:

WHEREAS, the Contractor was the successful bidder pursuant to a request for proposals issued by HTFC on October 4, 2013;

WHEREAS, HTFC and the Contractor entered into a contract on March 12, 2014, to conduct background screening checks on applicants who have applied for disaster recovery funds (the "Contract for Services");

WHEREAS, the period of services covered under the Contract for Services were from December 16, 2013 to May 15, 2014;

WHEREAS, HTFC has identified the need to have the Contractor continue conducting background screening checks and wishes to extend the Contract of Services for an additional two (2) years;

WHEREAS, HTFC has identified the additional need for a confidential hotline for the reporting of suspected fraud, waste, and abuse perpetrated by those individuals and entities applying for or receiving disaster recovery funds (the "Hotline Services");

WHEREAS, HTFC and the Contractor desire to amend the Contract for Services by means of this First Amendment in order to include the Hotline Services in the scope of services delineated in the Contract for Services;

WHEREAS, HTFC and the Contractor desire to amend the Contract for Services by the means of this First Amendment to increase the budget to \$200,000.00 to fund the cost of the Hotline Services as well as allow the Contractor to continue conducting background screening checks for an additional two year period;

WHEREAS, HTFC and the Contractor further desire to amend the Contract for Services by means of this First Amendment in order to ensure compliance with the statutes and regulations governing the Community Development Block Grant Disaster Recovery grants appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2);

WHEREAS, HTFC has delegated the day-to-day administration of this Contract for Services to the Governor's Office of Storm Recovery ("GOSR");

NOW, THEREFORE, pursuant to and in consideration of the above, and other mutual covenants and obligations herein contained, it is

STIPULATED AND AGREED as follows:

1. Exhibit A – Scope of Services is amended to include the following additional provisions:

Establishment of Hotline

The Contractor will establish a confidential hotline to be utilized by both the general public, as well as HTFC and GOSR employees, to report suspected fraud, waste, and abuse perpetrated by those individuals and entities applying for or receiving assistance from the HTFC/GOSR as it relates to Hurricane Sandy.

This confidential hotline will be made available through a toll-free telephone. Once an incident report has been received, the Contractor will communicate the results to GOSR, at which point GOSR and the Contractor will discern the appropriate method for a potential follow-up investigation. Follow-up investigations may include, but will not be limited to, due diligence research, interviews, and site visits.

The Contractor will provide a detailed written report of its investigative findings, which sets forth the methodology employed and analysis of information obtained on each individual or entity searched during the course of a follow-up investigation.

Hotline Features

The Contractor's hotline services will provide the following features and benefits:

- **24/7 Service** – The Contractor's services will be able to receive incident reports 24 hours a day, 7 days a week.
- **Toll-Free Access**

- **Open Exchange** – The Contractor’s services will allow users to reconnect with the hotline and add information to an existing report or obtain a status update of a previously submitted report. The Contractor will also act as the intermediary between HTFC/GOSR and the reporter to facilitate dialogue.
- **Retention** – The Contractor’s reports will be permanently retained.
- **Specialized Operators** – The Contractor’s hotline staff will be professionally trained and accustomed to dealing with caller concerns, stress, and frustration.
- **Worldwide Access**
- **Multilingual Service** – The Contractor’s specialized representatives will be available in English and Spanish, as well as more than 140 languages with the Contractor’s interpreter services.
- **Flexibility** – The Contractor’s reporting network will include toll-free 1-800 live telephonic services.

Additionally, the Contractor’s system will be secure, completely confidential, and offer reporters a superior safeguard of anonymity. The Contractor will provide Internet reporting via SSL encrypted site, and a reporter’s IP address will not be tracked. All hotline information will be maintained in a secure environment, with access to confidential data username- and password-protected. Due to the strict confidentiality required, the Contractor will deploy robust security in all areas of nonpublic information access including:

- Authentication
- Content filtering
- Anti-spam
- Virus scanning

Follow-Up Investigation

Upon receipt of an incident report, the Contractor will conduct an appropriate follow-up investigation. Follow-up investigations may include, but not be limited to:

- Due diligence research
- Interviews

- Site visits

The nature of the follow-up required will be decided on a case-by-case basis with the approval of GOSR.

In other instances, where follow-up investigation is not required, incident reports will be forwarded to Internal Audit, and GOSR's Director of Monitoring and Compliance in the storm recovery team.

2. Exhibit B – Budget is amended as follows:

To establish and maintain a confidential hotline for HTFC/GOSR for an estimated two (2) years, the Contractor will charge an annual fee of [REDACTED] year for a total of \$5,700.

Each incident report generated will be billed at an additional [REDACTED] per report.

