

Contract between
NEW YORK CITY
HEALTH AND HOSPITALS
CORPORATION

and

DATE

Term: _____
Expiration Date: _____
Renewal: Yes _____ **No** _____
Amended: _____

Agreement made as of this _____ day of _____ 20__ , (this "Agreement") by and between the New York City Health and Hospitals Corporation (the "Corporation"), a public benefit corporation created under the laws of the State of New York, having its principal place of business at 125 Worth Street, New York, New York 10013, and _____ the "Contractor"), a _____ organized under the laws of _____ with its principal place of business at _____.

WITNESSETH:

WHEREAS, _____

_____ ; and

WHEREAS, the Corporation conducted a competitive selection process for consulting services, using a request for proposals, negotiated acquisition or other approved method (the "Solicitation") and, as a result of the Corporation's evaluation process, determined that the Contractor's proposal best meets the requirements of the Solicitation and would be most advantageous to the Corporation [*Modify if procured as Sole Source*]; and

WHEREAS, the Contractor wishes to enter into an agreement with the Corporation to provide such services and the Corporation has taken all necessary company actions to authorize it to retain the Contractor to perform such services.

NOW THEREFORE, the parties agree as follows:

**ARTICLE 1
TERM OF AGREEMENT**

1.1 TERM

This Agreement, when fully signed and delivered, shall be effective as of the date first above written, and shall continue in effect until _____, (the "Initial Term") unless it is earlier terminated as provided herein. (The Corporation, at its sole option and discretion, may renew this Agreement for [one] [one-year term.] [two-year term.] [three-year term.] [an additional one or two successive one-year term(s).] The Corporation shall notify the Contractor

in writing of its intention to renew this Agreement at least 30 days prior to the expiration of the Initial Term or any renewal term.

ARTICLE 2
SCOPE OF SERVICES

2.1 SERVICES

The Contractor is to provide to the Corporation the services described in Exhibits “A” and “B” as defined below (the “Services”).

2.2 EXHIBITS INCORPORATED

The Contractor's services shall meet the requirements outlined in the Solicitation issued by the Corporation dated _____ (“Exhibit A”) and shall perform in accordance with the Contractor’s proposal, entitled “_____,” dated _____ (“Exhibit B” or “Contractor’s Proposal”). (Exhibits A and B are attached hereto and made a part of this Agreement.) To the extent that Exhibit A or Exhibit B is inconsistent with Articles 1 through 9 of this Agreement, then, such Articles shall control. In the event that Exhibit A is inconsistent with Exhibit B, Exhibit A shall control over Exhibit B. *[Modify if procured as Sole Source]*

2.3 SERVICES AND DELIVERABLES

The Services shall be at all times subject to the direction and control of the Corporation. The scope of work encompasses all tasks set forth in this Agreement and the Contractor’s Proposal. The Contractor shall perform such tasks within the following time frames:

<u>Task</u>	<u>Deliverables</u>	<u>Completion of Task/Due Dates for Deliverables</u>
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2.3.1 Extensions as of Right. The Contractor shall be entitled to an extension of time for the performance of the Services to the extent caused: (1) by the acts or omissions of the Corporation, its officers, agents or employees; or (2) by supervening conditions beyond the control of the Contractor such as acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or illegal or strikes or labor disputes not brought about by any act or omission of the Contractor; provided, however, that the Contractor gives a contemporaneous notice to the Corporation setting forth in detail the nature of each alleged cause of delay, the date upon which each such cause of delay began and ended and the number of days of delay attributable to each such cause. Upon such notice, the

Contractor shall be entitled to an extension of time for the performance of the Services equal to one day for each day of delay.

2.3.2 Discretionary Extensions. Upon request by the Contractor, the Corporation may, in its discretion, grant such extensions of time as it determines to be appropriate. Any such discretionary extension of time must be granted in writing to be effective.

2.4 STAFFING

The principal staff of the Contractor carrying out its responsibilities under this Agreement shall be as listed in Exhibit B. No substitution of personnel shall be made by the Contractor without the prior written consent of the Corporation. Before any such substitution is permitted hereunder, the Contractor shall submit to the Corporation a written justification supported by the qualifications of any proposed replacement. The description of qualifications shall include a current resume of academic training and professional experience, salary history and the names, addresses and telephone numbers of references who are familiar with recent performance of the individual and such other information as the Corporation may reasonably require.

ARTICLE 3 **COMPENSATION FOR SERVICES**

3.1 FEES

The Corporation shall pay, and the Contractor agrees to accept for the complete and satisfactory performance of all services required to be performed pursuant to this Agreement, an amount not to exceed \$ _____ plus \$ _____ for out-of-pocket expenses to the extent permitted herein.

3.2 CALCULATION OF COMPENSATION

3.2.1 Hourly Rates. The Contractor's compensation for the performance of the Services is based on the rates for each category of personnel for and on the actual time spent performing the Services. If less time should be required than has been estimated, the total fee for the Services will be lower than the amount indicated in Section 3.1. If more time should be required for the Services, the maximum fee for this Agreement shall nevertheless apply. The maximum billing rates are as follows:

<u>Level of Professional Staff</u>	<u>Hourly Billing Rate</u>
1.	
2.	
3.	

3.2.2 Payment on Deliverables. The fees for the tasks listed below will be paid by the Corporation on a fixed fee basis, pursuant to the schedule set forth below.

<u>Task/Deliverable</u>	<u>Payment Amount</u>
1.	\$ _____
2.	\$ _____
3.	\$ _____

3.3 SUBMISSION OF MONTHLY INVOICES

The Contractor will submit monthly invoices to the Corporation for payment for the Services rendered in the preceding month, in accordance with the Contractor's rates for each category of personnel and for time actually spent rendering the Services in accordance with Section 3.2.1 and/or for the deliverables completed during the preceding month based on the provisions of Section 3.2.2. Each invoice shall be based upon work performed by the Contractor to the date of such invoice and/or the deliverables completed. Accompanying each invoice shall be sufficient detail to allow the Corporation to verify the adequacy, accuracy and reasonableness of the charges. Such detail shall include, but not be limited to, the period of time related to such invoice, the Services performed, the name and title of the professional, his/her hours worked and the billing rate. The Contractor shall provide whatever additional information the Corporation reasonably deems necessary.

3.4 EXPENSES

The Corporation will reimburse the Contractor for out-of-pocket expenses, in an amount not to exceed \$_____ to the extent permitted hereunder. All such reimbursement will be based on a direct reimbursable basis upon receipt of a monthly bill containing the information as set forth in Section 3.5. Reimbursable expenses are only those out-of-pocket expenses directly related to providing the Services, as actually, reasonably and necessarily incurred. The Contractor will arrange for the most cost-effective means of local and out-of-town travel expenses, including meals and lodging, in accordance with the allowances provided by this Agreement and the Corporation's Operating Procedure 10-10, a copy of which the Contractor acknowledges receiving by accepting and signing this Agreement.

3.5 SUBMISSION OF INVOICES

The Contractor shall submit invoices to the Corporation for payment for out-of-pocket expenses in accordance with Section 3.4. Accompanying each invoice shall be a sufficiently detailed itemized breakdown of reimbursable expenses to allow the Corporation to verify the adequacy and accuracy of each invoice. Such detail will include, but not be limited to, the period of the time related to such bill, the services rendered, the places of lodging, means of travel and

meals, the names of the Contractor's employees incurring such expenses, the dates such expenses were incurred and such other information as the Corporation shall require. The Contractor shall provide receipts for individual items over \$250.00. The Corporation shall have no obligation to reimburse expenses unless a request for reimbursement is submitted within 120 days of the date the expense was incurred.

3.6 DISALLOWANCES

The Corporation reserves the right to disallow any amount claimed by the Contractor not in accordance with this Agreement. The Contractor will be notified, in writing, of any disallowances and shall be given the opportunity to resubmit any charges, with explanations, within thirty days of receipt of such notice.

3.7 WITHHOLDING OF FEES

Payment up to 70% of the total fee for this Agreement will be made prior to the receipt of the final draft of the final deliverable, based upon monthly invoices submitted by the Contractor. The Corporation shall withhold an amount equivalent to 30% of this Agreement, with final payment contingent upon receipt and acceptance by the Corporation of all reports and deliverables and services required to be provided hereunder to the Corporation, as indicated by a written letter of acceptance from the Corporation. All deliverables shall be submitted in draft for discussion and review by the Corporation. The Corporation will use its best efforts to accept or reject each deliverable within 30 days of receipt of the final draft. Acceptance of deliverables and services shall not be unreasonably withheld by the Corporation.

3.6 PAYMENT OF INVOICES

The Corporation shall make its best efforts to pay the invoices submitted in the form required by this Article within thirty days of receipt thereof.

