

CLOSING ITEM NO.: A-9

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (the "Project Agreement"), made as of May 1, 2022, by and among the ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at 333 West Washington Street, Syracuse, New York 13202 (the "Agency"), 245 COMMERCE LLC, a limited liability company organized and existing under the laws of the State of New York, having an office for the transaction of business located at 245 Commerce Boulevard, Liverpool, New York 13088 (the "Company") and IMMEDIATE MAILING SERVICES, INC., a corporation organized and existing under the laws of the State of New York, having an office for the transaction of business located at 245 Commerce Boulevard, Liverpool, New York 13088 (the "Operating Company").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 435 of the Laws of 1970 of the State of New York and Chapter 676 of the Laws of 1975 of the State of New York, as amended (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Company and the Operating Company, on behalf of themselves and entities formed or to be formed on behalf of the foregoing, submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (A)(1) the acquisition of an interest in an approximately 2.22-acre parcel of land located at 4575 Buckley Road (tax map no. 095.-02-20.2) in the Town of Clay, Onondaga County, New York (the "Land") and three existing buildings located thereon totaling

approximately 15,900 square feet (collectively, the “Existing Buildings”); (2) the renovation of the Existing Buildings, together with related site improvements on the Land (the Existing Buildings as so renovated and such site improvements, collectively, the “Facility”); and (3) the acquisition and installation in and around the Facility and/or for use in connection with the Project of various fixtures, machinery, equipment and other tangible personal property (collectively, the “Facility Equipment”) (the Land, the Facility and the Facility Equipment being collectively referred to as the “Company Project Facility”), such Company Project Facility to be leased and subleased by the Agency to the Company and further subleased by the Company to the Operating Company; and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively the “Equipment,” and together with the Company Project Facility, the “Project Facility”), which Project Facility will be used by the Operating Company as warehousing and office space for its business as an integrated service provider for conversational artificial intelligence and omnichannel communications; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (subject to certain statutory limitations); and (C) the lease (with an obligation to purchase) or sale of the Company Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency; and

WHEREAS, by resolution duly adopted by the members of the Agency on February 8, 2022 (the “Approving Resolution”), the Agency has conferred on the Company and the Operating Company in connection with the Project certain financial assistance consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, renovation, construction, reconstruction or equipping of the Project Facility; (b) an abatement from real property taxes through a 10-year payment in lieu of taxes agreement with the Company and the Operating Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively, the “Taxing Jurisdictions”); and (c) an exemption from mortgage recording taxes (subject to certain statutory limitations) (collectively, the sales and use tax exemption benefit, the abatement from real property taxes benefit and the mortgage recording tax exemption benefit (subject to certain statutory limitations) are hereinafter referred to as the “Financial Assistance”); and

WHEREAS, it has been estimated and confirmed by the Company and the Operating Company that the Company and the Operating Company have included within its Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$1,100,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$88,000; (ii) the mortgage to be obtained for completion of the Project shall be for an amount not to exceed \$480,000, and therefore, the value of the mortgage recording tax exemption benefits authorized and approved by the Agency cannot exceed \$3,600; and (iv) the real property tax abatement benefits to be provided to the Company

over the 10-year benefit period of the anticipated payment in lieu of taxes agreement are estimated to be approximately \$31,661 (such savings are estimated based on the current assessed value and tax rates of the Taxing Jurisdictions; actual savings are subject to change over the term of the Lease Agreement (as hereinafter defined) depending on any changes to assessed value of the Project Facility and/or tax rates of the Taxing Jurisdictions); and

WHEREAS, the Company proposes to lease the Land and Facility to the Agency, and the Agency desires to lease the Land and Facility from the Company pursuant to the terms of a certain underlying lease to agency dated as of May 1, 2022 (the "Underlying Lease"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to acquire an interest in the Facility Equipment pursuant to a bill of sale to Agency (the "Bill of Sale to Agency") from the Company; and

WHEREAS, the Agency proposes to sublease the Company Project Facility to the Company, and the Company desires to lease the Company Project Facility from the Agency, upon the terms and conditions set forth in a certain lease agreement dated as of May 1, 2022 (the "Lease Agreement"); and

WHEREAS, the Company proposed to sublease the Company Project Facility to the Operating Company, and the Operating Company desires to lease the Company Project Facility from the Company upon the terms and conditions set forth in a lease agreement dated as of May 1, 2022 (the "Sublease Agreement"); and

WHEREAS, the Agency proposes to acquire an interest in the Equipment pursuant to an equipment bill of sale to Agency from the Operating Company; and

WHEREAS, the Agency proposes to lease the Equipment to the Operating Company, and the Operating Company desires to lease the Equipment from the Agency, upon the terms and conditions set forth in a certain equipment lease agreement dated as of May 1, 2022 (the "Equipment Lease Agreement"); and

