

CONTRACT BETWEEN

METROPLUS HEALTH PLAN, INC.

and

DATE

Term: _____ Year(s)

Expiration Date: _____

Contract Amount: \$ _____ Annually Life of Contract

Renewal: Yes No

1st Option: _____

2nd Option: _____

Agreement made as of this _____ day of _____ 201_, (this "Agreement") by and between MetroPlus Health Plan, Inc. (the "Corporation"), a subsidiary corporation of the New York City Health and Hospitals ("NYC Health + Hospitals"), a public benefit corporation created under the laws of the State of New York, having its principal place of business at 160 Water Street, New York, New York 10038, 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
SCOPE OF SERVICES

1.1 SCOPE OF SERVICES

The Corporation hereby retains Contractor to provide the Services set forth in Article 1. The Contractor's Services shall meet the requirements outlined in the Solicitation issued by the Corporation dated _____ ("**Attachment A**") and shall be performed in accordance with the Contractor's proposal, entitled " _____," dated

_____ ("**Attachment B**" or "Contractor's Proposal"). (**Attachments A and B** are attached hereto and made a part of this Agreement.) To the extent that **Attachment A** or **Attachment B** is inconsistent with this Agreement, then this Agreement shall control. In the event that **Attachment A** is inconsistent with **Attachment B**, **Attachment A** shall control over **Attachment B**. [*Modify if procured as Sole Source*] In the event of a conflict between the legal terms set forth in this Agreement and a Statement of Work, Scope of Work, or Quote, the terms of this Agreement shall prevail.

The Contractor shall provide the services as set forth below:

[add details about services here]

1.2 OVERSIGHT OF SERVICES

The Services shall be at all times subject to the direction and control of the Corporation and MetroPlus shall maintain oversight of Contractor's performance of the Services described herein. MetroPlus shall periodically review Contractor's performance in accordance with the performance standards outlined in **Exhibit A**, attached hereto and incorporated herein. In the event that MetroPlus, in its sole discretion or as otherwise set forth in **Exhibit A**, determines that Contractor has failed to meet such performance standards and criteria, MetroPlus may impose penalties as specifically set forth in **Exhibit A**.

1.3 CONTRACTOR REPORTING

Contractor shall collect data and prepare the reports outlined in **Exhibit B**, attached hereto and incorporated herein, or any information (i) requested by MetroPlus pursuant to this Agreement; (ii) required pursuant to applicable law, regulation or applicable Government Contract; (iii) information required by applicable accreditation organizations, and (iv) any other information necessary to carry out the terms of this Agreement or for MetroPlus to remain compliant with any applicable law, regulation or Government Contract.

1.4 CORRECTIVE ACTION PLANS

In the event that MetroPlus determines that Contractor is not adequately performing any of the Services, MetroPlus shall notify Contractor and Contractor shall have thirty (30) days to present a corrective action plan to MetroPlus. If such corrective action plan is not satisfactory in the sole discretion of MetroPlus, MetroPlus may amend this Agreement and remove any Service or terminate Contractor, pursuant to the terms of this Agreement. In the event that MetroPlus removes any Service from this Agreement, Contractor will cease performing that Service and the

parties will negotiate a new rate of compensation as described in Exhibit C, attached hereto and incorporated herein. The imposition of a correction action plan as described in this paragraph 1.4 shall not prevent MetroPlus from enforcing the performance standards set forth in Exhibit A.

1.5 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.

1.6 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. Any extension of time granted by the Corporation shall not be deemed a waiver of other or future due dates or deadlines of Contractor required pursuant to this Agreement.

ARTICLE 2 **COMPENSATION FOR SERVICES**

2.1 CONTRACTOR PAYMENT

The Contractor agrees to accept, as full and complete payment for all Services provided in accordance with this Agreement, a payment in the amount set forth in Exhibit C to this Agreement. 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. The Corporation does not agree to pay late fees.

Corporation represents that it is exempt from the payment of sales and excise taxes and will provide Contractor with documentation of such exemption upon request.

2.2 INVOICES FOR SERVICES

The Contractor will submit monthly invoices to the Corporation for payment for the Services rendered in the preceding month. 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, including but not limited to the Purchase Order (“PO”) number.