ARTICLE 4 **REPRESENTATIONS AND WARRANTIES**

4.1 PROCUREMENT OF AGREEMENT

The Contractor represents and warrants that: (a) no person, entity or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for the payment of a commission, percentage, brokerage fee, contingency fee or any other compensation; and (b) no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the Corporation to enter into this Agreement and the Corporation relies upon such representations and warranties in the execution hereof.

4.2 CONFLICT OF INTEREST

The Contractor represents and warrants that: (a) neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided; and (b) in the performance of or the rendering of services under this Agreement no person having such interest or possible interest shall be employed by it. To the best of the Contractor's knowledge after due investigation, no elected official or other officer or employee of the Corporation or City of New York (the "City"), nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects such person's personal interest or the interest of any corporation, partnership or association in which such person is, directly or indirectly, interested; nor shall any such person have an interest, direct or indirect, in this Agreement or in the proceeds thereof.

4.3 NO DEFAULTS

The Contractor represents and warrants that it: (a) is not in arrears to the Corporation or the City of New York (the "City") upon any debt or contract, and is not a defaulter, as surety or otherwise, upon any obligation to the Corporation or the City, and has not been declared not responsible or disqualified, by any agency of the City or State of New York (the "State") nor is there any proceeding pending relating to the responsibility or qualification of the Contractor to enter into any public contract; and (b) to the best of its knowledge after due investigation, has paid all applicable City income, excise, and other taxes due from all years it has conducted business activities in the City.

4.4 FAIR PRACTICES

The Contractor and each person signing on behalf of the Contractor represents, warrants and certifies, under penalty of perjury, that to the best of their knowledge and belief:

- a.** The prices in this Agreement have been arrived at independently without collusion, communication or agreement, with the intent of restricting competition, as to any matter relating to such prices with any competitor;
- b.** Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the opening of any proposal, bid or other response to the Corporation's solicitation, directly or indirectly, to any other bidder, proposer or to any other kind of competitor; and
- c.** No attempt has been made or will be made by the Contractor to induce any other person, partnership, corporation or other entity to submit or not to submit a proposal with the intent of restricting competition.

That the Contractor has (i) published price lists, rates, or tariffs covering services and goods being procured; (ii) informed prospective customers of proposed or pending publication of new or revised price lists for such services and goods; or (iii) has sold the same services and goods to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraphs (a) or (b) above.

4.5 TERMINATION FOR BREACH OF REPRESENTATIONS AND WARRANTIES

For a breach or violation of the representations or warranties set forth above in Sections 4.1 and 4.4, the Corporation may terminate this Agreement upon 30 days prior notice to the Contractor, which notice shall specify the nature of the alleged breach. If the Contractor has not cured such breach (if de minimus and capable of cure) or explained the same to the satisfaction of the Corporation within such thirty (30) day period, then the Corporation may terminate this Agreement immediately upon notice to the Contractor without liability to the Contractor. This remedy, if effected, shall not constitute the sole remedy afforded the Corporation for the violation or breach of said representations and/or warranties, nor shall it constitute a waiver of the Corporation's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

4.6 LOWEST FEE

The Contractor represents and warrants that the direct fees for the Services charged to the Corporation pursuant to this Agreement shall be the lowest fees for such services which are charged by the Contractor to any of the Contractor's customers for like services under substantially the same circumstances. This representation and warranty includes those customers of the Contractor who are, as of the date of this Agreement, under contract with the Contractor and under any subsequent renewal of any such contract. Should the Corporation, at any time, determine that such representation and warranty has been breached, then the Corporation's payments to the Contractor hereunder shall be only at such "lowest fees."

4.7 BACKGROUND QUESTIONNAIRES

If the Contractor was required to complete the City's VENDEX questionnaires to qualify for this Agreement, then the Contractor represents and warrants that (a) all questions in the appropriate Principal and Vendor Questionnaires (the "Questionnaires") have been fully answered in accordance with the Vendor's Guide to VENDEX; (b) such information is in no respect misleading; and (c) the Questionnaires have been duly executed and submitted to the Corporation. The Contractor understands that the Corporation's reliance upon the completeness of the Contractor's answers and veracity of the information stated therein are material conditions to the Corporation's execution of this Agreement. The Contractor shall submit the appropriate Questionnaires, or if applicable, a "Certification of No Change" upon the extension or renewal of this Agreement. The Contractor shall submit newly completed Questionnaires to the Corporation

every three years. This Agreement shall be a nullity until the Contractor submits fully completed, signed and notarized Questionnaires to the Corporation. If, for any reason, final review of the Questionnaires and the Contractor's background by the Corporation cannot be obtained prior to full execution of this Agreement, this Agreement shall nevertheless be and continue to be in full force and effect, subject to the Contractor's agreement to proceed with due diligence and speed, making its best efforts in good faith to submit to the corporation all required questionnaires, not to exceed fourteen business days from the date of execution of this Agreement, which shall be fully completed, signed and notarized. Upon written notice to the Contractor, the Corporation may immediately suspend or terminate this Agreement upon written notice to the Contractor if it reasonably believes that Contractor is not making such efforts. In addition, after receipt of information from the Corporation's Office of the Inspector General or the City's Department of Investigation of the kind that would typically be used as a basis for finding a contractor not responsible to receive a contract award, the Corporation may immediately suspend or terminate this Agreement. Such termination notice will provide the Contractor with an opportunity to contest the accuracy of the information at a hearing before a panel of Corporation officials, at which hearing the Contractor may be represented by counsel. In no event shall any such termination affect the Corporation's obligation to pay for services satisfactorily performed and/or goods delivered in accordance with the Agreement prior to termination. The Corporation will pay Contractor for any services or deliverables satisfactorily performed or delivered, as applicable, on a *quantum meruit* basis, at the rates or prices set forth in the Agreement, as applicable.

4.8 PROHIBITION ON GIFTS AND GRATUITIES

Neither the Contractor nor any of its directors, officers, members, partners, employees or agents shall directly or indirectly give any gift in any form, including but not limited to money, service, a loan, travel, entertainment, hospitality, thing or promise, to members of the Corporation's Board of Directors, Community Advisory Boards, Corporation officers, employees, or personnel working for any Corporation hospital auxiliary or professional or academic affiliate. If the Contractor, its employees or agents give any such gift to any such person, such act will constitute a material breach of the Agreement and the Corporation shall have a right to terminate the Agreement on that basis upon 10 days written notice to the Contractor.

ARTICLE 5
AUDIT BY THE CORPORATION AND THE CITY

5.1 DOCUMENTATION SUBJECT TO AUDIT

All vouchers or invoices presented for payment to be made hereunder, and the books and records upon which said vouchers or invoices are based are subject to audit by the Corporation and also by the City Comptroller (the "Comptroller") pursuant to the powers and responsibilities conferred upon said such office by the Charter and Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.

5.2 SUBMISSION OF DOCUMENTATION

The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Corporation and the Comptroller so that they may evaluate the reasonableness of the charges.

5.3 MAINTENANCE OF RECORDS

The Contractor shall maintain separate and accurate books and records in accordance with generally accepted accounting standards consistently applied that sufficiently and properly reflect all direct and indirect costs expended in the performance of this Agreement. The Contractor shall retain such documents for six (6) years after the final payment or termination of this Agreement, whichever is later. The Contractor shall make available all such records for periodic audit and review by the Corporation, the City, the State, the Federal Government and other persons duly authorized by the Corporation.

5.4 WITHHOLDING OF PAYMENT

If an investigation, inspection or audit is commenced, the Corporation has the right to withhold payment of any disputed amounts, if any payment is due, until all the requirements set forth above have been satisfactorily met by the Contractor, and, in such event, the Corporation must escalate any withheld payments that are the subject of such investigation, inspection or audit to the Contractor's management. While such dispute resolution is ongoing, the Corporation has the right to withhold payment pursuant to the process, if any payment is due, in an amount equal to the payment amounts that are subject of such dispute.

ARTICLE 6
COVENANTS OF THE CONTRACTOR

6.1 CONTRACTOR'S EMPLOYEES, AGENTS, AND CONTRACTORS

6.1.1 No officer, agent or employee of the Contractor, and no independent contractor engaged by the Contractor to perform work under this Agreement, are either employees of the Corporation or the City and none are under contract to either the Corporation or the City. The Contractor alone is responsible for their work, direction, compensation and personal conduct while performing pursuant to this Agreement. Neither the Corporation nor the City shall be responsible for: (a) the acts, omissions, liabilities or obligations of the Contractor or any person, firm or entity engaged by the Contractor; or (b) taxes of any nature.