WHEREAS, in order to define the obligations of the Company and the Operating Company regarding payments in lieu of taxes for the Project Facility, the Agency, the Company and the Operating Company will enter into a payment in lieu of tax agreement, dated as of May 1, 2022 (the "PILOT Agreement"); and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company and the Operating Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company and the Operating Company to undertake the Project in Onondaga County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State to another area of the State and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State; and

WHEREAS, by its Approving Resolution, the Agency authorized the Company and the Operating Company to act as its agents for the purposes of undertaking the Project and the

Agency delegated to the Company and the Operating Company the authority to appoint sub-agents subject to the execution of this Project Agreement and compliance with the terms set forth herein and in the Approving Resolution; and

WHEREAS, in order to define the obligations of the Company and the Operating Company regarding their ability to utilize the Agency's Financial Assistance as agent of the Agency to acquire, construct, renovate, equip and complete the Project Facility and to undertake the Project, the Agency, the Company and the Operating Company will enter into this Project Agreement; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Approving Resolution and as more particularly described in the PILOT Agreement and this Project Agreement, that the Company and the Operating Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company and the Operating Company; and

WHEREAS, no Financial Assistance shall be provided to the Company and the Operating Company prior to the effective date of this Project Agreement;

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

ARTICLE I PURPOSE OF PROJECT

Section 1.01 Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Underlying Lease, Lease Agreement, the Equipment Lease, the PILOT Agreement and this Project Agreement in order to, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the County of Onondaga and to otherwise accomplish the public purpose of the Act.

ARTICLE II REAL PROPERTY TAX EXEMPTION

Section 2.01. PILOT Agreement. Attached hereto and made a part hereof is Exhibit A, which contains an executed copy of the PILOT Agreement entered into by and among the Company, the Operating Company and the Agency. The amount of real property tax abatement benefit comprising the Financial Assistance shall be approximately \$31,661, which such amount reflects the total estimated real property tax exemptions for the Project Facility (which constitute those taxes that would have been paid if the Project Facility were on the tax rolls and not subject to the PILOT Agreement) of approximately \$224,109, less the total payments in lieu of taxes of \$192,449 to be made by the Company and the Operating Company to the Taxing Jurisdictions

with respect to the Project Facility during the term of the PILOT Agreement. The amount of estimated real property tax exemptions is estimated based on an assumed assessed value of the Project Facility and assumed future tax rates of the Taxing Jurisdictions; therefore the real property tax abatement benefit is estimated because it is calculated using the estimated real property tax exemptions. The actual amount of real property tax abatement benefit is subject to change over the term of the PILOT Agreement depending on any changes to assessed value and/or tax rates of the Taxing Jurisdictions. The PILOT Agreement contained in Exhibit A attached hereto reflects an annual breakdown of the payments in lieu of taxes to be made to the Taxing Jurisdictions in each year during the term of the PILOT Agreement (“Total PILOT”), an estimated value of the real property tax (“Full Tax Payment without PILOT”), and an estimated value of the real property tax abatement benefits (“Net Exemptions”).

ARTICLE III MORTGAGE RECORDING TAX EXEMPTION

Section 3.01. Mortgage Recording Tax Exemption. The Agency hereby grants to the Company an exemption from mortgage recording taxes (except to the extent limited by Section 874 of the Act) for one or more Mortgages securing an aggregate principal amount not to exceed \$480,000, with the amount of the mortgage recording tax exemption benefit not to exceed **\$3,600**, or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the financing or refinancing of the Company Project Facility (the “Mortgage Recording Tax Exemption”).

ARTICLE IV SALES AND USE TAX EXEMPTION

Section 4.01. Sales and Use Tax Exemption. The Agency hereby grants to the Company an exemption from State and local sales and use taxes on purchase of goods and services relating to the Project and subject to State and local sales and use taxes in the amount up to \$1,100,000, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$88,000**.

Section 4.02 Scope of Agency. The Company and the Operating Company hereby agree to limit their activities as agents for the Agency under the authority of the Approving Resolution to acquisition, construction, reconstruction and installation of the Project Facility. The right of the Company and the Operating Company to act as agents of the Agency shall expire on May 10, 2024 unless extended by a resolution adopted by the members of the Agency. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 4.01 and Section 4.04(b) hereof unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company and the Operating Company as agents for the Agency shall include the following language:

“This contract is being entered into by _____ (the “Agent”), as agent for and on behalf of the Onondaga County Industrial Development Agency (the “Agency”), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and

installation in certain premises located at 4575 Buckley Road (tax map no. 095.-02-20.2) in the Town of Clay, Onondaga County, New York (the "Premises"). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of May 1, 2022 by and among the Agency, the Company and the Operating Company (the "Project Agreement"), and the Agent hereby represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

Section 4.03. Appointment of Sub-Agents. Subject to the terms and conditions of this Project Agreement and pursuant to the Approving Resolution, the Agency hereby delegates to the Company and the Operating Company the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and such other parties as the Company and/or the Operating Company choose (each, a "Sub-Agent"). The appointment of each such Sub-Agent will be effective only upon: (1) the execution by the Sub-Agent and the Company and/or the Operating Company of the Sub-Agent Appointment Agreement attached hereto as Exhibit B, the terms and provisions of which are incorporated herein, and (2) the receipt by the Agency of a fully executed Sub-Agent Agreement and a completed Form ST-60 in accordance with Section 4.04(c) below.