2.3 INVOICES FOR OUT-OF-POCKET EXPENDITURES

If the Contractor is authorized to obtain payment for out-of-pocket expenditures pursuant to Exhibit C, the Contractor shall submit invoices to the Corporation for payment for such expenses in accordance with the above section. 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 expenditure. 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 (if over the per diem MetroPlus meal rate), 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 other than meals that are payable at the MetroPlus per diem rate. The Corporation shall have no obligation to reimburse expenses unless a request for reimbursement is submitted within 90 days of the date the expense was incurred.

2.4 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.

ARTICLE 3 **REPRESENTATIONS AND WARRANTIES**

3.1 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.

3.2 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, NYC Health + Hospitals 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.

3.3 NO DEFAULTS

The Contractor represents and warrants that it: (a) is not in arrears to the Corporation or 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 NYC Health + Hospitals or 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.

3.4 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.

3.5 EXCLUDED PROVIDERS

Each Party represents, warrants and covenants to other Party that, during the term of the Agreement, it and each of its employees, contractors and/or agents providing services hereunder has not been: (a) convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a); or (b) excluded, debarred, suspended or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or non-procurement programs. Without limiting the foregoing, each Party agrees to use its reasonable efforts to check, before hiring staff and every thirty (30) days thereafter, all of its employees, contractors and/or agents providing services hereunder whose salaries are directly or indirectly paid for by a federal health care program against the exclusion lists maintained by the following: (v) the US Department of Health and Human Services' Office of Inspector General; (w) the System for Award Management ("SAM"); (x) the New York State Office of Medicaid Inspector General; (y) Social Security Death Master; and (z) the Office of Foreign Asset Control. Each Party shall promptly notify the other Party in writing in the event that it becomes aware that it or any of its employees, contractors, or agents providing services hereunder appear on one or more of these lists and shall immediately remove such sanctioned person from providing services to or on behalf of the other Party. Either Party shall have the right to immediately terminate this Agreement upon written notice to the other Party if the other Party appears on one of the foregoing lists. Each Party 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. Each Party shall promptly notify the other Party if it becomes a party to a CIA or CCA during the term of this Agreement. "CIA" is an agreement whereby a governmental agency agrees not to exclude a health care provider or health plan from participation in Medicare, Medicaid or other governmental health care program in exchange for the health plan 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 health plan, which agreement requires the health plan to maintain its existing compliance program and agree to comply with certain obligations similar to those required by a CIA."

3.6 TERMINATION FOR BREACH OF REPRESENTATIONS AND WARRANTIES

For Contractor's breach or violation of the representations or warranties set forth above in Sections 3.1, 3.4 and 3.5, the Corporation may terminate this Agreement upon 30 days prior notice to the Contractor. The notice of Corporation's intent to terminate this Agreement shall specify the nature of the alleged breach and will be sent via U.S. certified mail. 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.

3.7 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."

3.8 BACKGROUND QUESTIONNAIRES

If the Contractor was required to complete 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 from the date of its last submission of completed Questionnaires so long as this agreement is in effect. 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 NYC Health + Hospitals 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, in its discretion, 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.

ARTICLE 4
COVENANTS OF THE CONTRACTOR

4.1 CONTRACTOR’S EMPLOYEES, AGENTS, AND CONTRACTORS

4.1.1 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, NYC Health + Hospitals or the City and none are under contract to either the Corporation, NYC Health + Hospitals 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 NYC Health + Hospitals 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.

4.1.2 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.

4.2 LIABILITY

4.2.1 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, NYC Health + Hospitals 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, NYC Health + Hospitals or the City.

4.2.2 If any claim is made or any action is brought against the Corporation, NYC Health + Hospitals 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.

4.3 INSURANCE

4.3.1. 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.

4.3.1.1 The Contractor shall maintain, at its sole cost and expense, Commercial General Liability Insurance covering the Contractor as Named Insured and the Corporation, NYC Health + Hospitals and the 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."

4.3.1.2 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.

4.3.1.3 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.

4.3.1.4 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.

4.3.1.5 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.

4.3.1.6 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.

4.3.1.7 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.

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

4.3.2.1 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's Legal Department. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the Corporation.

4.3.2.2 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.

4.3.2.3 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.

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

4.3.3.1 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.

4.3.3.2 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 NYC Health + Hospitals and the 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.

4.3.3.3 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.