6.1.2 Prior to assigning any employee, agent or independent contractor to work at a Corporation site, the Contractor shall conduct a criminal history background check (a "Background Check") on such person covering the three years prior to such proposed assignment. A Background Check must include, for residents of the State, a criminal history record search of the State Office of Court Administration's records for all 62 State counties. In addition, the Contractor shall conduct a Background Check through the records for any other state in which the person resided in the last three years. The Corporation may require the Contractor to perform a more extensive Background Check on workers who will have direct contact with mentally ill or minor patients, provide nursing home or home health care services or in certain other situations. The Contractor shall also comply with all applicable federal, state or local statutes or regulations requiring Background Checks. After reviewing an individual's Background Check report, the Contractor shall provide a written, signed certification to the Corporation stating that there is nothing in such person's background that would render him or her unsuitable to work in a health care setting or at a Corporation administrative office. The Contractor shall maintain the Background Check reports for six years. The Corporation may audit the Contractor's records to verify compliance with this Section.

6.2 LIABILITY

6.2.1 The Contractor shall be solely responsible for any physical injuries to, or death of, its officers, agents, or employees, or any other person arising during the performance of the Services and for all damage to any property sustained during its operations and under this Agreement resulting from any act or omission to act by the Contractor or any of its officers, employees, agents, or independent contractors. The Contractor shall be solely responsible for ensuring the safety of its officers, employees, agents and independent contractors. The Contractor shall indemnify, defend and hold harmless the Corporation and the City from any liability, damage, cost or suit arising out of the performance of this Agreement except to the extent that any of the same are due to the sole negligence of the Corporation or the City.

6.2.2 If any claim is made or any action is brought against the Corporation or the City arising out of the acts or omissions to act of an officer, employee, agent or independent contractor of the Contractor, with regard to the performance of this Agreement, then the Corporation shall have the right to withhold payments due to the Contractor in a reasonable

amount required to meet the Contractor's obligations of indemnification as aforesaid but only to the extent that such claims are not being defended by the Contractor's insurance carrier or such insurance carrier has not otherwise accepted responsibility for such claims.

6.3 INSURANCE

6.3.1. Insurance Requirements. The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

6.3.1.1 The Contractor shall maintain, at its sole cost and expense, Commercial General Liability Insurance covering the Contractor as Named Insured and the Corporation and City as Additional Insureds in the amount of at least Two Million Dollars (\$2,000,000) per occurrence. Such insurance shall protect the Corporation and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, and shall be "occurrence" based rather than "claims-made."

6.3.1.2 Such Commercial General Liability Insurance shall name the Corporation, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

6.3.1.3 At the Corporation's direction, if professional services are provided pursuant to this Agreement, each of the Contractor and all subcontractors of the Contractor providing professional services, shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least Two Million Dollars (\$2,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional Services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

6.3.1.4 Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

6.3.1.5 The Contractor shall maintain, and ensure that each subcontractor maintains Workers' Compensation Insurance, Disability Benefits Insurance, and

Employer's Liability Insurance and Unemployment Insurance, in accordance with, and to the extent required by, the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

6.3.1.6 If vehicles are used in the provision of the Services, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

6.3.1.7 If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

6.3.2 General Requirements for Insurance. All insurance obtained by the Contractor shall satisfy the following requirements.

6.3.2.1 All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Corporation. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the Corporation.

6.3.2.2 There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Corporation. Any such self-insurance program shall provide the Corporation with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

6.3.2.2.1 The Corporation's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

6.3.3 Proof of Insurance. The following evidence of insurance shall be required.

6.3.3.1 For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within 10 days of award of this Contract (ACORD forms are not acceptable proof of workers' compensation coverage):

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the Corporation.

6.3.3.2 For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Corporation within ten days of award of this Agreement. All Certificates of Insurance shall be (i) in a form acceptable to the Corporation and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) accompanied by the endorsement in the Contractor's general liability policy by which the Corporation and City have been made additional insureds pursuant to this Agreement. All Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Agreement as Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

6.3.3.3 Certificates of Insurance confirming renewals of insurance shall be submitted to the Corporation prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of this Agreement.

6.3.3.4 The Contractor shall provide the Corporation with a copy of any policy required under this Article upon the demand for such policy by the Corporation.

6.3.3.5 Acceptance by the Corporation of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

6.3.3.6 If the Contractor receives notice, from an insurance company or other person that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Corporation.

6.3.4 Miscellaneous Insurance Provisions.

6.3.4.1. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall provide the insurer with timely notice thereof on behalf of the Corporation. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the New York City Health and Hospitals Corporation as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the Corporation. If the Contractor fails to comply with the requirements of this Section, the Contractor shall indemnify the Corporation for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the Corporation.

6.3.4.2 The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the Corporation at any time.

6.3.4.3 Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the Corporation from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or at law.

6.3.4.4 The Contractor waives all rights against the Corporation, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Corporation.

6.3.4.5 If the Contractor requires any subcontractor to procure insurance for any operations under this Contract and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the Corporation and the City, including their officials and employees, as additional insureds with coverage at least as broad as the most recently issued ISO form CG 20 26.

6.4 MINIMUM WAGES

Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, all persons employed by the Contractor

in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by law, not less than the minimum wage as prescribed by law. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

6.5 INDEPENDENT CONTRACTOR STATUS

The Contractor is an independent contractor and is not an employee of the Corporation or the City. Neither the Contractor nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Corporation or the City. They will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Corporation or the City including, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

6.6 PROTECTION OF CORPORATION PROPERTY

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to the Corporation's property, including leased property, used in the performance of this Agreement, and caused directly or indirectly, by the acts or omissions of the Contractor, its officers, and employees, or any person, firm, company, agent or others engaged by the Contractor as to perform or assist with the performance of the Services.

6.7 RIGHTS OF CORPORATION

The rights and remedies of the Corporation provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

6.8 COMPLIANCE WITH LAW

The Contractor shall perform all Services in accordance with law including having all legally required approvals and licenses.

6.9 FEDERAL EMPLOYMENT PRACTICES

The Contractor and its subcontractors shall comply with the Civil Rights Act of 1964 and any amendments thereto, and the rules and regulations thereunder.

6.10 NON-DISCRIMINATION AGAINST THE HANDICAPPED

The Contractor shall comply with the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1994, and all regulations, guidelines and interpretations issued pursuant thereto.

6.11 INVESTIGATIONS

6.11.1 The parties agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State, City or other governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental

agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

6.11.2 a. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the Corporation, City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

b. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by the Corporation, City or State or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and seeking testimony concerning the interest in, and seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the Corporation, City the State, or any political subdivision thereof or any local development corporation within the City; then:

6.11.3 a. The President of the Corporation shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if penalties should attach for the failure of a person to testify.

b. If any non-governmental party to the hearing requests an adjournment, the President of the Corporation may, upon granting the adjournment, suspend any contract, lease, permit or license of the party granted the extension pending the final determination pursuant to Section 6.11.5, below, without the Corporation or City incurring any penalty or damages for delay or otherwise.

6.11.4 The penalties which may attach after a final determination by the President may include but shall not exceed:

a. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such

person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the Corporation or City; and/or

- b.** The cancellation or termination of the rights or interest of the person or entity it represents in any and all such existing Corporation or City contracts, leases, permits or licenses that the refusal to testify concerns, and that have not been assigned as permitted under this Agreement, nor the proceeds of which have been pledged to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the Corporation or City incurring any penalty or damages on account of such cancellation or termination. Monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

6.11.5 The President shall consider and address in reaching his or her determination and in assessing an appropriate penalty, the factors in paragraphs a and b, below. The President may also consider, if relevant and appropriate, the criteria established in paragraphs c and d, below, in addition to any other information which may be relevant and appropriate:

- a.** The parties' good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought;
- b.** The relationship of the person who refuses to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity;
- c.** The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the Corporation or City; and
- d.** The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 6.11.4, above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 6.11.3 (a), above, gives notice and proves that such interest was previously acquired. Under either

circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

6.11.6 Definitions

6.11.6.1 License

The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

6.11.6.2 Person

The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

6.11.6.3 Entity

The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the Corporation, City or otherwise transacts business with the City.

6.11.6.4 Member

The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

6.11.7 In the event that the Corporation or City requires a standard revision to this Section 6.11, known as the "Investigations Clause," then the Contractor may, at its option, elect to substitute such standard revision *nunc pro tunc* into this Agreement or, in the event that the Corporation or City agree in any instance to any material change regarding the penalties described in Section 6.11.4 hereof, the Corporation or City shall advise Contractor of such revision, and the Contractor, at its option, may elect to substitute such revised penalties *nunc pro tunc* into the Agreement for those contained in Section 6.11.4.

6.11.8 In addition to and notwithstanding any other provision of this Agreement, the President of the Corporation may in his or her sole discretion terminate this Agreement upon not less than three days written notice in the event Contractor fails to report promptly in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

6.12 ASSIGNMENT

6.12.1 The Contractor shall not assign or otherwise dispose of this Agreement, or of its rights, interests or duties herein without the prior written consent of the Corporation. Failure of the Contractor to obtain any required consent to any assignment shall be grounds for termination for cause, at the option of the Corporation whereupon the Corporation shall be relieved from any further liability to the Contractor, its assignees or transferees, and all monies that may thereafter become due under this Agreement shall be forfeited. The provisions of this clause shall not hinder an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State. Notwithstanding the foregoing, the Contractor may assign this Agreement to an affiliated company under common ownership and control with the Contractor provided that: (a) the Contractor gives the Corporation prior notice of the assignment with a description of the relationship of the assignee to the Contractor; (b) the assignee delivers a written consent to be bound by all of the terms of this Agreement; and (c) the Contractor shall nonetheless remain liable for the assignee's performance hereunder.