Section 4.04. Representations and Covenants of the Company and the Operating Company.

(a) The Company and the Operating Company hereby incorporate and restate their representations, covenants and warranties made in the Lease Agreement and the Equipment Lease Agreement, respectively.

(b) The Company and the Operating Company further covenant and agree that the purchase of goods and services relating to the Project and subject to State and local sales and use taxes are estimated in the amount up to \$1,100,000, and, therefore, the value of the sales and use tax exemption benefits for the Company authorized and approved by the Agency cannot exceed \$88,000.

(c) The Company and the Operating Company further covenant and agree to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (Form ST-60) for themselves and each Sub-Agent and to provide said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(d) The Company and the Operating Company further covenant and agree to file an annual statement with the State Department of Taxation and Finance an "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions

the Company, the Operating Company and their Sub-Agents have claimed pursuant to the agency conferred on the Company and the Operating Company with respect to the Project in accordance with Section 874(8) of the Act. The Company and the Operating Company further covenant and agree that they will, within thirty (30) days of each filing, provide a copy of same to the Agency, but in no event later than February 15 of each year. The Company and the Operating Company understand and agree that the failure to file such annual statement will result in the removal of (1) the Company's and the Operating Company's authority to act as agents for the Agency, and (2) the authority of any sub-agent of the Agency appointed by the Company or the Operating Company pursuant to Section 4.03 hereof to act as agent for the Agency.

(e) The Company and the Operating Company further acknowledge and agree that all purchases made in furtherance of the Project by the Company, the Operating Company and any Sub-Agent shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123, a copy of which is attached hereto as Exhibit C), and that it shall be the responsibility of the Company, the Operating Company or the Sub-Agent, as the case may be, (and not the Agency) to complete Form ST-123. The Company and the Operating Company acknowledge and agree that they shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company and/or the Operating Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company and the Operating Company acknowledge and agree that the bill of invoice should state, "I, [NAME OF AGENT], certify that I am a duly appointed agent of the Onondaga County Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my Project Agreement with the Onondaga County Industrial Development Agency." The Company and the Operating Company further acknowledge and agree that the following information shall be used by the Company and the Operating Company to identify the Project on each bill and invoice: 245 Commerce LLC / Immediate Mailing Services, Inc. Project; 4575 Buckley Road (tax map no. 095.-02-20.2) in the Town of Clay, Onondaga County, New York; IDA Project No.: 3101-21-15B.

(f) The Company and the Operating Company acknowledge and agree that the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company and/or the Operating Company shall be the sole party or parties liable thereunder.

ARTICLE V COMMITMENTS AND REPORTING

Section 5.01. Compliance Commitments. The Company and the Operating Company agree and covenant that they shall meet and maintain the following commitments beginning in the first year in which Financial Assistance is so claimed, and continuing through the term of the PILOT Agreement:

(a) The Company and the Operating Company have zero (0) employees at the Facility at the date of the Application for Financial Assistance (the "Baseline FTE"). The

Company and/or the Operating Company shall at all times maintain such Baseline FTE at the Project Facility. In addition to the Baseline FTE employees, the Company and/or the Operating Company shall (i) within one year after the Completion Date, create and maintain additional FTE employment at the Project Facility equal to five (5) FTE employees and (ii) within two years after the Completion Date, create and maintain additional FTE employment at the Project Facility equal to three (3) FTE employees (for an aggregate total of eight (8) FTE additional employees). The employment requirements set forth in this paragraph (a) are hereinafter referred to as the "Employment Commitment". In no event shall any independent contractor as determined under the laws of the State of New York be included in calculating the number of FTE employees employed within the County of Onondaga and/or at the Project Facility.

(b) For purposes of this Project Agreement and for determining whether the Company and the Operating Company are in compliance with the Employment Commitment, a "Full Time Equivalent Employee" shall mean (i) a full time, permanent, private sector employee on the Company's or the Operating Company's payroll, who has worked at the Project Facility for a minimum of thirty (30) hours per week for not less than four (4) consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Company or the Operating Company to other employees with comparable rank, duties and hours; or (ii) up to three (3) part time, permanent, private-sector employees on Company's or the Operating Company payroll, who have worked at the Project Facility for a combined minimum of thirty (30) hours per week for not less than four (4) consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Company or the Operating Company to other employees with comparable rank, duties and hours.

(c) The Company and the Operating Company shall annually provide or cause to be provided to the Agency certain information reasonably necessary to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project (the "Reporting Commitment").