4.3.3.4 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.

4.3.3.5 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.

4.3.3.6 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.

4.3.4 Miscellaneous Insurance Provisions.

4.3.4.1. 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.

4.3.4.2 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.

4.3.4.3 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.

4.3.4.4 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.

4.3.4.5 If the Contractor requires any subcontractor to procure insurance with regard to 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 NYC Health + Hospitals 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.

4.4 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.

4.5 INDEPENDENT CONTRACTOR STATUS

The Contractor is an independent contractor and is not an employee of the Corporation, NYC Health + Hospitals 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, NYC Health + Hospitals 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, NYC Health + Hospitals or the City including, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

4.6 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.

4.7 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.

4.8 COMPLIANCE WITH LAW

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

4.9 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.

4.10 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.

4.11 INVESTIGATIONS

4.11.1 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.

4.11.2 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, NYC Health + Hospitals, 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, NYC Health + Hospitals, 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, NYC Health + Hospitals, the City or the State, or any political subdivision thereof or any local development corporation within the City; then:

4.11.3 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 4.11.5, below, without the Corporation, NYC Health + Hospitals or the City incurring any penalty or damages for delay or otherwise.

4.11.4 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, NYC Health + Hospitals 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, NYC Health + Hospitals 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, NYC Health +

Hospitals 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.

4.11.5 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, NYC Health + Hospitals 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 4.11.4, 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 4.11.3 (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.

4.11.6 Definitions

a. 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.

b. 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.

c. 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, NYC Health + Hospitals, City or otherwise transacts business with the City.

d. 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.

4.11.7 In the event that the Corporation, NYC Health + Hospitals, or City requires a standard revision to this Section 4.11, 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, NYC Health + Hospitals, or City agree in any instance to any material change regarding the penalties described in Section 4.11.4 hereof, the Corporation, NYC Health + Hospitals, 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 4.11.4.

4.11.8 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.

4.12 ASSIGNMENT

4.12.1 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.

4.13 SUBCONTRACTING

4.13.1 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.

4.13.2 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.

4.13.3 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 and for the 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.

4.14 PUBLICITY AND PUBLICATION

4.14.1 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.

4.14.2 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.

4.15 INVENTIONS, PATENTS AND COPYRIGHTS

4.15.1 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.

4.15.2 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.

4.15.3 In no event shall Section 4.15.1 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.

4.15.4 If this Agreement involves information services or the lease, license or other use of the Corporation, NYC Health + Hospitals 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, NYC Health + Hospitals or the City concerning the Corporation's or NYC Health + Hospitals'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, NYC Health + Hospitals 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.

4.16 INTELLECTUAL PROPERTY 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 4.16 shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

4.17 HIPAA COMPLIANCE

The parties shall take such actions as necessary to comply with the privacy standards and other 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.

4.18 MACBRIDE FAIR EMPLOYMENT PRINCIPLES

If the Contractor is a governmental agency or not-for-profit corporation then this Section 4.18 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 4.18 are material conditions of this Agreement.

4.19 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.

4.20 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.

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

4.21.1 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.

4.21.2 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.

4.21.3 The Contractor shall achieve these goals:

[MBE Goal (15%)]

[WBE Goal (15%)]

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.

4.21.4 The 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 administrative action by the Corporation, 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.

4.22 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

TERM AND TERMINATION

5.1 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.

5.2 CORPORATION'S RIGHT TO TERMINATE

This Agreement may be terminated (i) by Corporation with or without cause upon thirty days written notice and without liability for any damages resulting therefrom, (ii) if either Party breaches this Agreement, and has failed to cure such breach within thirty days after receiving written notice from the non-breaching Party, provided, however, that if the breach is of such a nature that it cannot be cured within such thirty day period, the breaching Party shall be allowed a reasonable time within which to cure, provided that the breaching Party gives notice to the non-breaching Party within such thirty day period of its intention to cure and the manner in which it intends to cure, or (iii) immediately if a Party becomes insolvent, a Party has a proceeding under the federal or State Bankruptcy Act, either voluntarily or involuntarily, or a Party has a receiver appointed.

5.4 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.

5.5 APPROPRIATION OF SIMILAR SERVICES

If the Corporation should terminate this Agreement the Corporation may procure, on such terms and in such manner as it deems appropriate, services similar to those so terminated, and the Contractor shall continue the performance of this Agreement to the extent not so terminated.