6.13 SUBCONTRACTING

6.13.1 The Contractor shall not enter into any subcontracts for the performance of its obligations under this Agreement without prior written approval of the Corporation. A copy of each such proposed subcontract shall be submitted to the Corporation with the Contractor's written request for approval.

6.13.2 All such subcontracts shall contain provisions specifying:

- a.** That the work performed by the subcontractor must be in accordance with the terms of this Agreement;
- b.** That nothing contained in such agreement shall impair the rights of the Corporation; and
- c.** That nothing contained herein, or under the agreement between the Contractor and its subcontractors, shall create any contractual relationship between the subcontractor and the Corporation.
- d.** That the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the Agreement between the Corporation and the Contractor.

6.13.3 The Contractor agrees that it is fully responsible to the Corporation for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them for performance of services covered by this Agreement as it is for the acts and omissions of persons directly employed by it. The Contractor shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

6.14 PUBLICITY AND PUBLICATION

6.14.1 The prior written approval of the Corporation is required before the Contractor or any of its employees, agents, or independent contractors may, at any time, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Agreement. The foregoing restriction does not apply to or prohibit the Contractor from (i) using the Corporation's name in direct communications with customers or prospective customers (such as in a response to a solicitation or another direct communication), (ii) including the Corporation's name in marketing materials that contain a list of the Contractor's customers.

6.14.2 If the Contractor or any of its employees publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the Corporation shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use the publication.

6.15 INVENTIONS, PATENTS AND COPYRIGHTS

6.15.1 Any discovery or invention arising out of or developed in the course or performance of this Agreement shall be promptly and fully reported to the Corporation, and if this work is supported by a Federal grant of funds, it shall promptly and fully be reported to the Federal Government for determination as to whether patent protection of such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered to protect the public interest.

6.15.2 The Corporation shall be the owner of any report, document or other data produced in whole or in part in connection with the performance of this Agreement.

6.15.3 In no event shall Section 6.15.1 above be deemed to apply to any discovery or invention of the Contractor which existed prior to or was developed or discovered independently from its activities related to this Agreement.

6.15.5 If this Agreement involves information services or the lease, license or other use of the Corporation or City computer system or electronic data processing system then the following shall apply:

- a.** All software, computer data, and any accompanying literature developed in connection with this Agreement shall be the sole property of the Corporation;
- b.** All such material constitutes confidential information that the Contractor shall not disclose to any third party nor shall it disclose any information obtained from the Corporation or the City concerning the Corporation's or the City's operations, existing or future computer programs or other record keeping procedures, except as such disclosure may be required by law;

- c. The Contractor will use its best efforts to prevent unauthorized dissemination or disclosure of such information related to the development of said software; and
- d. None of the Contractor or any of its employees shall transfer, publish, use or disclose the contents of or any aspect of said software to third parties unless specifically authorized in writing, in advance, by the Corporation. This Section shall not apply if the Contractor develops similar software independently of this Agreement or such software was rightfully obtained by the Contractor from a third party whom the Corporation or the City has licensed or authorized to use such software. The Contractor shall return to the Corporation, at the termination or expiration of this Agreement all copies of such software, any improvements thereof and all information, data or material related thereto, including, without limitation, each and every copy or so much of every program, program deck, tape, disk, card, card deck, printout, listing, specifications, layout manual and other material with respect to such software or any part thereof then in the possession or in the control of, or obtained by others through or from the Contractor and its permitted transferee.

6.16 INFRINGEMENTS

The Contractor shall defend, indemnify and hold harmless the Corporation from and against any damage, loss or expense sustained by the Corporation or that the Corporation may be subject to or which it may suffer or incur arising out of or in connection with any infringement or alleged infringement by the Contractor and/or its subcontractors of any copyright, trademark or patent rights or any other intellectual property rights of any third party in any designs, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the Corporation harmless regardless of whether or not the alleged infringement arises out of compliance with this Agreement's scope of services/scope of work. Insofar as the facts or law relating to any claim would preclude the Corporation from being completely indemnified by the Contractor, the Corporation shall be partially indemnified by the Contractor to the fullest extent permitted by law. The indemnification provisions set forth in this Section 6.16 shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

6.17 HIPAA COMPLIANCE

The parties shall take such actions as necessary to comply with the privacy standards and other
HHC Consulting Agreement rev Jan. 2014

requirements relating to protected health information as defined in the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) (“HIPAA”) and amendments thereto, and the rules and regulations promulgated thereunder, as well as guidance issued by the United States Department of Health and Human Services. If at any time the Corporation determines that a HIPAA-compliant business associate agreement is required to be executed by both parties to maintain such compliance, the Contractor shall comply with such requirement.

6.18 PARTICIPATION IN AN INTERNATIONAL BOYCOTT

In accordance with Admin. Code § 6-114, The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, and the regulations of the United States Department of Commerce promulgated thereunder. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Corporation may, at its option, terminate and render forfeit and void this Agreement.

6.19 MACBRIDE FAIR EMPLOYMENT PRINCIPLES

If the Contractor is a governmental agency or not-for-profit corporation then this Section 6.19 shall not apply. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles. The Contractor agrees that the covenants and representations in this Section 6.19 are material conditions of this Agreement.

6.20 CONFIDENTIALITY

The Contractor shall hold any reports, information, or data furnished or prepared, assembled or used by the Contractor under this Agreement confidential and the same shall not be made available to any individual or organization, or published without the prior written approval

of the Corporation or as authorized or required by law. The Corporation shall hold any reports, information or data pertaining to the Contractor, its employees or customers that are disclosed to the Corporation or which are learned by the Corporation as a result of this Agreement confidential and the same shall not be made available to any individual or organization, or published without the prior written approval of the Contractor or as authorized or required by law. The provisions of this Section shall survive the termination or expiration of this Agreement.

6.21 MINORITY AND WOMEN-OWNED BUSINESS ENTITY PROGRAM (M/WBE)

6.21.1 The Corporation is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“M/WBE Regulations”) for all contracts with a value in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

6.21.2 The Contractor agrees, at no additional cost to the Corporation, to the extent it subcontracts any services performed under this Agreement that it will fully comply and cooperate with the Corporation in the implementation of the minority and women-owned business enterprises (“M/WBEs”) Regulations as they are described in New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 and this Article. These requirements include equal employment opportunities for minority group members and women and contracting opportunities for certified M/WBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these undertakings by the Contractor. The obligations undertaken by the Contractor in pursuant to this Article shall be deemed supplementary to, and not in lieu of, other applicable nondiscrimination provisions, if any, required by New York State Executive Law Article 15 or other applicable federal, state or local laws, provided, however, that in meeting such obligations, the Contractor shall not be obligated to violate any other applicable nondiscrimination provision.

6.21.3 The Contractor shall achieve these goals:

[MBE Goal (___%)]

[WBE Goal (___%)]

If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a request for waiver documenting good faith efforts by the Contractor to meet such goals. Requests for waiver must satisfy the requirements of New York State Executive Law, Article 15-A, and 5 NYCRR, Section 143.7. If the documentation included with the waiver request is complete, the Corporation shall evaluate the request and issue a written notice of

acceptance or denial within twenty (20) days of receipt. Should the requested waiver be denied, the Contractor may request an administrative hearing within seven (7) calendar days of the Contractor's receipt of such waiver denial.

6.21.4 Contractor's intentional failure to comply with its obligations in this Article may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the Corporation's administrative action, including without limitation the withholding of funds pending receipt of the required M/WBE documentation, suspension or termination of this Agreement or such other actions as allowed by this Agreement and applicable law.

ARTICLE 7

TERMINATION

7.1 CONDITIONS OF TERMINATION

7.1.1 The Corporation may terminate this Agreement, in whole or in part:

- a. Upon thirty days' notice to the Contractor if the Contractor has breached this Agreement if such breach is not cured within such period.
- b. Upon notice to the Contractor, if the Contractor becomes insolvent, or in the event of the commencement under the Federal or State Bankruptcy Act of any proceeding by or against the Contractor, either voluntarily or involuntarily, or the appointment of a receiver for the Contractor's assets.
- c. Without cause, upon thirty days notice to the Contractor, if the Corporation deems that termination would be in the best interest of the Corporation.

7.1.2 If the Contractor disputes the termination by the Corporation, the Contractor may, by notice to the Corporation within ten business days of receipt of the termination notice, seek review of the decision before a review board. At any such hearing, the Contractor may be represented by counsel and present or refute evidence and testimony relevant to the issue of the Contractor's termination. The Corporation's decision shall be final and binding with respect to the termination of the Contractor if the Contractor does not request a review as herein provided.