Section 5.02. Reporting Requirement. (A) The Company and the Operating Company agree, whenever requested by the Agency, to provide and certify or cause to be certified such information concerning the Company and the Operating Company, their finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation. The Company and the Operating Company also agree to provide and certify information concerning their finances and other topics the Agency considers appropriate.

(B) As part of the commitments set forth in Section 5.01 and paragraph (A) of this Section 5.02, the Company and the Operating Company shall provide, annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the FTE jobs created by the Company and the Operating Company as a result of the Financial Assistance, by category, including FTE independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created by the Company and the Operating Company that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Exhibit D contains a form of annual certification that the

Company and the Operating Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act.

ARTICLE VI
SUSPENSION, DISCONTINUATION, RECAPTURE
AND/OR TERMINATION OF FINANCIAL ASSISTANCE

Section 6.01. Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Underlying Lease, the Lease Agreement, the Equipment Lease Agreement, the PILOT Agreement and this Project Agreement in order to provide Financial Assistance to the Company and the Operating Company for the Project Facility and to accomplish the public purposes of the Act.

(a) The Company and the Operating Company attest that they understand and agree to the recapture provisions of the Agency's Uniform Tax Exemption Policy (the "Policy").

(b) In accordance with Section 875(3) of the New York General Municipal Law, the Policy, and the Approving Resolution, the Company and the Operating Company covenant and agree that they is subject to recapture of all State sales and use tax exemption benefits if:

(1) the Company, the Operating Company or their subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the State sales and use tax exemption benefits; or

(2) the State sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company, the Operating Company or its subagents, if any; or

(3) the State sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Project has failed to comply with a material term or condition to use the property or services in the manner required by any project document between or among the Company, the Operating Company and/or the Agency.

Each of the foregoing four events are hereinafter referred to as a "State-Mandated Recapture Event". The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency's attention, whether a State-Mandated Recapture Event has occurred.

(c) In addition to Section 6.01(b), in accordance with the Policy and the Approving Resolution, the Company and the Operating Company covenant and agree that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance:

(1) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency; and/or such exemptions were for property or services not authorized by the Agency (“Local Sales Tax Benefit Violation”);

(2) the Company and the Operating Company fail to reach and maintain 75% of their Employment Commitment (“Job Deficit”);

(3) the Company and the Operating Company fail to meet the Reporting Commitment (“Reporting Failure”); or

(4) there otherwise occurs any event of default under any Basic Document (as that term is defined in the Lease Agreement) (each, an “Event of Default”) or a material violation of the terms and conditions of any Basic Document (a “Material Violation”).

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a Local Sales Tax Benefit Violation, Job Deficit, Reporting Failure, Event of Default or Material Violation (each a “Noncompliance Event”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any Basic Document in accordance with the terms of the Basic Document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance, and shall consider the following criteria in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- Whether the Company and/or the Operating Company have proceeded in good faith.
- Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Company and/or the Operating Company.
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company and/or the Operating Company, such as the Company and/or the Operating Company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of the County of Onondaga.

- The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- The potential future benefit of the operation of the Project Facility to the community.
- Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance.

The Agency shall document its evaluation of the above criteria in writing and, based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance (the "Determination"). The Determination shall provide terms, if any, by which the Company and/or the Operating Company may remedy any Noncompliance Event upon which the Determination was based. The Company and/or the Operating Company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company and/or the Operating Company (which will be at the Agency's sole discretion).

(d) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company and the Operating Company agree and covenant that they will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and/or the Operating Company; and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the State of New York and/or appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. The Company and the Operating Company further understand and agree that in the event that the Company and/or the Operating Company fail to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(e) In the event (x) the Company Project Facility is sold or closed, resulting in the occurrence of a Noncompliance Event and (y) the Agency determines by resolution that no substantial future economic benefit is likely to accrue to the community, then the value of the Financial Assistance extended to the Company and the Operating Company by the Agency shall be subject to recapture as described below in this paragraph (e).

(1) The recapture payment required to be paid by the Company and the Operating Company to the Agency shall be equal to the (x) sum of (1) the difference between any PILOT payments made by the Company and the Operating Company and the real property taxes that have would be paid by the Company and the Operating Company if the Company Project Facility were not under the supervision, jurisdiction or control of the Agency, (2) the value of the Mortgage Recording Tax Exemption, if any, granted to the Company and the Operating Company, and (3) the amount of sales and use tax that would have been paid by the Company and the Operating Company if the sales

and use tax exemption had not been granted; (y) multiplied by the Applicable Percentage as set forth in subparagraph (2) of this paragraph (e).

(2)	<u>Time from Completion Date</u>	<u>Tax Saving</u>
	1 Year	80%
	2 Years	60%
	3 Years	40%
	4 Years	20%
	5 Years	10%

ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.01. Hold Harmless Provisions.