Follow-up investigative services, as requested in specific instances by GOSR following the generation of an incident report, will be conducted at a rate of [REDACTED] hour [REDACTED]

The cost of these hotline/investigative services, as well as allowing MSA to continue performing background screening checks, will require an increase in the original budget cap to \$200,000.

The amendment will extend the duration of the contract for an estimated two additional years from the date of execution of the amendment.

3. The following provisions are included in Appendix 2 as Sections 25 and 26:

25. STATUTORY AND REGULATORY COMPLIANCE

Contractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

26. RIGHTS IN DATA

(a) *Definitions.* As used in this clause—

Computer database or database means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software: (1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled; and (2) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

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

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Limited rights means the rights of HTFC in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights, as used in this clause, means the rights of the HTFC in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

Unlimited rights means the rights of HTFC to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, HTFC shall have unlimited rights in: (i) Data first produced in the performance of this contract; (ii) Form, fit, and function data delivered under this contract; (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to: (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause; (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause; (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright.

(1) *Data first produced in the performance of this contract.* (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of HTFC, assert copyright in scientific and technical articles based on or containing data

first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of HTFC is required to assert copyright in all other data first produced in the performance of this contract; (ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of HTFC sponsorship (including contract number); (iii) For data other than computer software, the Contractor grants to HTFC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of HTFC. For computer software, the Contractor grants to HTFC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of HTFC.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of HTFC, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor: (i) Identifies the data; and (ii) Grants to HTFC, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, HTFC shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* HTFC will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except: (1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations); (2) As expressly set forth in this contract; or (3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by HTFC.

(e) *Unauthorized marking of data.*

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings

not authorized by this contract, HTFC may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings: (i) HTFC will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings; (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by HTFC for good cause shown), HTFC shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions; (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, HTFC will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If HTFC determines that the markings are authorized, the Contractor will be so notified in writing. If HTFC determines, with concurrence of the head of the contracting activity, that the markings are not authorized, HTFC will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of HTFC's decision. HTFC will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by HTFC's determination becoming final (in which instance HTFC will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent HTFC's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of HTFC removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to HTFC without any restrictive markings shall be deemed to have been furnished with unlimited rights. HTFC is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside HTFC, the Contractor may request, within 6 months (or a longer time approved by HTFC in

writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. HTFC may agree to do so if the Contractor: (i) Identifies the data to which the omitted notice is to be applied; (ii) Demonstrates that the omission of the notice was inadvertent; (iii) Establishes that the proposed notice is authorized; and (iv) Acknowledges that HTFC has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, HTFC may: (i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or (ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall: (i) Identify the data being withheld; and (ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to HTFC shall be treated as limited rights data and not restricted computer software.

(h) Subcontracting. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to HTFC under this contract. If a subcontractor refuses to accept terms affording HTFC those rights, the Contractor shall promptly notify HTFC of the refusal and shall not proceed with the subcontract award without authorization in writing from HTFC.

(i) Relationship to patents or other rights. Nothing contained in this clause shall imply a license to HTFC under any patent or be construed as affecting the scope of any license or other right otherwise granted to HTFC.

4. HTFC/GOSR reserves the right to require that the Contractor maintain records, information, and data relating but not limited to complaints and incident reports in a case management and tracking system provided or licensed by GOSR. In the alternative, if the Contractor provides its own case management and tracking system, then: 1) the Contractor will provide a routine data extract of such information and data collected while providing services to GOSR on a mutually agreed-upon schedule, and no less frequently than on a weekly basis; and 2) HTFC will have unlimited rights in all such information, data, and source codes. In all instances, HTFC reserves the right to host database and application servers. Any proposed solution for transferring records, information, and data relating but not limited to complaints and incident reports from the Contractor to HTFC/GOSR will follow industry standards for secure

coding for application development. HTFC reserves the right to test the solution for vulnerabilities, and the Contractor is responsible for mitigating any vulnerabilities discovered in the application development. Any proposed solution for transferring records, information, and data relating but not limited to complaints and incident reports from The Contractor to HTFC/GOSR will conform to and utilize HTFC/GOSR's supported architecture, including but not limited to directory services/identity management systems for user authorization and credentialing.

5. All other terms and conditions, including appendices, attachments, exhibits, riders and Letter Agreements to the Contract for Services are hereby continued in full force and effect as though set forth herein.

IN WITNESS WHEREOF, the parties executed this First Amendment on the day and year first above written.

MSA Investigations, Inc.

By: 
Name: Neil Moran
Title: Vice President

July 15, 2014

HOUSING TRUST FUND CORPORATION

By: 
Name: Jamie Rubin
Title: Director, Governor's Office of Storm Recovery