7.1.3 The Contractor shall forebear from the commencement of any action or proceeding regarding the Corporation's termination, unless the Contractor has requested a hearing before a review board pursuant to Section 7.1.2 above, and such board has issued a final decision.

7.2 NOTICE OF TERMINATION/CAUSES BEYOND CONTRACTOR'S CONTROL

The Contractor may terminate this Agreement on notice to the Corporation by reason of any failure in the performance of this Agreement (including any failure by the Contractor to make progress in the prosecution of work hereunder which endangers such performance), if such

failure arises out of causes beyond the control and without the fault or negligence of the Contractor and such conditions have persisted for not less than 180 days. Such causes may include, but are not restricted to: Acts of God or of the public enemy; acts of the government in either its sovereign or contractual capacity, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, or any other cause beyond the reasonable control of the Contractor. Upon such termination, the Contractor shall comply with the Corporation's close-out procedures, including but not limited to:

- a. Giving the Corporation or its designees access to all books and records relating to this Agreement during normal business hours upon reasonable notice or giving the Corporation copies of such materials at the Corporation's option and cost; and
- b. Submitting, within 90 days, a final statement and report relating to this Agreement, with such information as the Corporation may reasonably request.

7.3 RECOUPMENT OF DISALLOWANCES, QUESTIONED COSTS AND OVER-PAYMENTS; LIABILITY AND SET-OFF

The Corporation may, at its option, withhold for the purposes of set-off and monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audit of the Contractor with regard to this Agreement. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the Corporation or the City for damages sustained by the Corporation or the City by virtue of the Contractor's breach of the Agreement, and the Corporation may withhold payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the Corporation or City from the Contractor is determined.

7.4 REDUCTIONS IN FEDERAL, STATE AND/OR CITY FUNDING

7.4.1 This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments, or with the Corporation's own funds, the expenditure of which were approved by the Corporation in accordance with its operating procedures. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the Corporation shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments. This right shall include, but not limited to, in the case of exercise of the reduction option, the reduction or elimination of programs, services or service components, the reduction or elimination of

contract-reimbursable staff or staff-hours, and corresponding reductions in the Agreement budget and the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services required to be performed under this Agreement.

7.4.2 Any total discontinuance of funds pursuant to Section 7.4.1 shall be effective immediately upon written notice to the Contractor. Any reduction in funds pursuant to Section 7.4.1 shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) days from the date of such notice. Prior to sending such notice of reduction, the Corporation shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Corporation shall not be bound to use any of the Contractor's suggestions and that the Corporation shall have sole discretion as to how to effectuate the reductions.

7.4.3 If the Corporation terminates or otherwise reduces funding pursuant to this Section 7.4, the Corporation shall pay for services provided in accordance with this Agreement prior to the termination or reduction date and any obligation necessarily incurred by the Contractor in accordance with the terms of this Agreement prior to receipt of notice of termination or reduction and falling due after said date.

ARTICLE 8 **MISCELLANEOUS**

8.1 GOVERNING LAW; SEVERABILITY; WAIVER; VENUE

8.1.1 This Agreement shall be governed in all respects by the laws of the State of New York as applied to contracts entered into and wholly to be performed within the State of New York.

8.1.2 The invalidity or unenforceability of any term or condition hereof shall in no way affect the validity or enforceability of any other terms or provisions.

8.1.3 The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.

8.1.4 Any litigation arising from this Agreement will be brought only before the appropriate New York State or Federal courts sitting in the County and State of New York.

8.2 CLAIMS AND ACTIONS THEREON

8.2.1 No action shall lie or be maintained against the Corporation or the City by the Contractor upon any claims based upon this Agreement unless such action shall be commenced

within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever is earliest.

8.2.2 If any claim is brought relating to this Agreement, the Contractor shall diligently render to the Corporation and/or the City any assistance that they may reasonably require.

8.2.3 The Contractor shall report to the Corporation in writing within three business days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

8.3 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim for personal liability shall be made by the Contractor against any individual officer, agent or employee of the Corporation or the City related to anything done or omitted in connection with this Agreement and no claim shall be made by the Corporation against any individual, officer, agent or employee of the Contractor except in the case of fraud.

8.4 NOTICES

All notices or communications required or permitted to be given hereunder shall be in writing and if to the Corporation shall be sent to 125 Worth Street, Room 527, New York, NY 10013, Attn: General Counsel and if to the Contractor, at the address specified in this Agreement. Notices may be sent by hand delivery, U.S. Postal Service certified mail return receipt requested or by nationally recognized courier. Notices shall be deemed given upon delivery if delivery is by hand, within three business days if by certified mail and on the next business day if sent by recognized courier with next business day delivery specified.

8.5 ALL LEGAL PROVISIONS DEEMED INCLUDED

Each and every provision of law required to be inserted in this Agreement shall be and is deemed to be inserted herein and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice from such omission to the rights of either party hereunder.

8.6 POLITICAL ACTIVITY

8.6.1 There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

8.6.2 No funds provided under this Agreement shall be used to pay the salary or expense of any person to engage in any activity designed to influence legislation or appropriations pending before the Congress of the United States.

8.7 MODIFICATION

This Agreement may be modified by the parties only in writing. It may not be altered or modified orally.

8.8 SECTION HEADINGS

Section headings are inserted only as a matter of convenience and reference and in no way define, limit, affect or describe the scope or intent of this Agreement.

8.9 MERGER

This Agreement contains the entire understand of the parties with regard to the subject matter hereof and all prior or contemporaneous understandings or agreements are deemed to have been merged into this Agreement.

8.10 LIMITATION OF LIABILITY

The Corporation's liability to the Contractor for any losses or damages arising out of any of the provisions of this Agreement, shall not exceed the amount due the Contractor for services performed under this Agreement that remain unpaid at the time of such loss or damage. Neither party shall be liable to the other for incidental or consequential damages.

8.11 SECTION 400.4: NEW YORK STATE HOSPITAL CODE

As required by 10 NYCRR Sec. 400.4[a][1][4] when the Contractor is providing health care services hereunder: Notwithstanding any other provision in this Agreement, the Corporation remains responsible for: (a) ensuring that any services provided pursuant to this Agreement complies with all pertinent provisions of Federal, State and local statutes, rules and regulations; (b) planning, coordinating and ensuring the quality of all services provided; and (c) ensuring adherence to the plan of care established for patients. This Section is limited by the requirements of the NYS Department of Health and is subject to 10 NYCRR § 405.2[i].

8.12 ACCESS TO RECORDS BY THE FEDERAL GOVERNMENT

Until the expiration of four years after the furnishing of the Services pursuant to this Agreement, the Contractor will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of this Agreement and any books, documents, records and other data of the Contractor that are necessary to certify the nature and extent of costs incurred by the Corporation for such services. The Contractor shall ensure that any subcontractor it uses in the performance of this Agreement similarly makes its books, records and other data available and will issue such a certification.

8.13 SURVIVAL

All representations, warranties, and indemnifications contained herein and all confidentiality provisions shall survive the termination of this Agreement.

8.14 PROVISIONS RELATING TO EXCLUDED PROVIDERS.

8.14.1 The Contractor represents and warrants that it, its employees, agents, and principals are not individuals or entities excluded from participation in federal or state health care programs. The Contractor shall ensure the eligibility of its principals, agents and employees to participate in federal and state health care programs and further warrants that it will notify the Corporation if it, its principals or any of its agents or employees providing services under this Agreement become excluded from such participation during the term of this Agreement.

8.14.2 The Contractor represents and warrants that it is not currently a party to a Corporate Integrity Agreement ("CIA") or Certification of Compliance Agreement ("CCA") with any state or federal governmental agency. The Contractor shall promptly notify the Corporation if it becomes a party to a CIA or CCA during the term of this Agreement.

8.14.3 "CIA" is an agreement whereby a governmental agency agrees not to exclude a health care provider or vendor from participation in Medicare, Medicaid or other governmental health care program in exchange for the contractor agreeing to: (1) report overpayments, certain events, investigations and legal proceedings to the federal Office of the Inspector General and (2) provide annual reports to the OIG regarding its compliance activities. "CCA" is an agreement entered into, in lieu of a CIA, between a governmental agency and a health care provider or vendor, which agreement requires the contractor to maintain its existing compliance program and agree to comply with certain obligations similar to those required by a CIA.