(a) The Company and the Operating Company hereby release the Agency and its members, officers, agents (other than the Company and the Operating Company) and the Operating Company and employees from, agree that the Agency and its members, officers, agents (other than the Company and the Operating Company) and employees shall not be liable for and agree to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company and the Operating Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Company Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Company Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Company Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Company Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Project Agreement or the enforcement of or defense of validity of any provision of this Project Agreement, (3) all claims arising from the exercise by the Company and the Operating Company of the authority conferred on it pursuant to Sections 4.01 and 4.03 hereof, and (4) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the gross negligence or intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company and the Operating Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company and the Operating

Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents (other than the Company and the Operating Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company and the Operating Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or the Operating Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(c) To effectuate the provisions of this Section 7.01, the Company and the Operating Company agree to provide for and insure, in the liability policies required by Section 7.02 of this Project Agreement, its respective liabilities assumed pursuant to this Section 7.01.

(d) Notwithstanding any other provisions of this Project Agreement, the obligations of the Company and the Operating Company pursuant to this Section 7.01 shall remain in full force and effect after the termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company and the Operating Company) or employees, relating thereto.

Section 7.02. Insurance Required.

(a) The Company and the Operating Company agree that it shall maintain all insurance required under the Lease Agreement and the Equipment Lease Agreement, respectively.

(b) The Company and the Operating Company agree that they shall cause their general contractor for the Project to maintain, effective as of the date hereof and until the construction of the Project Facility is complete, insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, with the Agency named on each such policy as an additional insured.

Section 7.03. Survival. All warranties, representations, and covenants made by the Company and the Operating Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Project Agreement to the Agency regardless of any investigation made by the Agency.

Section 7.04. Notices. All notices, certificates and other communications under this Project Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed as follows:

If to the Agency: Onondaga County Industrial Development Agency
333 West Washington Street, Suite 130
Syracuse, New York 13202
Attention: Executive Director

With a copy to: Barclay Damon LLP
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Attention: Jeffrey W. Davis, Esq.

If to the Company: 245 Commerce LLC
245 Commerce Boulevard
Liverpool, New York 13088
Attention: Warren Lee Vanderpool, Jr., Member

With a copy to: Bond, Schoeneck & King PLLC
One Lincoln Center
Syracuse, NY 13202-1355
Attention: Paul W. Reichel, Esq.

If to the Operating Company: Immediate Mailing Services, Inc.
245 Commerce Boulevard
Liverpool, New York 13088
Attention: Warren Lee Vanderpool, Jr.
Chief Executive Officer

With a copy to: Bond, Schoeneck & King PLLC
One Lincoln Center
Syracuse, NY 13202-1355
Attention: Paul W. Reichel, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

Section 7.05. Amendments. No amendment, change, modification, alteration or termination of this Project Agreement shall be made except in writing upon the written consent of the Company, the Operating Company and the Agency.

Section 7.06. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Project Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Project Agreement or any part thereof.

Section 7.07. Counterparts. This Project Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

Section 7.08. Governing Law. This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Onondaga County, New York.

Section 7.09. Term. Except as specifically provided otherwise, the term of this Project Agreement shall be the longer of: (1) the term of the Lease Agreement; or (2) five years following the Project's Completion Date. The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of this Project Agreement.

Section 7.10. Joint and Several Liability. In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against the Company or the Operating Company, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

Section 7.11. Section Headings. The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Robert M. Petrovich
Executive Director

245 COMMERCE LLC

By: Warren Lee Vanderpool, Jr.
Warren Lee Vanderpool, Jr.
Member

STATE OF NEW YORK)
COUNTY OF Orontaga) ss.:

Warren Lee Vanderpool, Jr., being first duly sworn, deposes and says:

1. That I am the sole member of 245 Commerce LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

Warren Lee Vanderpool, Jr.
Warren Lee Vanderpool, Jr.

Subscribed and affirmed to me
under penalties of perjury
this 6th day of May, 2022.

Tara DeBois
(Notary Public)

TARA DEBOIS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DE6318212
Qualified in Cayuga County
My Commission Expires 01-20-2023

Signature Page to Project Agreement
Page 2 of 3

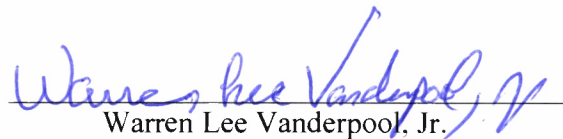
IMMEDIATE MAILING SERVICES, INC.

By: 
Warren Lee Vanderpool, Jr.
Chief Executive Officer


STATE OF NEW YORK)
COUNTY OF Onondaga) ss.:

Warren Lee Vanderpool, Jr., being first duly sworn, deposes and says:

1. That I am the Chief Executive Officer of Immediate Mailing Services, Inc. and that I am duly authorized on behalf of the Operating Company to bind the Operating Company and to execute this Project Agreement.
2. That the Operating Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.


Warren Lee Vanderpool, Jr.