5.6 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.

5.7 REDUCTIONS IN FEDERAL, STATE AND/OR CITY FUNDING

5.7.1 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.

5.7.2 Any total discontinuance of funds pursuant to Section 5.5.1 shall be effective immediately upon written notice to the Contractor. Any reduction in funds pursuant to Section 5.5.1 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.

5.7.3 If the Corporation terminates or otherwise reduces funding pursuant to this Section 5.7, 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 6

AUDIT BY THE CORPORATION AND THE CITY

6.1 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.

6.2 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.

6.3 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 ten (10) 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, NYC Health + Hospitals, the City, the State, the Federal Government and other persons duly authorized by the Corporation.

6.4 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 7 **MISCELLANEOUS**

7.1 GOVERNING LAW; SEVERABILITY; WAIVER; VENUE

7.1.1 This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of New York without giving effect to its principles of conflict of laws.

7.1.2 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.

7.1.3 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.

7.1.4 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.

7.2 CLAIMS AND ACTIONS THEREON

7.2.1 No action shall lie or be maintained against the Corporation, NYC Health + Hospitals 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.

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

7.2.3 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.

7.3 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, NYC Health + Hospitals 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.

7.4 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 160 Water Street, 3rd Floor, New York, NY 10038, Attn: Chief Legal & Compliance Officer and if to the Contractor, at the address specified in this Agreement. Notices may be sent by hand delivery, the 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 sent by certified mail and on the next business day if sent by recognized courier with next business day delivery specified.

7.5 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.

7.6 POLITICAL ACTIVITY

7.6.1 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.

7.6.2 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.

7.7 MODIFICATION

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

7.8 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.

7.9 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.

7.10 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.

7.11 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].

7.12 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.

7.13 SURVIVAL

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

ARTICLE 8 **EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE**

8.1 COMPLIANCE WITH CHAPTER 56 OF THE NEW YORK CITY CHARTER

8.1.1 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.

8.1.2 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.

8.1.3 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.

8.1.4 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.

8.1.5 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.

8.2 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 NYC Health and Hospital'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.

METROPLUS HEALTH PLAN, INC.
A subsidiary corporation of the
**NEW YORK CITY HEALTH AND
HOSPITALS**

By: _____
**President and Chief Executive
Officer**

[CONTRACTOR'S NAME HERE]

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

Contractor's Federal Tax I.D. Number

APPROVED AS TO FINANCE:

Chief Financial Officer
MetroPlus Health Plan, Inc.

APPROVED AS TO LEGAL:

Chief Legal & Compliance Officer
MetroPlus Health Plan, Inc.

NO LEGAL APPROVAL REQUIRED UNLESS BOILERPLATE CHANGED

ATTACHMENT A

METROPLUS HEALTH PLAN SOLICITATION, DATED _____

ATTACHMENT B

CONTRACTOR'S PROPOSAL, ENTITLED " _____", DATED

EXHIBIT A

PERFORMANCE STANDARDS AND GUARANTEES

Contractor and MetroPlus have mutually agreed that Contractor's performance of the Services hereunder shall conform to the performance standards set forth below in this Attachment A. Contractor's performance obligations shall be in accordance with, and in addition to, the rights and remedies of the parties' the Agreement.

The performance guarantees set forth below shall be measured monthly, or as otherwise indicated below, and reported quarterly. Contractor will provide MetroPlus a quarterly performance guarantee report based on a three (3) month calendar quarter (the "Reporting Quarter") within forty-five (45) days from the end of the Reporting Quarter.

MetroPlus shall have the opportunity to review the performance guarantee report and will inform Contractor if its acceptance or dispute of such report no less than thirty (30) days of receipt of the performance guarantee report.

In the event Contractor does not meet a given performance guarantee within the Reporting Quarter, Contractor automatically remit the applicable penalty amount to MetroPlus within ninety (90) days from the end of the Measurement Period or the resolution of any dispute, whichever is sooner. If the performance guarantees are effective for less than a Reporting Quarter, penalty amounts will be prorated for the portion of the Reporting Quarter.

EXHIBIT B

REPORTING REQUIREMENTS

EXHIBIT C
COMPENSATION

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]