ARTICLE 9 **EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE**

9.1 COMPLIANCE WITH CHAPTER 56 OF THE NEW YORK CITY CHARTER

9.1.1 The Contractor shall comply with Chapter 56 of the New York City Charter (formerly Mayor's Executive Order 50, dated April 25, 1980, as amended) ("E.O. 50") and the rules and regulations promulgated thereunder. This Agreement will not be effective unless the reporting requirements set forth below have been complied with in their entirety. The Contractor:

- a.** Will not engage in any unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, citizenship status, sexual orientation or affectional preference in all employment decisions including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff and termination and all terms and conditions of employment except as provided by law;
- b.** When it subcontracts, it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status, citizenship status, sexual orientation, or affectional preference;

- c. Will state in all solicitations or advertisements for employees placed by or on behalf of the contract that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status, citizenship status, sexual orientation, or affectional preference or that it is an equal employment opportunity employer;
- d. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50; and
- e. Will furnish all information and reports, including an Employment Report, before the award of the contract which are required by E.O. 50 and the rules, regulations, and orders of the Director of the Corporation's Office of Equal Employment Opportunity (the "Director of the EEO Office"), and will permit access to its books, records and accounts by the EEO Office for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

9.1.2 The Contractor understands that its non-compliance with the foregoing shall constitute a material breach of this Agreement, as well as non-compliance with E.O. 50. After a hearing held pursuant to the rules of EEO Office, the Director may impose any or all of the following sanctions:

- a. Disapproval of the Contractor;
- b. Suspension or termination of the contract;
- c. Declaring the Contractor in default; or
- d. An employment program.

9.1.3 The Director of the EEO Office may recommend to the Corporation that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 or the rules of the EEO Office to be non-responsible.

9.1.4 The Contractor shall include the provisions of the foregoing paragraphs in every subcontract or purchase order, in excess of \$50,000, using funds provided hereunder, to which it becomes a party unless exempted by E.O. 50 so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the EEO Office as a means of enforcing such provisions, including sanctions for non-compliance.

9.1.5 The Contractor shall refrain from entering into any contract or contract modifications subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

9.2 ADHERENCE TO THE CORPORATION'S EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION POLICIES

The Contractor shall adhere to all terms, conditions and provisions of the Corporation's Equal Employment and Affirmative Action Policies as set forth by the Corporation's Board of Directors.

[NO FURTHER TEXT ON THIS PAGE. SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties have signed below as of the date first above written.

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

By: _____
Alan D. Aviles, Esq.
President

[CONTRACTOR'S NAME HERE]

By: _____
Name:
Title:
Contractor's Authorized Representative

Contractor's Federal Tax I.D. Number

APPROVED AS TO FINANCE:

Senior Vice President - Finance
New York City Health and Hospitals Corporation

APPROVED AS TO FORM:

Senior Vice President and General Counsel
New York City Health and Hospitals Corporation

APPROVED AS TO PROGRAM:

Senior Vice President-
New York City Health and Hospitals Corporation

APPENDIX A

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the New York City Health and Hospitals Corporation that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized officer of broker]

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective _____ (“Effective Date”), is entered into by and between _____, with principal place of business at _____ (“Business Associate”) and the New York City Health and Hospitals Corporation, with principal place of business at 125 Worth Street, New York, New York 10013 (“Covered Entity”) (each a “Party” and collectively the “Parties”).

Business Associate (which, for the purposes of this Business Associate agreement, includes its directors, officers, employees, and third party workforce) is a _____, and Covered Entity is a public benefit corporation providing health care. The Parties have _____ agreement, effective _____, (the “Agreement”) under which Business Associate may use, have access to, or disclose Protected Health Information (“PHI”) or electronic protected health information (“ePHI”) in its performance of the Services described below. Both Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 (hereinafter, the “HIPAA Regulations”) and acknowledge the respective duties and obligations imposed on them by the privacy and security provisions of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), Title XIII, subtitle D, of the American Recovery and Reinvestment Act of 2009 (“ARRA”), codified at 42 U.S.C. § 17921 *et seq.* Citations herein to the Code of Federal Regulations refer to the HIPAA Privacy Regulations published on December 28, 2000 and amended on August 14, 2002 and the HIPAA Security Regulations published on February 20, 2003, and shall include all subsequent, updated, amended or revised provisions relating thereto. Terms not otherwise defined herein shall have the meanings ascribed to them in the HIPAA Regulations, including but not limited to 45 C.F.R. §§ 160.103, 164.103, 164.304, 164.402, & 164.501 and as provided in the HITECH Act, 42 U.S.C. § 17921. References throughout this Agreement to PHI shall be deemed to include ePHI, where applicable. Unless otherwise noted, all references to PHI in this Agreement are to PHI that Business Associate, or its subcontractors or agents, receives from, creates for, has access to, or maintains or transmits on behalf of Covered Entity.

The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

1.1 **Services.** Pursuant to the _____ Agreement, Business Associate provides services (“Services”) for Covered Entity that may involve the use, access to, or disclosure of PHI.

1.2 **Permitted Uses and Disclosures by Business Associate.** Except as otherwise specified herein and pursuant to 42 U.S.C. § 17934, Business Associate may make any and all uses and disclosures of PHI necessary to perform its obligations under the _____ Agreement, provided that such uses or disclosures would not violate the HIPAA Regulations if made by Covered Entity, which may include disclosure of PHI (i) to its employees, subcontractors, and agents, as set forth below, (ii) as directed by Covered Entity, or (iii) as otherwise permitted by the terms of this Agreement. All other uses and disclosures of PHI are prohibited. Unless otherwise limited herein, Business Associate may use PHI of Covered Entity for the following purposes:

- a. **Disclosure for Management, Administration.** Business Associate may use or disclose PHI for proper management and administration of Business Associate as set forth in 45 C.F.R. § 164.504(e)(4).
- b. **Disclosure to Third Parties for Performance of Agreement.** Subject to paragraph 2.1(d)

below, Business Associate may disclose the PHI in its possession to third parties for the purpose of performing its duties under the Agreement and this Agreement. The third parties shall provide written assurances of their confidential handling of such PHI, which shall include adherence to the same restrictions and conditions on use and disclosure as apply to Business Associate herein.

- c. As Required by Law/Legal Process. Business Associate may use or disclose PHI to fulfill any present or future legal responsibilities of Business Associate, provided that the disclosures are (i) required by law, as defined in 45 C.F.R. § 164.103, or (ii) required to carry out the legal responsibilities of Business Associate, as provided in 45 C.F.R. § 164.504(e)(4). To the extent permitted by applicable law, prior to disclosing PHI as required by law to a law enforcement, regulatory, administrative, or oversight agency, or in response to a subpoena, court order, civil investigative demand, or other compulsory document or lawful process, Business Associate shall notify Covered Entity of such pending disclosure and provide reasonable time for Covered Entity to oppose such disclosure, should Covered Entity deem such opposition necessary; provided, however, that if Covered Entity does not respond to Business Associate regarding such opposition prior to the date on which such disclosure must be timely made, Business Associate may, in its own discretion, disclose PHI as required by law or such lawful process.
- d. Aggregation of Data. Business Associate may aggregate the PHI in its possession with the PHI of other covered entities and provide Covered Entity with data analyses relating to the Health Care Operations of Covered Entity in accordance with 45 C.F.R. § 164.504 (e)(2)(i)(B). Under no circumstances may Business Associate disclose PHI of Covered Entity to any other party or covered entity pursuant to this paragraph without the explicit authorization of Covered Entity.
- e. Use of De-identified Data. Business Associate may de-identify PHI and utilize de-identified PHI for purposes other than research, provided that Business Associate (i) de-identifies the PHI pursuant to the HIPAA requirements set out in 45 C.F.R. § 164.514(b) and (ii) provides Covered Entity with appropriate documentation if required by 45 C.F.R. § 164.514(b)(1)(ii). De-identified information does not constitute PHI and, with the exception of paragraph 1.2(f) below, is not subject to the terms of this Agreement.
- f. Use of Data for Research Purposes. Business Associate agrees that it will obtain prior approval by Covered Entity for the use or disclosure of PHI or de-identified PHI for research purposes. Use or disclosure for research purposes that has not been approved by Covered Entity is strictly prohibited.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

2.1 **Responsibilities of the Business Associate.** With regard to the uses or disclosures of PHI permitted by this Agreement, Business Associate hereby agrees to the following:

PROTECTION OF PHI

- a. Report Unauthorized Use. Business Associate agrees to notify Covered Entity of any use or disclosure of PHI by Business Associate, or its third party subcontractors or agents, in violation of this Agreement of which Business Associate becomes aware. Business Associate shall make such notification in writing, to the individuals designated as contacts

by Covered Entity in paragraph 5.6 below, within ten (10) business days of having been made aware of the unauthorized use or disclosure.