Subscribed and affirmed to me
under penalties of perjury
this 6th of May, 2022.


(Notary Public)

TARA DEBOIS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DE6318212
Qualified in Cayuga County
My Commission Expires 01-20-2023

Signature Page to Project Agreement
Page 3 of 3

EXHIBIT A

PILOT Agreement

SEE TAB NUMBER 7 OF CLOSING TRANSCRIPT

EXHIBIT B

Form of Sub-Agent Appointment Agreement

THIS SUB-AGENT APPOINTMENT AGREEMENT (the "Agreement"), dated as of _____, 20__, is by and between [245 COMMERCE LLC, a limited liability company organized and existing under the laws of the State of New York, having an office for the transaction of business located at 245 Commerce Boulevard, Liverpool, New York 13088] [IMMEDIATE MAILING SERVICES, INC., a corporation organized and existing under the laws of the State of New York, having an office for the transaction of business located at 245 Commerce Boulevard, Liverpool, New York 13088] (the "Company"), and [NAME OF SUB-AGENT], a _____ of the State of New York, having an office for the transaction of business at _____ (the "Sub-Agent").

W I T N E S S E T H:

WHEREAS, the Onondaga County Industrial Development Agency (the "Agency") was created by Chapter 435 of the Laws of 1970 of the State of New York (the "State") and Chapter 676 of the Laws of 1975 of the State of New York, as amended pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York (the "State"); and

WHEREAS, by resolution duly adopted by the members of the Agency on February 8, 2022 (the "Approving Resolution"), the Agency authorized the Company and [245 Commerce LLC] [Immediate Mailing Services, Inc.] to act as its agents for the purposes of undertaking a project for the benefit of the Company and [245 Commerce LLC] [Immediate Mailing Services, Inc.] (the "Project") consisting of: (A)(1) the acquisition of an interest in an approximately 2.22-acre parcel of land located at 4575 Buckley Road (tax map no. 095.-02-20.2) in the Town of Clay, Onondaga County, New York (the "Land") and three existing buildings located thereon totaling approximately 15,900 square feet (collectively, the "Existing Buildings"); (2) the renovation of the Existing Buildings, together with related site improvements on the Land (the Existing Buildings as so renovated and such site improvements, collectively, the "Facility"); and (3) the acquisition and installation in and around the Facility and/or for use in connection with the Project of various fixtures, machinery, equipment and other tangible personal property (collectively, the "Facility Equipment") (the Land, the Facility and the Facility Equipment being collectively referred to as the "Company Project Facility"), such Company Project Facility to be leased and subleased by the Agency to the [Company] [245 Commerce LLC] further subleased by the [Company] [245 Commerce LLC] to [the Company] [Immediate Mailing Services, Inc.]; and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively the "Equipment," and together with the Company Project Facility, the "Project Facility"), which Project Facility will be used by [the Company] [Immediate Mailing Services, Inc.] as warehousing and office space for its business as an integrated service provider for conversational artificial intelligence and omnichannel communications; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from

certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (subject to certain statutory limitations) (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Company Project Facility to [the Company] [245 Commerce LLC] or such other person as may be designated by [the Company] [245 Commerce LLC] and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to [the Company] [Immediate Mailing Services, Inc.] or such other person as may be designated by [the Company] [Immediate Mailing Services, Inc.] and agreed upon by the Agency; and

WHEREAS, by the Approving Resolution, the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of a project agreement by and among the the Company and [245 Commerce LLC] [Immediate Mailing Services, Inc.]and the Agency and compliance with the terms set forth therein; and

WHEREAS, the Company and [245 Commerce LLC] [Immediate Mailing Services, Inc.]and the Agency entered into a Project Agreement dated as of May 1, 2022 (the “Project Agreement”).

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. The Company hereby appoints the Sub-Agent as an agent of the Agency for the purpose of assisting the Company and the Agency in the completion of the Project and benefitting from the State and local sales and use tax exemption relative to expenditures made in furtherance thereof. The Sub-Agent is only an agent of the Agency for the aforementioned purposes. The Sub-Agent hereby agrees to limit its activities as agent for the Agency under the authority of this Agreement to acts reasonably related to the completion of the Project Facility.

2. The Sub-Agent covenants, agrees and acknowledges:

a. To make all records and information regarding State and local sales and use tax exemption benefits claimed by it in connection with the Project available to the Company and the Agency upon request. The Sub-Agent agrees to comply with all procedures and policies established by the State Department of Taxation and Finance, or any similar entity, regarding the documenting or reporting of any State and local sales and use tax exemption benefits, including providing to the Company all information of the Sub-Agent necessary for the Company to complete the State Department of Taxation and Finance’s “Annual Report of Sales and Use Tax Exemptions” (Form ST-340).

b. To be bound by and comply with the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein. Without limiting the scope of the foregoing, the Sub-Agent acknowledges that pursuant to Section 875(3) of the Act, the Agency shall recover, recapture, receive or otherwise obtain from the Sub-Agent the portion of the Financial Assistance (the “Recapture Amount”) consisting of: (1) (a) that portion of the State sales and use tax exemption claimed by the Sub-Agent to which the Sub-Agent was not entitled, which is in excess of the amount of the State sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State sales and use tax exemption claimed by the Sub-Agent, if the Sub-Agent fails to

comply with a material term or condition regarding the use of the property or services as represented to the Agency in the application to the Agency in regard to the Project or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise.

c. That the failure of the Sub-Agent to promptly pay such Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance to collect sales and use taxes from the Sub-Agent under Article 28 of the Tax Law, together with interest and penalties. In addition to the foregoing, the Sub-Agent acknowledges and agrees that for purposes of exemption from State sales and use taxation, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the Tax Law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

d. That all purchases made by the Sub-Agent in connection with the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123, a copy of which is attached hereto as Exhibit A), and it shall be the responsibility of the Sub-Agent (and not the Agency) to complete Form ST-123. The Sub-Agent acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the Onondaga County Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement." The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: 245 Commerce LLC / Immediate Mailing Services, Inc. Project; at 4575 Buckley Road (tax map no. 095.-02-20.2) in the Town of Clay, Onondaga County, New York; IDA Project No.: 3101-21-15B.

e. That the Sub-Agent shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered, used or provided by subagent in connection with the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), for such claims or liabilities that arise as a result of the Sub-Agent acting as agent for the Agency pursuant to this Agreement or otherwise.

The Sub-Agent shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation only to Sub-Agent's work on or for the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

The foregoing defenses and indemnities shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

f. That as agent for the Agency or otherwise, the Sub-Agent will comply at the Sub-Agent's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Sub-Agent with respect to the Project Facility.

g. That Section 875(7) of the Act requires the Agency to post on its website all resolutions and agreements relating to the Sub-Agent's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement, and that Public Officers Law Article 6 declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Sub-Agent feels that there is information about the Sub-Agent in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Sub-Agent's competitive position, the Sub-Agent must identify such elements in writing, supply same to the Agency prior to or contemporaneously with the execution hereof and request that such elements be kept confidential in accordance with Public Officers Law Article 6. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the Act.

h. That the Sub-Agent must timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project on an annual basis.

i. That the failure to comply with the foregoing will result in the loss of the exemption.

j. That if the Sub-Agent is the general contractor for the Project, then at all times following the execution of this Agreement, and during the term thereof, the Sub-Agent shall maintain or cause to be maintained the following insurance policies with an insurance company licensed in the State that has an A.M. Best rating of not less than A-:

(i) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value

of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the general contractor.

(ii) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the general contractor is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the general contractor who are located at or assigned to the Project Facility;

(iii) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

In addition, all insurance required by this section shall be with insurance companies of recognized financial standing selected by the general contractor and licensed to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the general contractor is engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the general contractor as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the effective date of this Agreement, the general contractor shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the general contractor covering the Project Facility; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the general contractor shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the execution of this Agreement.

The general contractor shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraphs, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required hereby for so long as the general contractor is performing, supervising or causing work to be done on or at the Project Facility. The general contractor shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement in each such year.

k. That every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State, without regard to its conflicts-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Sub-Agent irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

3. Failure of the Sub-Agent to comply with any of the provisions of this Agreement shall result in the immediate nullification of the appointment of the Sub-Agent and the immediate termination of this Agreement and may result in the loss of the Sub-Agent's, the Company's State and local sales and use tax exemption with respect to the Project at the sole discretion of the Agency. In addition, such failure may result in the recapture of the State and local sales and use taxes avoided.

4. The Company acknowledges that the assumption of certain obligations by the Sub-Agent in accordance with this Agreement does not relieve the Company of its obligations under any provisions of the Approving Resolution, the [Equipment] Lease Agreement by and between the Company and the Agency dated as of May 1, 2022, the Project Agreement or of any other agreement entered into by the Company in connection with the Project.

5. The Company and the Sub-Agent agree that the Agency is a third-party beneficiary of this Agreement.

6. This Agreement shall be in effect until the earlier of: (i) the completion of the work on the Project by the Sub-Agent; or (ii) the Sub-Agent's loss of status as an agent of the Agency as set forth herein. Notwithstanding the foregoing, the provisions of Sections 2(b), 2(c) and 2(e) shall survive the termination of this Agreement.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the Company and the Sub-Agent have caused this Agreement to be executed in their respective names by their respective duty authorized officers, all as of the day and year first above written.

[245 COMMERCE LLC]

[IMMEDIATE MAILING SERVICES, INC.]