- b. Safeguard PHI. Business Associate agrees to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 to maintain the confidentiality and security of PHI, including ePHI, regardless of media (including written, oral, and electronic) and to prevent unauthorized use or disclosure of such PHI by implementing and maintaining appropriate protection policies and procedures.
- c. Mitigate. Business Associate agrees to mitigate, to the extent commercially reasonable, any harmful effects from any unauthorized use or disclosure of PHI by Business Associate or its third party subcontractors or agents.
- d. Bind Subcontractors and Agents. In accordance with 42 C.F.R. § 164.502(e)(1)(ii), Business Associate agrees to require all of its subcontractors and agents that receive, use, maintain, transmit, or have access to PHI under this Agreement to agree, in written satisfactory assurances that conform with 42 C.F.R. § 164.504(e)(5), to adhere to the same restrictions, conditions, and requirements concerning the use or disclosure of PHI that are imposed by this Agreement on Business Associate with respect to such information.
- e. Minimum Necessary Disclosure. In accordance with 45 C.F.R. § 164.502(b), Business Associate agrees to disclose to its subcontractors, agents, or other third parties, and to request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- f. Return or Destroy. Subject to paragraph 3.4 below, within thirty (30) days of the termination of this Agreement, Business Associate agrees to return to Covered Entity or destroy the PHI in its possession and retain no copies (which for purposes of this Agreement shall mean destruction of all backup tapes or other media).
- g. Breach Notification. In accordance with 42 U.S.C. § 17932(b)&(d) and 45 C.F.R. § 164.410, and subject to the possibility of delay afforded by 42 U.S.C. § 17932(g) and 45 C.F.R. § 164.412, Business Associate shall without unreasonable delay, and in no case later than sixty (60) days after discovery by Business Associate thereof, notify Covered Entity of any breach of Covered Entity's unsecured PHI. "Breach" as used in this paragraph shall have the meanings provided in 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402. If Business Associate finds that a breach has occurred, Business Associate shall provide Covered Entity with its analysis of the factors set out in 45 C.F.R. § 164.402(2)(i)-(iv), and all documentation in support thereof, for its determination that PHI has been compromised. If Business Associate finds that a breach has *not* occurred, in that an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Regulations *has taken place*, has been reported to Covered Entity as required by paragraph 2.1(a) of this Agreement, but has been determined by Business Associate *not to compromise the security or privacy of the PHI*, Business Associate shall nevertheless provide Covered Entity, within the applicable notification period specified above, with its analysis of the factors set out in 45 C.F.R. § 164.402(2)(i)-(iv), and all documentation in support thereof, for its determination that PHI has not been compromised.
- h. Business Associate to Bear Costs Related to Breach. In the event a breach as described above in paragraph 2.1(g) has occurred, Business Associate shall reimburse Covered Entity for all costs incurred by Covered Entity directly related to providing the notice

required by 42 U.S.C. § 17932 and 45 C.F.R. §§ 164.404&164.406, including if applicable, but not limited to: written notice, substitute notice, additional notice in urgent situations, and notification to media.

- i. Miscellaneous HITECH Provisions. Business Associate acknowledges applicability of the business associate contract requirements and additional security and privacy requirements imposed by the HITECH Act upon Business Associate pursuant to 42 U.S.C. §§ 17931 & 17934. Business Associate also acknowledges obligations imposed upon Business Associate and Covered Entity by 42 U.S.C. § 17935(d), and any implementing regulations thereunder, when effective and as applicable.

SECURITY REQUIREMENTS

- j. Implement Safeguards. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, has access to, or transmits on behalf of Covered Entity. In accordance with §§ 164.306, .308, .310, and .312 of the HIPAA Regulations, Business Associate shall:
 - (i) implement written policies, procedures and practices to provide the foregoing safeguards and furnish copies of same to Covered Entity, or permit Covered Entity's access thereto, within 10 business days of Covered Entity's written request therefor;
 - (ii) within 10 business days of execution of this Agreement, provide to Covered Entity's Privacy Officer in writing the name of, and contact information for, Business Associate's designated HIPAA Security Officer;
 - (iii) comply with the HHS Office for Civil Rights' **Guidance on Risk Analysis Requirements under the HIPAA Security Rule**, and any modifications thereto, originally posted on the HHS/OCR Website on July 14, 2010.
- k. Bind Subcontractors and Agents. Business Associate agrees to require all of its subcontractors and agents to which it provides ePHI to agree, in writing and in accordance with 45 C.F.R. § 164.504(e)(5), to implement reasonable and appropriate safeguards to protect such ePHI.
- l. Report Security Incident. Business Associate agrees to notify Covered Entity of any security incident involving PHI experienced by Business Associate or its subcontractors and agents of which Business Associate becomes aware; provided, however, the Parties acknowledge and agree that this section 2.1(l) constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" means, without limitation, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access to, use, or disclosure of PHI. Business Associate shall make such notification in writing, to the individuals designated as contacts by Covered Entity in paragraph 5.6 below, within ten (10) business days of having been made aware of the security incident.
- m. Application of HITECH Security Provisions. Pursuant to 42 U.S.C. § 17931, sections

164.308, 164.310, 164.312, and 164.316 of title 45 of the Code of Federal Regulations shall apply to Business Associate.

ACCESS AND AVAILABILITY OF PHI

- n. Access for Viewing, Inspection, and Copying by Individual Subject of PHI. Business Associate agrees to make PHI, if maintained by Business Associate in a Designated Record Set, available to Covered Entity for subsequent inspection and copying by the Individual subject thereof in accordance with applicable law (including, but not limited to, the HIPAA Regulations, 45 C.F.R. § 164.524).
- o. Amendment by Subject of PHI. Upon written notice by Covered Entity, Business Associate agrees to make PHI, if maintained by Business Associate in a Designated Record Set, available within ten (10) business days to Covered Entity for subsequent amendment by the Individual subject thereof and incorporate any amendments to PHI in accordance with applicable law (including, but not limited to, the HIPAA Regulations, 45 C.F.R. § 164.526).
- p. Access by the U.S. Department of Health and Human Services (HHS). Subject to attorney-client and any other applicable legal privileges, and pursuant to 45 C.F.R. § 164.504 (e)(2)(ii)(H), Business Associate agrees to make available to the Secretary of HHS all internal practices, books, and records relating to the use or disclosure of PHI so that HHS may determine Covered Entity's compliance with the HIPAA Regulations.
- q. Access for Accounting Purposes. Business Associate agrees to document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI. Business Associate agrees to provide to Covered Entity, within ten (10) business days of receiving a request in writing therefrom, such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an Individual for an accounting of the disclosures of the Individual's PHI in accordance with 45 C.F.R. § 164.528.
- r. Performance of Covered Entity's HIPAA Obligations by Business Associate. To the extent, if any, that Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

QUALIFIED SERVICE ORGANIZATIONS PROVISIONS

- s. Business Associate Bound by 42 C.F.R. Part 2. Business Associate acknowledges that if it receives, stores, processes, has access to, maintains, or otherwise deals with any "patient identifying information" or "records" as defined in 42 C.F.R. § 2.11 from an alcohol/drug abuse "program," as defined in 42 C.F.R. § 2.11, that is federally assisted in a manner described in 42 C.F.R. § 2.12(b), and that is operated by Covered Entity, Business Associate is fully bound by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

- t. Judicial Proceedings to Obtain Records Covered by 42 C.F.R. Part 2. Business Associate agrees that it will resist in judicial proceedings any efforts to obtain access to “patient identifying information” or “records” as defined in 42 C.F.R. § 2.11 and as received, processed, stored, or maintained by Business Associate, other than as permitted by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

APPLICABILITY OF CERTAIN STATE CONFIDENTIALITY LAWS & REGULATIONS

- u. New York State Confidentiality Laws & Regulations. Business Associate agrees to comply with all applicable state laws and regulations governing the confidentiality of information provided by Covered Entity including, but not limited to, New York Public Health Law §§ 18 (Access to Patient Information) & 2780 *et seq.* (Confidential HIV Related Information); New York Mental Hygiene Law §§ 22.05 (Patient Chemical Dependence Services Records) & 33.13 (Confidentiality of Clinical Records); New York Civil Rights Law § 79-1 (Confidentiality of Genetic Test Records); and New York General Business Law §§ 399-ddd (Confidentiality of Social Security Account Number), 399-h (Disposal of Records Containing Personal Identifying Information), & 899-aa (New York Breach Notification Statute).
- v. Breach Notification Under New York Law. Pursuant to New York General Business Law § 899-aa(2)&(3) and in conformity with paragraph 2.1(a) of this Agreement, Business Associate shall, within ten (10) business days of discovery thereof, notify Covered Entity of any “breach of the security of the system,” as defined in New York General Business Law § 899-aa(1)(c), that involves PHI containing individuals’ “private information,” as defined in New York General Business Law § 899-aa(1)(b), that was, or was reasonably believed to be, acquired from Business Associate by a person without valid authorization.
- w. Business Associate to Bear Costs Related to Breach. Notwithstanding any other provision of this Agreement to the contrary, Business Associate shall bear all costs related to its breach of private information under New York General Business Law § 899-aa, including any and all applicable damages or losses identified in New York General Business Law § 899aa(6). In the event such breach has occurred, Business Associate shall reimburse Covered Entity for all costs incurred by Covered Entity directly related to providing the notice required by New York General Business Law § 899-aa(5), including if applicable, but not limited to: written notice, electronic notice, telephone notification, substitute notice, and notification to major statewide media.
- x. Disposal of PHI Under New York Law. In the event Business Associate chooses to destroy the PHI in its possession in compliance with paragraphs 2.1(f) and 3.4 of this Agreement, and said PHI contains “personal identifying information” as defined in New York General Business Law § 399-h(1)(d), Business Associate shall dispose of such information in conformity with New York General Business Law § 399-h(2).