By: _____
Name: _____
Title: _____

[SUB-AGENT]

By: _____
Name: _____
Title: _____

Exhibit A to Sub-Agent Appointment Agreement

Form ST-123
(see attached)



New York State Department of Taxation and Finance

New York State Sales and Use Tax

IDA Agent or Project Operator**Exempt Purchase Certificate**

Effective for projects beginning on or after June 1, 2014

ST-123

(7/14)

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village	State	ZIP code	City, town, or village	State	ZIP code
Agent or project operator sales tax ID number (see instructions)					

Mark an **X** in one: ☐ Single-purchase certificate ☐ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (use OSC number)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yy)	/	/
Enter the date that agent or project operator status ends (mm/dd/yy)	/	/

Exempt purchases(Mark an **X** in boxes that apply)

- ☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (attach title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, Contractor Exempt Purchase Certificate, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam, and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your Certificate of Authority, if you are required to be registered as a vendor. See TSB-M-09(17)6, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, Privacy Notification. See Need help? for the Web address and telephone number.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082

EXHIBIT C

Form ST-123
(see attached)



New York State Department of Taxation and Finance

New York State Sales and Use Tax

IDA Agent or Project Operator**Exempt Purchase Certificate**

Effective for projects beginning on or after June 1, 2014

ST-123

(7/14)

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village State ZIP code	City, town, or village State ZIP code
Agent or project operator sales tax ID number (see instructions)	

Mark an **X** in one: ☐ Single-purchase certificate ☐ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (also OSC number)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yy)	/	/
Enter the date that agent or project operator status ends (mm/dd/yy)	/	/

Exempt purchases(Mark an **X** in boxes that apply)

- ☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, Contractor Exempt Purchase Certificate, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1116(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your Certificate of Authority, if you are required to be registered as a vendor. See TSB-M-09(17)6, Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

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EXHIBIT D

Form of Annual Reporting Questionnaire

Onondaga County Industrial Development Agency

Annual Survey of Companies

January 20[]

Overview: As an agent of the Onondaga County Industrial Development Agency, _____ is required annually to document for the term of its contractual agreement with the Issuer: its employment levels, insurance coverage, payment of taxes and fees, and in some instances amount of indebtedness. To fulfill your compliance requirements, please:

1. Complete the employment and if applicable to your project, the indebtedness , sales tax and mortgage recording tax sections of the document;
2. Attach the required supporting documentation;
3. Sign and certify the document; and
4. Return to the Issuer **no later than February 28, 20[]**

Failure to comply with this request may result in an action by the Issuer to terminate or recapture the benefits granted to you. As noted in the Issuer agreement, the Issuer reserves the right to verify any information provided in this document, including an onsite inspection of the project facility or its supporting records throughout the life of the project agreement

I. Contact Information – please update any of the following information.

File Number: _____

Project Name: _____

Responsible Company Officer: _____

Officer Title: _____

Officer Phone: _____

Officer Fax: _____

Officer Email: _____

II. Employment Section – Please report the number and average hourly wage rate of all full-time equivalent (FTE) employees working at the project location, including the employees of any tenants or subtenants. Also, please report the number of construction employees working on the project if applicable. The Issuer definition of the term “full-time equivalent employee” is located on the last page of this document.

Number of FTE jobs as of December 31, _____

Average Wage of Full-time Employee _____

Number of FTE construction jobs created
between January 1, _____ – December 31, _____

II. Outstanding Indebtedness – Please report the information for any Issuer authorized bonds and notes issued, outstanding or retired during the period beginning January 1, _____ and ending December 31, _____.

Current Interest Rate: _____

Outstanding Balance as of Dec. 31,
_____: _____

Principle payments during the period
Jan. 1, _____ through Dec. 31, _____: _____

Outstanding Balance as of Dec. 31, _____: _____

Final Maturity Date of the Issue: _____

Were the bonds or notes retired during the
reporting period of Jan. 1, _____ through
Dec. 31, _____ Yes ☐ No ☐

III. Sales Tax Exemption – Please report amount of New York State sales and use tax exemption accrued by the project during the period of January 1, _____ through December 31, _____. This information should agree with that reported on your _____ NYS Tax Form ST340.

\$ _____

V. Mortgage Recording Tax Exemption - Please report amount of mortgage recording tax exemption accrued by project during period Jan. 1, ____ and ending Dec. 31, ____.

\$ _____

VI. Required Attachments – Please attach copies of the following documents.

- ☐ NYS-45-MN Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Form, filed for the quarter ending Dec. 31, ____.
- ☐ For companies that have made sales tax exempt purchases utilizing the sale tax exempt certificate provided to it by the Onondaga County Industrial Development Agency, a copy of NYS ST-340 Annual Statement to NYS Department of Tax and Finance of the value of all sales and use tax exemptions claimed by the Company under the authority granted by the Issuer.

VII. Certification: The undersigned hereby certifies the Company has complied with all provisions of its agreement with the Issuer and that the information provided to the Issuer in this annual survey is accurate and correct.

Signed

Date

Name (Printed)

Title

Phone