2.2 **Responsibilities of the Covered Entity.** With regard to the use or disclosure of PHI by Business Associate, Covered Entity hereby agrees as follows:

- a. Inform Business Associate of Changes in Privacy Notice. Upon request, Covered Entity agrees to furnish Business Associate with a copy of the Notice of Privacy Practices that Covered Entity provides to Individuals pursuant to 45 C.F.R. § 164.520 and to inform

Business Associate of any subsequent changes thereto, if such changes affect Business Associate's permitted or required uses and disclosures of PHI.

- b. Inform Business Associate of Changes in Authorizations. Covered Entity agrees to inform Business Associate of any changes in, or withdrawal of, any authorizations provided to Covered Entity by Individuals in accordance with 45 C.F.R. § 164.508 and pursuant to which Covered Entity has disclosed PHI to Business Associate, if such changes affect Business Associate's permitted or required uses and disclosures of PHI.
- c. Inform Business Associate of Opt-out Election. Covered Entity agrees to inform Business Associate of any opt-outs exercised by any Individual from marketing or fundraising activities of Covered Entity pursuant to 45 C.F.R. § 164.514(f), if such opt-outs affect Business Associate's permitted or required uses or disclosures of PHI.
- d. Notify Business Associate of Additional Limitations. Covered Entity agrees to notify Business Associate, in writing and in a timely manner, of any arrangements permitted or required of Covered Entity under 45 C.F.R. parts 160 and 164 that may affect in any manner the use or disclosure of PHI by Business Associate under this Agreement, including, but not limited to, restrictions on use or disclosure of PHI agreed to by Covered Entity as provided for in 45 C.F.R. § 164.522.
- e. Miscellaneous HITECH Provisions. Covered Entity acknowledges applicability of the additional privacy and security requirements imposed by the HITECH Act upon Covered Entity pursuant to 42 U.S.C. § 17921 *et seq.*

3. TERM AND TERMINATION

3.1 **Term.** This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this section 3. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with paragraph 5.1 herein.

3.2 **Termination by the Parties.** Pursuant to 45 C.F.R. § 164.504(e) and 42 U.S.C. § 17934(b), the Parties hereby acknowledge and agree that in the event one party has or obtains substantial and credible evidence that the other party has violated a material term of this Agreement, non-breaching party shall have the right to investigate such violation, and breaching party shall reasonably cooperate with non-breaching party with respect to such investigation. In the event of a material breach, non-breaching party shall: (i) provide breaching party with written notice of the existence of a material breach; and (ii) afford breaching party an opportunity to cure said material breach within thirty (30) days of receipt of non-breaching party's written notice. As provided for in 45 C.F.R. § 164.504(e)(2)(iii), failure to cure is grounds for the immediate termination by non-breaching party of this Agreement and any related agreements without penalty or recourse to non-breaching party. Termination of this Agreement by either party shall be in writing.

3.3 **Automatic Termination.** This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Agreement.

3.4 **Effect of Termination.** Upon the event of termination pursuant to this section 3, Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J), if it is feasible to

do so. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for Business Associate to return or destroy said PHI, Business Associate shall notify Covered Entity in writing within thirty (30) days of the termination of this Agreement. Said notification shall include: (i) a statement that Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement to Business Associate's use or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is not feasible for Business Associate to obtain from subcontractors or agents any PHI in the possession of subcontractors or agents, Business Associate shall provide a written explanation to Covered Entity and require subcontractors and agents to agree to extend any and all protections, limitations, and restrictions contained in this Agreement to subcontractors' or agents' use or disclosure of any PHI retained after termination of this Agreement, and to limit any further uses or disclosures to the purposes that make return or destruction of the PHI infeasible.

4. INDEMNIFICATION

4.1 **Indemnification.** Business Associate agrees to indemnify, defend, and hold harmless Covered Entity and Covered Entity's employees, directors, trustees, officers, agents or other members of its workforce against all losses suffered by Covered Entity, and all liability to third parties, arising from or in connection with any material breach of this Agreement by Business Associate or its employees, directors, officers, subcontractors, agents, or other members of its workforce. Accordingly, Business Associate shall reimburse Covered Entity for any and all losses, liabilities, fines, penalties, costs, or expenses (including reasonable attorneys' fees) that may for any reason be imposed upon Covered Entity by reason of any suit, claim, action, proceeding, or demand by any third party that results from such material breach by Business Associate hereunder. Covered Entity hereby represents that it shall be responsible for the acts or omissions of its officers, employees, agents and contracted affiliates in connection with this Agreement. Such representation is based upon and limited to the obligation of the City of New York to defend, indemnify, and hold harmless Covered Entity, its officers, employees, agents and contracted affiliates from any and all liability and damages arising from or in connection with the provision and delivery of health services. The Parties and their subcontractors or agents shall not be liable to each other under this Agreement for any special, incidental, indirect, punitive, or consequential damages, whether based on breach of contract, warranty, tort, or product liability, and whether or not the Parties have been advised of the possibility of such damages. The Parties' obligations under this paragraph shall survive the expiration or termination of this Agreement for any reason.

5. MISCELLANEOUS

5.1 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of paragraphs 2.1 (**Responsibilities of the Business Associate**, solely with respect to PHI Business Associate retains in accordance with paragraph 3.4 where it is not feasible to return or destroy such PHI), 3.4 (**Effect of Termination**), 4.1 (**Indemnification**), 5.3 (**No Third Party Beneficiaries**), and 5.9 (**Governing Law**) shall survive termination of this Agreement indefinitely.

5.2 **Amendments; Waiver.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. Notwithstanding the foregoing, in order to ensure that this Agreement at

all times remains consistent with applicable law regarding use and disclosure of PHI (including, but not limited to, the HIPAA Regulations, the HITECH Act, and the provisions of federal and New York Law cited in paragraphs 2.1(s)-(x) herein), the Parties agree that this Agreement may be amended from time to time upon written notice from one Party to the other Party requesting such amendment, and with the subsequent written agreement of the other Party, as to the revisions required to make this Agreement consistent with applicable law.

5.3 **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 **Interpretation.** To the extent that any terms or provisions of this Agreement are ambiguous, such terms or provisions shall be interpreted to allow the Parties to comply with the HIPAA Regulations, the HITECH Act and its implementing regulations, and, where applicable, with the federal and New York State laws and regulations cited in paragraphs 2.1(s)-(x) of this Agreement.

5.5 **Effect.** The terms and provisions of this Agreement shall supersede any other conflicting or inconsistent terms and provisions in the Agreement, including all documents incorporated therein by reference and all exhibits or other attachments thereto.

5.6 **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or overnight courier to such Party's address given below, or via facsimile to the facsimile telephone numbers, if any, listed below. Notice shall be deemed given three (3) business days after depositing into U.S. Mail postage prepaid, the next business day if sent by overnight courier, and the same day if sent by facsimile.

If to *Business Associate*, to:

Phone: Fax:

With a copy, which shall not constitute notice, to:

Phone: Fax:

If to *Covered Entity*, to:

Phone: Fax:

With a copy, which shall not constitute notice, to:

HIPAA Privacy Officer
New York City Health and Hospitals Corporation
160 Water Street, 11th Floor
New York, New York 10038
Phone: (646) 458-3727 Fax: (646) 458-5624

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

5.7 **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.8 **Integration.** This Agreement embodies and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, supersedes all prior oral or written agreements, commitments, and understandings pertaining to the subject matter hereof, and applies with full force and effect to any PHI remaining in Business Associate’s possession that is subject to the survival provision of any previous business associate agreement between the Parties.

5.9 **Governing Law.**

- a. Any action, claim, dispute, or litigation (each hereafter referred to as “action”) regarding performance, non-performance, breach, or interpretation of this Agreement or otherwise arising out of or relating to this Agreement shall be governed by the laws of the State of New York.

- b. Any action of whatever nature commenced by or asserted against Covered Entity arising out of or relating to this Agreement shall be brought, heard, and determined exclusively in the City of New York, in the county within the City of New York in which the cause of action arose or, if the cause of action arose outside the City of New York, in the County of New York.

- c. If for any reason any action arising out of or related to this Agreement is removed from a court, the venue of which is described in paragraph 5.9(b), to the jurisdiction of a court of the United States, such action shall be heard and determined exclusively in a court of the United States located in the State of New York and the County of New York.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf:

**NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION**

By: _____

By: _____

Date: