

EARLY INTERVENTION PROVIDER AGREEMENT

AGREEMENT, effective as of the date set forth on the signature page, is made between the City of New York, acting through the Commissioner ("Commissioner") of the Department of Health and Mental Hygiene ("Department") and the signatory provider ("Provider" or "Contractor") of Contract Services to infants and toddlers with developmental delays and disabilities.

WHEREAS, pursuant to Title II-A of Article 25 of the New York State Public Health Law, the Department is responsible for the implementation of the early intervention law in the City of New York, and the Commissioner is the early intervention official of the City of New York;

WHEREAS, the Department is authorized under such Law and Section 556(b)(7) of the City Charter to enter into contracts for the provision of Contract Services;

WHEREAS, the Department uses a Fiscal Agent for the payment of and reimbursement for the Contract Services under this Agreement;

WHEREAS, the Provider qualifies under State Department of Health procedures as a Provider of Contract Services as defined herein;

WHEREAS, under the Early Intervention Program, the Provider may be designated to provide Contract Services for a Referred or Eligible Child, and will be claiming reimbursement for such Contract Services from the Department's Fiscal Agent;

NOW THEREFORE, the Provider and the Department agree as follows:

ARTICLE I. DEFINITIONS

The following terms shall have the meaning defined below for the purposes of this Agreement.

"Act" means Title II-A of Article 25 of the New York State Public Health Law, the Early Intervention Program for Infants and Toddlers with Disabilities and Their Families, as amended.

"Agreement" means the provisions set forth in this document, together with Appendix A and Annexes A and B, attached hereto and incorporated herein.

"Appendix A" means the attachment to this Agreement so designated and titled "General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services."

"Annex A" means the attachment to this Agreement so designated and shall include the Provider's general information and the site specific information as requested, and the Contract Services the Provider may furnish hereunder.

"Annex B" means the attachment to this Agreement so designated and titled "Provider Agreement Between the New York State Department of Health and Service Providers in the New York State Early Intervention Program" and the accompanying "Statement of Reassignment."

"Applied Behavioral Analysis" means a methodology for treating autism and other related conditions as described in the State Department document "Clinical Practice Guideline: Report of the Recommendations. Autism/Pervasive Developmental Disorders, Assessment and Intervention for Young Children (Age 0-3 Years)."

"Assistive Technology Devices" means those devices as defined in the Regulations.

"City" means the City of New York.

"Claim" means a request for reimbursement for Contract Services rendered, on a document, in a document format, or in an electronic format, approved by the Department or its designee.

"Commissioner" means the Commissioner of the Department.

"Contract Services" means, as applicable, the provision of Service Coordination, Screening and Evaluations, Early Intervention Services, and Assistive Technology Devices to Eligible and Referred Children.

"Days" means, unless otherwise specified, calendar days.

"Department" means the New York City Department of Health and Mental Hygiene.

"Early Intervention Services" means services under the Act other than Service Coordination, Screening and Evaluations, Assistive Technology Devices, Transportation, and Respite Services.

"Early Intervention Service Provider" means a provider of Early Intervention Services.

"Eligible Child" has the same definition as in Section 2541 of the Act.

"Evaluation" has the same definition as in Section 2541 of the Act.

"Evaluator" shall mean a team of two or more professionals approved pursuant to Section 2541 of the Act to conduct Screenings and Evaluations of Referred Children with Parental consent.

"Fiscal Agent" means the provider designated by the Department for the payment of and reimbursement for Contract Services.

"IFSP" means an individualized family service plan developed under Section 2545 or Section 2546 of the Act.

"Initial Service Coordinator" means the Service Coordinator appointed by the Department for the period up to and including the first IFSP meeting.

"Medical Assistance Program" means the program authorized by Title II of Article 5 of the New York State Social Services Law.

"Ongoing Service Coordinator" means the Service Coordinator selected by the Parent at the IFSP meeting or thereafter and designated in the IFSP or amendments thereto.

"Parent" means the parent or other person authorized to give parental consent under the Act or Regulations on behalf of an Eligible or Referred Child.

"Procedures Manual" means the New York City Early Intervention Program Forms and Procedures Manual as promulgated by the Department and in effect on the effective date of this Agreement, or as subsequently amended.

"Program Director" means the individual employed by the Provider who is responsible for directing and overseeing the provision of Contract Services to Referred and Eligible Children and the deployment and supervision of Provider's Qualified Personnel.

"Qualified Personnel" means those individuals who are approved to deliver services to the extent authorized by their licensure, certification or registration as defined in the Regulations.

"Referred Child" means a child thought to be a possibly Eligible Child under Section 2544 of the Act who has been referred to the Department as provided for by the Act.

"Regulations" means the regulations of the NYSDOH related to Early Intervention, Subpart 69-4 of Part 69 of Subchapter H of Chapter II of Title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, also known as 10 NYCRR Subpart 69-4.

"Screening" means a procedure to determine what type of Evaluation, if any, of a Referred Child is warranted.

"Service Coordination" means the services provided by a Service Coordinator as defined in Section 2541 of the Act.

"Service Coordinator" means the Ongoing or Initial Service Coordinator.

"State" means the State of New York.

"NYSDOH" means the New York State Department of Health.

ARTICLE II. TERM OF AGREEMENT

The term of this Agreement, including renewal options (if any), is set forth on the signature page, provided however, that the initial term shall not exceed three (3) years and the total renewal periods shall not extend beyond six (6) years after the commencement date.

ARTICLE III. SERVICES

Section 3.01 In General.

- a) The Provider shall provide the Contract Services specified in Annex A.
- b) All Contract Services shall be conducted in accordance with: the Act and the Regulations, including the provisions for confidentiality and Parental consent; delivery of the Contract Services by appropriately licensed or qualified professionals; generally accepted standards of professional quality; and the Procedures Manual, as amended.
- c) The Provider shall comply with the provisions of Annex B, the New York State Department of Health "Provider Agreement Between the New York State Department of Health and Service Providers in the New York State Early Intervention Program" and the accompanying "Statement of Reassignment."
- d) The Provider shall provide all services specified in Annex A and shall not restrict its services to certain areas within such boroughs for which it has contracted pursuant to Annex A. The Department reserves the right to require the Provider to provide Contract Services for specified Eligible Children consistent with Annex A. The Department shall exercise reasonable judgment in requiring such Contract Services.
- e) In the event that the Department finds that the Provider shows a pattern and practice of not providing a sufficient level of Contract Services to Eligible or Referred Children residing in particular zip codes that are within a borough for which it is otherwise authorized to serve, the Department may

require such Provider to provide Contract Services to such Children on a priority basis in accordance with procedures established by the Department.

f) Early Intervention Service Providers and Evaluators shall cooperate with the Eligible or Referred Child's Service Coordinator consistent with the Service Coordinator's need to monitor the delivery of Contract Services to such Child. Service Coordinators shall cooperate with the Eligible or Referred Child's Evaluators and Service Providers consistent with their needs to evaluate, deliver Contract Services to such Child, including but not limited to the timely processing of six month and annual reviews of, and amendments to, IFSPs.

g) The Provider shall submit to the Department no less than annually, in the format and by a date requested by the Department, a description of the Provider's Contract Services at each site at which such Contract Services are offered. Such program description may include program models utilized at various sites, languages offered, services offered, special populations served, and other such descriptive information. The Department shall make such program descriptions available to Service Coordinators for the purpose of assisting parents in understanding program types and options, and selecting an evaluation site.

h) The Provider shall submit to the Department no less than annually, if applicable, the names, addresses, and professional titles of all members of its Board of Directors; and, if applicable, the names, addresses, and professional titles of any individual, partnership, joint venture or corporation which holds a ten percent (10%) or greater ownership interest in the Provider.

i) The Provider shall designate a high-level administrator of the Provider as a compliance officer who shall have overall responsibility for and shall monitor the quality of the Provider's services and compliance with this Agreement, the Act, the Regulations, and the Procedures Manual, including but not limited to the timely delivery of Contract Services and the documentation of Contract Services. The compliance officer shall report all incidents of material noncompliance, fraud, or abuse to the Provider's executive director or the individual serving in an equivalent position immediately upon discovery. The Provider shall notify the Department's Early Intervention Office of Program Monitoring and Quality Improvement of each such incident within 72 hours of its discovery. The compliance officer shall initiate, or cause to be initiated, timely corrective action by the Provider upon a finding by the Provider or the Department that there are areas that need such corrective action.

j) The Provider shall comply with NYSDOH requirements for orientation, pre-service and in-service training for all employees and subcontractors of the Provider. The Provider shall not use the services of a subcontractor subject to such training requirements without first confirming that the subcontractor has successfully completed such training. The Provider shall also provide training to all of its employees and subcontractors on any programmatic or administrative procedures of the Department in furtherance of Contract Services. The Provider shall ensure that employees and subcontractors of the Provider performing Contract Services have received training in the precepts and research on providing services embedded in natural routines, as provided by the Department.

k) On an annual basis, no later than February first of each year of this Agreement, the Provider shall provide to the Department a listing of all evaluations of and reports in final form on the Provider related to its Early Intervention Services program or programs co-located with its Early Intervention Services conducted by the State Departments of Health or Education or by any other federal, State or local agencies, including other counties of the State of New York, issued during the preceding calendar year. Copies of all reports and replies or responses thereto by the Provider shall be provided to the Department upon request. If no reports were issued during the period covered, the Provider shall submit a statement to that effect.

l) The Provider shall provide to the Department a full copy of any fiscal audit reports or audited financial statements for the Provider during the term of this Agreement, including but not limited to annual financial audits and audited financial statements produced for another purpose. All audit reports and audited financial statements shall be provided to the Department within 60 days of issuance.

Section 3.02 Confidentiality.

a) All information related to services provided under this Agreement shall be confidential pursuant to Title 34 of the Code of Federal Regulations (CFR) Part 99 (the Federal Education Rights and Privacy Act), 34 CFR Sections 300.610 through 300.626, with the modifications specified in 34 CFR Section 303.5(b); New York State Public Health Law Article 25 and Article 27F, and any regulations promulgated thereunder; and the provisions of Section 369(4) of the New York State Social Services Law, and 42 U.S.C. Section 1396a(a)(7).

b) The Provider shall preserve the confidentiality of all electronic and/or hard-copy data and information, both historical and current data, shared, received, collected, or obtained as a result of this Agreement. No disclosure, redisclosure or release of such data or information is to be made, permitted, or encouraged by the Provider, its officers or employees, subcontractors or agents, except as expressly authorized by law. No such data or information is to be used for personal benefit. The Provider shall specifically instruct its employees, subcontractors and agents in regard to their obligation to keep such data and information in confidence and their liability upon breach of confidentiality to all the penalties prescribed by law.

c) In furtherance of this obligation, the Provider shall:

(i) Ensure that all records containing personally identifiable information are maintained in secure locations. The Provider must ensure that any records that are carried with any individual who travels to a variety of locations to deliver services are kept secure and confidential when off-site.

(ii) Ensure that when records contain information about multiple children, a Parent who requests access to his/her Child's record only receives the record(s) pertaining to that Child/family.

(iii) Maintain a record of any individual who accesses a Child's records, the purpose for which the record was accessed and a copy of authorization for consent, if necessary.

(iv) Assure that all employees and subcontractors, agents, consultants, and volunteers are informed about and are required to adhere to the Provider's confidentiality policies and procedures.

(v) Adhere to all legal requirements that protect early intervention records containing sensitive information (such as sexual or physical abuse, HIV status, treatment for mental illness, the Child's parentage, etc.).

(vi) Ensure the confidentiality of all information maintained in an electronic format.

d) Provider Responsibilities Regarding AIDS and HIV-Related Information

(i) The Provider shall ensure the protection of health history information related to an individual who has been diagnosed as having AIDS or HIV-related illness or HIV infection or laboratory tests performed on an individual for HIV-related illness.

(ii) The Provider shall ensure that staff to whom confidential HIV-related information is disclosed as a necessity for providing services and in accordance with 18 NYCRR 403 and Section 2782 of Public Health Law are fully informed of the penalties and fines for redisclosure in violation of State law and regulation.

(iii) The Provider shall accompany any disclosure of confidential HIV-related information with a written statement as follows:

“This information has been disclosed to you from confidential records, which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure.”

Section 3.03 Central Register of Child Abuse and Maltreatment.

a) The Provider shall contact the New York State Central Register of Child Abuse and Maltreatment whenever it believes that there is reasonable cause to suspect that a Referred or Eligible Child is or has been abused or maltreated. Employees, subcontractors and agents of the Provider in those professions required under Title 6 of the Social Services Law on Child Protective Services to report cases of suspected child abuse or neglect (mandated reporters), must call the mandated reporter's number of the New York State Central Register of Child Abuse and Maltreatment. The Provider shall have a written policy to ensure that it contacts the New York State Central Register of Child Abuse and Maltreatment when any employee, subcontractor or agent of the Provider who is not a mandated reporter believes that there is reasonable cause to suspect abuse, maltreatment or neglect, of a Referred or Eligible Child, based on their observations.

b) The Provider shall in accordance with applicable law complete New York State Central Register of Child Abuse and Maltreatment clearance on any person who is being actively considered for employment, whether as employee, agents or subcontractor, who may have regular and substantial contact with a Referred or Eligible Child. The Provider shall adhere to the procedures established by the New York State Office of Children and Family Services, including processing fees, in accessing the New York State Central Register of Child Abuse and Maltreatment, in accordance with applicable law.

c) If an individual screened through the New York State Central Register of Child Abuse and Maltreatment is the subject of an indicated report, then the Provider shall immediately remove the indicated subject from contact with Referred or Eligible Children. Failure of the Provider to immediately remove the indicated subject from contact with Referred or Eligible Children may result in immediate termination of this Agreement.

Section 3.04 Attendance at Training Sessions The Provider shall attend up to four (4) training sessions in any calendar year provided by the Department, the Fiscal Agent, or the NYSDOH related to the provision of Contract Services and/or Claims procedures for such Contract Services when notified of such training sessions by the Department and/or the NYSDOH. The Department shall provide the Provider with notice of such required training in writing at least twenty-one (21) Days in advance of the date of such training. The individual with chief responsibility for the coordination of billing by the Provider to the Department

shall attend training by the Fiscal Agent. . The Provider must ensure that all subcontractors and employees who provide Evaluation services attend training provided by New York State regarding evaluation and eligibility, within six (6) months of becoming a subcontractor or employee of the Provider or within six (6) months of the start date of this Agreement, whichever is later. The Provider must submit documentation to the Department each year of the Agreement demonstrating that each subcontractor or employee providing speech therapy, physical therapy, occupational therapy, audiology, vision therapy, nutritional services, or medical services received a minimum of five (5) hours of early childhood (0-5) training in that year, and that each subcontractor or employee providing services as a special educator, psychologist, or social worker received a minimum of five (5) hours of birth-to-five training in that year.

Section 3.05 Facilities.

a) Other than for Contract Services provided in the natural environment, as defined in the Regulations, the Provider shall provide all Contract Services in a location approved by the Department and NYSDOH, having a physical plant appropriately equipped and supplied to meet the needs of the Child, with a current Certificate of Occupancy permitting the actual use appropriate to State and City requirements, or similar requirements outside New York City, if applicable, and, if applicable, a New York City Department of Health and Mental Hygiene day care permit.

b) At all times that Contract Services are provided the Provider shall maintain and operate voice and facsimile telephone lines using New York City area codes or toll-free numbers.

Section 3.06 Maintenance of New York State Eligibility. The Provider shall maintain New York State eligibility to provide Contract Services to Referred or Eligible Children. Termination by the NYSDOH or any other New York State department of the Provider's eligibility to provide Contract Services shall be cause for termination of this Agreement forthwith. If provided for in the applicable State regulations, the termination of such eligibility shall not be considered to have occurred when an administrative appeal is made by the Provider with the applicable State department until the final determination of the appeal is made by the applicable State department.

Section 3.07 Maintenance of New York City Department of Health and Mental Hygiene Day Care Permit.

a) In the event that the Provider is required by applicable law to have a day care permit from the New York City Department of Health and Mental Hygiene at a particular site where Contract Services are being delivered, the failure to have a permit covering that site shall be cause for the termination forthwith of Contract Services at that site.

b) The Provider shall submit a copy of its day care permit or evidence that an application for renewal has been timely submitted to the Department, annually, on or by the first day of July.

Section 3.08 Program Director Qualifications. The Provider's Program Director shall possess the appropriate licensure, certification or registration to meet the criteria of Early Intervention Qualified Personnel, as defined under Public Health Law §2541(15) and 10 NYCRR §69-4.1(a)(j), and shall have at least three (3) years of full-time experience supervising work or working with children with developmental delays under five years of age.

Section 3.09 Qualified Personnel. The Provider's Program Director or another individual within the category of Qualified Personnel who reports directly to the Program Director shall have direct contact with and ensure the quality of services provided by all Qualified Personnel providing Contract Services on behalf of the Provider.

Section 3.10 Employees and Subcontractors of the Provider.

The Provider shall be responsible for the recruitment and screening of appropriate employees and independent contractors, and verification of credentials, references, and suitability for working with clients and participants. The Provider's process of selecting and engaging employees and subcontractors shall be handled in full by one or more employees of the Provider and not by any subcontractor. The Provider shall not engage any therapist or clinician as an employee or independent contractor without first conducting an in-person interview of the individual and checking at least three references.

a) The Provider shall not hire or retain any employee or subcontractor (or permit a subcontractor's employee to perform Contract services) unless it has on file the documents evidencing all State certification and/or licensure required under the State regulations. . The Provider shall initial and date a copy of the document for placement in a personnel file of the employee or subcontractor. In the case of a subcontractor, the Provider shall also place in such personnel file an original of the contract between the Provider and the subcontractor, and a copy of the NYSDOH approval letter referenced in Section 3.10(c)(iv).

b) The Provider shall take reasonable measures to investigate the backgrounds of new employees and subcontractors. Such investigation shall include a check of references and shall require that prospective employees and subcontractors disclose all criminal convictions or exclusion actions, including but not limited to actions taken pursuant to Section 1320a-7 of Title 42 of the United States Code, which provides for the exclusion of certain individuals from participation in Medicare and State health care programs. In the case of individuals who are employees or independent contractors of subcontractors, such investigation may be performed by the subcontractor but the subcontractor shall provide the Provider with the results of all such investigations. To the extent consistent with Article 23-A of the New York State Correction Law, the Provider shall not hire or contract with an individual known to be convicted of a criminal offense related to health care or who is listed as debarred, excluded or otherwise ineligible for participation in federal health care programs, such as Medicaid. In addition, the Provider shall not permit such an individual who is a subcontractor's employee or independent contractor to perform Contract Services.

c) No subcontract, nor any amendment thereto, between the Provider and any other agency, entity, or individual for the performance of any Contract Services ("subcontract") shall be effective for the purposes of this Agreement unless it contains provisions specifying:

(i) that nothing contained in such subcontract shall impair the rights of the Eligible and/or Referred Child;

(ii) that the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement;

(iii) that all original records, case files, and any other documentation of Contract Services by the subcontractors will be stored at premises owned, leased, or otherwise controlled by the subcontractor, and will be made available to the Department under the same terms specified by this Agreement, including Annex A, for documents controlled by the Provider; and

(iv) that the subcontractor is approved by the NYSDOH to deliver the Contract Services to be delivered through the subcontract, and that the "Letter of Approval" from the NYSDOH is appended thereto.

d) No subcontract, nor any amendment thereto, between the Provider and any subcontractor for the performance of any Contract Services shall impose any limitation on the subcontractor's right to perform services for other entities or individuals.

Section 3.11 Publications of the Provider.

a) All brochures or other informational material, including promotional literature, of the Provider designed to inform the public about the Provider's Contract Services newly created or revised after the effective date of this Agreement shall contain the following statement: "Our [or This] Early Intervention Program is funded and regulated by the New York State Department of Health and, in New York City, by the New York City Department of Health and Mental Hygiene." If such informational material has, as part of the Provider's name, the phrase "Early Intervention Program," the phrase must be preceded by the specific name of the provider.

b) The Provider shall comply with the terms and conditions of the NYSDOH's guidance document concerning early intervention provider marketing and promotion.

c) Any violation of this Section shall result in liquidated damages of five hundred (500) dollars per incident. Distribution of multiple copies of a single publication shall be considered a single incident for this purpose.

Section 3.12 No Financial or Material Inducement to Families. The Provider shall not provide any financial or material inducement to Parents to have their Children provided Contract Services by the Provider. Any violation of this Section may be grounds for termination of this Agreement.

Section 3.13 Provisions Applicable to Service Coordinators.

a) Availability.

(i) The Provider shall make staff available continuously throughout the course of the year to perform Service Coordination services, including attendance at IFSP meetings, conferences with the Committee on Preschool Special Education pursuant to New York Public Health Law Section 2548, and other meetings or appointments.

(ii) The Provider shall ensure that Service Coordination services are reasonably available in a manner that does not limit service access to daytime, weekday hours and does not limit access to a specific location. The Provider shall ensure that opportunities for Service Coordination are available to Parents in non-traditional schedules and a variety of methods and locations. Service Coordinators shall be responsible for informing Parents of their contact information and as to the specific times and places of their accessibility.

(iii) The Child's Service Coordinator shall be reasonably accessible to the Evaluator and Early Intervention Service Providers of the Eligible or Referred Child and to the Department.

b) Except as otherwise provided herein, no individual shall act as a Service Coordinator without a Service Coordinator number being assigned to such individual by the Department. Prior to the assignment of a Service Coordinator number, the Provider shall submit in writing to the Department a resumé of the proposed Service Coordinator with information sufficient for the Department to make a determination as to whether the proposed Service Coordinator meets the required qualifications for a Service Coordinator specified in the Regulations. Only Service Coordinators meeting these qualifications may be assigned a Service Coordinator number by the Department.

c) Whenever a Service Coordinator discontinues working for the Provider, the Provider must immediately notify the Department in accordance with the Procedures Manual. In the event that a replacement of an Ongoing Service Coordinator is necessary, a Service Coordinator whose application for a Service Coordinator number is pending before the Department may act as an Ongoing Service Coordinator with the assistance of a Service Coordinator who has such a number as provided for in the Procedures Manual.

d) Service Coordinators shall provide the full spectrum of Service Coordination activities enumerated in the Act, the Regulations, and the Procedures Manual, including the provision of information to Parents on their rights and obligations under the Act, the periodic monitoring of the delivery of Contract Services delivered to the Eligible Child to ascertain whether services are being provided in conformance with the IFSP, and, in the event that services are not being so provided, taking such action as is specified in the Procedures Manual.

e) Insurance Information.

(i) The Initial Service Coordinator shall obtain information about a Referred Child's health insurance coverage, including:

- 1) the Referred Child's Medicaid Client Identification Number, if applicable, and enrollment status, including the period of Medicaid eligibility and re-certification dates;
- 2) the type of health insurance policy or health benefit plan, including whether the Referred Child is insured through Child Health Plus B;
- 3) the name of the insurer or plan administrator;
- 4) the policy or plan identification number ;
- 5) a photocopy of both sides of the insurance identification card, prior to or during the IFSP meeting;
- 6) the name of the Referred Child's primary care provider.

(ii) If a Parent refuses to provide the Initial Service Coordinator with the health insurance information required in this Section, the Initial Service Coordinator shall document such refusal in writing on a form provided by the Department and shall submit the completed form to the Department.

(iii) The Department will not reimburse the Provider of Initial Service Coordination for Contract Services provided for a particular Referred Child until the health insurance information for such Referred Child required in this Section is provided to the Department or documentation of the Parent's refusal to provide such information is provided to the Department.

(iv) The Ongoing Service Coordinator shall update information on an Eligible Child's insurance information as part of the six-month review and annual evaluation of the IFSP.

f) For a particular Referred or Eligible Child, Service Coordination under this Agreement may only be performed by a Service Coordinator assigned to such Child pursuant to the Procedures Manual.

g) In the event that a Service Coordinator fails to provide to the appropriate Department employee documents related to amendments to an IFSP or any IFSP subsequent to an initial IFSP for an Eligible Child within a period of time as provided for in the Procedures Manual, an Early Intervention Service Provider of such Eligible Child may file such documents with such appropriate Department employee as provided for in the Procedures Manual.

h) If an Eligible Child's Service Coordinator is notified of that Child's absence for more than three (3) consecutive scheduled sessions, the Service Coordinator shall attempt to contact the Eligible Child's Parent(s) to ascertain the reason for the absence.

i) In the event that and for so long as a Provider of Service Coordination is rated by the Department in the bottom twenty-five (25) percent of providers of Service Coordination pursuant to an evaluation tool of the Department, then in accordance with written procedures of the Provider, a clinical supervisor of the Provider shall conduct no less than bimonthly a review of each Service Coordinator employed by or contracted with the Provider. Such review shall include a review of the Service Coordinator's notes, the timeliness of the completion of tasks. The Provider shall also institute written procedures to ensure that any particular Service Coordinator completes his or her pending work prior to leaving the Provider.

Section 3.14 Provisions Applicable to Screening and Evaluations.

a) All Evaluations and Screenings must be performed solely by Qualified Personnel who are not on the NYSDOH Providers Not Allowed To Order list (also known as the list of Restricted, Terminated or Excluded Individuals or Entities maintained by the Office of the Medicaid Inspector General (OMIG)) and must be performed solely in environments appropriate to the needs of the child. No Evaluation may be performed by telephone, in whole or in part.

b) The Provider shall promptly notify the Service Coordinator and the Department in accordance with the Procedures Manual of the results of any Screening, and whether or not the Parent has decided to have an Evaluation done.

c) In the event that the Department issues standards for Evaluation tools, the Provider shall use only such Evaluation tools as have been approved by the Department. Nothing herein shall authorize the Department to require that a particular tool be used for a particular child.

d) All Evaluations of children whose primary language is not English should be bilingual if reasonably possible. If such an Evaluation is not bilingual, the Provider must submit documentation of the attempts made to locate a bilingual Evaluator. At least one member of the team that conducts the multidisciplinary Evaluation must be an expert in the primary area of concern identified by the Parent.

e) Evaluators shall complete multidisciplinary Evaluations of Referred Children, and provide the Parent, the Service Coordinator, and the Department with a copy of the Evaluation in accordance with the Procedures Manual, within thirty (30) Days of the referral of the Child to the Department. The Evaluator must submit documentation of the reason(s) for any delay beyond this thirty (30) day period. Repeated violation of the 30-day requirement for reasons within the control of the Provider shall entitle the Department to suspend the Provider's eligibility to provide Evaluation services under this Agreement for 30 Days, or until a corrective action plan is submitted and accepted, whichever is longer.

f) All multidisciplinary Evaluations, including the health assessment form, must be complete at the time submitted to the Department. A health assessment form must contain, at a minimum, the data elements of the Department's CH-205 form or a comparable health record.

g) Prior to submitting any Evaluation, the Provider must ensure that it is in compliance with all of the requirements of the applicable laws, rules, and regulations, the NYSDOH's *Early Intervention Program Memorandum 2005-02*, and this Agreement.

h) A member of the team performing the Child's Evaluation shall attend meetings for the purposes of developing and reviewing the initial IFSP of a Child. Exceptions to such attendance shall be in accordance with section 69-4.11(a)(2)(iii)(a) of the Regulations. Under this regulation, in the event that a telephone conference call is to be done, arrangements for such shall be made before the IFSP meeting with appropriate Department employees, and where a knowledgeable authorized representative not a member of the team is to attend, this representative shall be an individual within the category of Qualified Personnel under the Regulations and shall have reviewed the findings of the Evaluation and have discussed it with the Qualified Personnel of the team who conducted the Evaluation. Failure of the Provider of an Evaluation to have an individual who is within the category of Qualified Personnel at an initial IFSP meeting shall result in an assessment by the Department of liquidated damages of \$500 if such failure is through the fault of the Provider. This amount may be offset from any payments for Contract Services by the Department.

i) The Provider shall submit any additional information, documentation, or explanation requested by the Department with regard to any Evaluation, within the timeframe specified by the Department. If the Department has indicated that a multidisciplinary Evaluation fails to support a recommended determination of eligibility, the Provider must also submit documentation establishing that the entire team that performed the Evaluation has reviewed the Department's correspondence and has made a team decision regarding whether there is additional information to support eligibility consistent with NYSDOH guidelines.

j) The Provider may not perform an Evaluation pursuant to this Agreement before the date that the consent for evaluation form is signed and dated, before the child is referred to the Early Intervention program, or sooner than four (4) working Days after the Department's receipt of written notice from the Parent or Evaluator.

k) The Provider may not perform a supplemental Evaluation for a child pursuant to this Agreement prior to performing a core developmental Evaluation for the child unless the supplemental Evaluation is based on a developmental concern indicated by the Parent.

l) The Provider must obtain written authorization from the Department prior to performing a multidisciplinary Evaluation pursuant to this Agreement for any child for whom such an Evaluation was performed within the prior 12-month period.

m) The Provider must obtain written authorization from the Department prior to performing any core or supplemental Evaluation pursuant to this Agreement for any child for whom an initial IFSP meeting

has already been held. Such Evaluation must then address any concerns that were stated as a basis for obtaining the authorization.

n) For children in foster care, no Evaluation may be performed pursuant to this Agreement until the Department, acting in conjunction with the Commissioner of Social Services or his/her designee, has made a determination regarding the availability of the child's Parent and the need to appoint a surrogate parent for purposes of the Early Intervention Program, including providing consent for the Evaluation and participation in the Evaluation process.

o) The Department shall not be required to pay the Provider for any Evaluation that is not performed and completed in accordance with all of the requirements of the applicable laws, rules, and regulations, the NYSDOH's *Early Intervention Program Memorandum 2005-02*, and this Agreement. Moreover, in determining whether and to what extent the Provider may continue to provide Contract Services, the Department may consider the number and/or percentage of Evaluations submitted by the Provider during the term of this Agreement that do not comply with all such requirements.

Section 3.15 Provisions Applicable to Early Intervention Services Including Applied Behavioral Analysis Services.

a) In the event that an Early Intervention Service Provider is to provide Contract Services pursuant to an IFSP, the Provider shall provide such Contract Services in conformity with the IFSP, including the provisions in the IFSP related to the frequency, duration, and location of such Contract Services.

b) When a Contract Service has been authorized on an Eligible Child's IFSP to be billed as a home/community, individual/collateral service, the Provider shall not perform such Contract Service at premises owned by, leased to, licensed to or otherwise controlled by the Provider or any subcontractor of the Provider, or at premises licensed or subject to licensure under the New York State Public Health Law or Mental Hygiene Law.

c) At the time that services are authorized, and annually thereafter, the Early Intervention Service Provider shall give the Parents of each Eligible Child a calendar disclosing all days that the Service Provider will not be available to provide services during the current calendar year. The Early Intervention Service Provider shall also provide the Department with such an annual calendar of closings for the upcoming year, by December 31st of the year preceding that covered by the calendar.

d) The Early Intervention Service Provider shall keep an accurate record of the attendance and absence of each Eligible Child for whom Contract Services are being provided under this Agreement. Such record shall be kept in the Eligible Child's case file.

e) If at any point during the duration of the IFSP of an Eligible Child the Early Intervention Service Provider is unable to provide the Eligible Child with the Contract Services specified in the IFSP, the Early Intervention Service Provider shall immediately notify the Parent and the Service Coordinator of such fact, in accordance with the Procedures Manual. Nothing in this paragraph shall be in derogation of Parental rights conferred by applicable laws and regulations.

f) Where the IFSP indicates that the Eligible Child's Parent will be reimbursed for transportation, the Early Intervention Service Provider will reimburse the Parent for the cost of such transportation within thirty (30) Days of receiving complete claims for reimbursement from the Parent. Any Claim by the Early Intervention Service Provider for reimbursement for these costs from the Department shall be made in accordance with the Procedures Manual and/or as specified by the Fiscal Agent.

g) If transportation is being provided for an Eligible Child to and/or from the Early Intervention Service Provider's site by a bus company under contract with the City of New York, the Provider shall designate a transportation coordinator, as specified in Annex A, who shall be responsible for the transmission of any required information to the New York City Department of Education regarding Eligible Children being transported to the Provider's site. The transportation coordinator shall also be responsible for the completion and submission of the Department's "Transportation Attendance Sheet" on a monthly basis, verifying the transportation of Eligible Children and their Parents or companions to the Provider's site on specific dates. If the Provider's existing attendance sheet for children does or can include the same information contained in the Department's Transportation Attendance Sheet regarding the transportation of Parents or companions, then the Provider's form may be used instead. The monthly Transportation Attendance Sheet or the Provider's equivalent shall be submitted to the Early Intervention Program Finance Unit by the seventh (7th) business day of the following calendar month.

h) The Early Intervention Service Provider shall notify the Eligible Child's Service Coordinator in writing within two (2) Days of an Eligible Child's absence from more than three (3) consecutive scheduled sessions for the delivery of Contract Services and shall indicate the reason for the absence, if known, in accordance with the Procedures Manual.

i) When an Eligible Child is voluntarily withdrawn from Contract Services with an Early Intervention Service Provider, for any reason, the Early Intervention Service Provider shall notify the Service Coordinator in accordance with the Procedures Manual.

j) Any Qualified Personnel who are subcontractors of the Provider providing Contract Services in the natural environment of the Eligible Child shall have no less than twenty-four (24) months of prior direct service employment working with developmentally delayed children under five years of age.

k) As requested by the Department, Qualified Personnel of the Early Intervention Service Provider who are providing Contract Services to a Child shall attend meetings for the purposes of reviewing and amending the ongoing IFSP of the Child.

Section 3.16 Provisions Applicable to Assistive Technology Devices. The Assistive Technology Device Provider shall provide Assistive Technology Devices in accordance with the Regulations and the Procedures Manual. Any Provider that provides any services under this Agreement other than Evaluation or Service Coordination must designate one individual to be responsible for oversight of requests for and tracking approvals for and receipt and distribution of assistive technology devices.

Section 3.17 Attendance at Mediation and Impartial Hearings.

a) As provided by law, where a Parent has requested mediation or an impartial hearing with respect to any Child for whom the Provider has provided Contract Services, the Provider shall cooperate with the Department representatives assigned to conduct such mediation or impartial hearing. Such cooperation shall include but not be limited to the following: (1) consultation with the appropriate Department representatives; and (2) after such consultation, provision of a witness or witnesses with either direct knowledge of the Child or sufficient knowledge of the Child such that the witness or witnesses will effectively participate in the mediation or impartial hearing process.

b) In the event that proceedings initiated pursuant to Subsection (a) of this Section continue beyond the impartial hearing level, the Provider shall continue to cooperate with the Department representatives on the same terms as stated in Subsection (a) until the final resolution of the matter.

Section 3.18 Provision of Applied Behavioral Analysis

Individuals providing Applied Behavioral Analysis must be under the supervision of an individual who is within the category of Qualified Personnel and has had at least two (2) years of experience in the practice of Applied Behavioral Analysis. In the event that the NYSDOH initiates a mechanism for NYSDOH approval for provision of Applied Behavioral Analysis and sets a date beyond which the Provider may not provide Applied Behavioral Analysis without such approval, the Provider shall, no later than thirty (30) Days after the issuance by the NYSDOH of the mechanism for such approval, either apply for such approval and notify the Department that it has done so, or notify the Department that it has decided not to apply for such approval. If the Provider elects to forego NYSDOH approval and therefore must cease operating its Applied Behavioral Analysis services, the Provider shall cooperate fully with the Department in the reassignment of affected early intervention children to other appropriately authorized programs and services in accordance with Section 3.19.

Section 3.19 Transition of Services Upon Termination of Contract

Upon a termination of this Agreement for any reason, the Provider shall, no later than thirty (30) days after notice of termination, unless requested by the Department for an earlier date, cooperate with the Department in developing measures, including a timetable, for the orderly transition of Contract Services and notice of closure to Parents, and subsequently implement such measures in cooperation with the Department. Failure of the Provider to so implement in good faith such measures shall result in liquidated damages by the Provider of \$1,000 for each Child receiving services from the Provider at the time of the notice of termination. The Department shall have the right to offset said liquidated damages from any outstanding payments owed to the Provider by the Department. For the purposes of ascertaining what Children are receiving services from the Provider, the assignment of the Provider to a Child through a currently effective IFSP, or, where the Child's initial IFSP meeting has not yet been held, the assignment of the Provider as Initial Service Coordinator or Evaluator, shall govern.

Section 3.20 Special Provision Regarding Termination

The Department shall have the right to terminate this Agreement, in whole or in part, immediately:

- 1) for any act that constitutes an unacceptable practice under the Medical Assistance Program as enumerated in Title 18 of the New York Code of Rules and Regulations Section 515.2(b)(1) through (b)(15);
- 2) where conditions at the location of the delivery of Contract Services, other than locations not owned, leased, or otherwise controlled by the Provider, constitute a threat to staff, Referred or Eligible Children, Parents, or the public health or safety;

ARTICLE IV. SPECIAL PROVISIONS REGARDING RECORDS, REPORTS, AND AUDITS

Section 4.01 Case Files.

- a) The Provider shall maintain a primary file for each Child. This file shall contain:
 - (i) a complete and current record of the Contract Services provided to the Child by the Provider;
 - (ii) all Parental consents for the provision of Service Coordination, Evaluations and Early Intervention Services and/or for the disclosure of information;

(iii) all IFSPs of the Child and related documents, including IFSP amendments, or evidence that copies of the IFSPs have been requested of the Service Coordinator;

(iv) copies of all forms required by the Procedures Manual, including service authorizations;

(v) the name of each employee or subcontractor of the Provider delivering Contract Services to the Child;

(vi) all physicians' prescriptions establishing the medical necessity of the provision of such Contract Services, when required, with an effective duration at least as long as the duration of the IFSP;

(vii) all progress reports from all Qualified Personnel providing services to a Child pursuant to an IFSP, every three months from the first date that Contract Services are provided, which document the delivery of Early Intervention Services, how the outcomes on the Eligible Child's IFSP have been addressed and how the Eligible Child has been responding to the Contract Services;

(viii) documentation of all circumstances resulting in the delay of the delivery of any Contract Services beyond what is provided for in the Child's IFSP;

(ix) written correspondence with or regarding the Child/family;

(x) notes recording all relevant discussions with Parents or other providers regarding the Child and family;

(xi) notes recording all discussions with the Department regarding the Child and family;

(xii) documentation of all written notices, if any, sent to the Parent by the Provider, including type of notices and dates when they were sent;

(xiii) all child/family reports, including Evaluations with relevant medical reports, if available, and ongoing assessments related to the Contract Services provided; and

(xiv) all session notes as provided for below.

b) Session Notes

(i) For each date where reimbursement for Contract Services is sought by the Provider, a session note must be recorded.

(ii) A session note shall contain the following:

1) the date of service;

2) the nature and extent of the service provided;

- 3) the profession, name, and signature of the individual delivering the Contract Services;
- 4) where the Contract Services are delivered at a site other than a facility of the Provider, the contemporaneous signature of the Child's Parent or caregiver or, if the site is a place where the Parent or caregiver is not present during the delivery of Contract Services, the name, title, and contemporaneous signature of an appropriate supervisory individual at such site; and
- 5) a brief description of the activities performed by the individual delivering the Contract Services and the Eligible Child's response.

c) The file shall be available for review by representatives of the Department during working hours at the Provider's place of business, and, in the case of Early Intervention Service Providers and Evaluators, for review by the Service Coordinator.

Section 4.02 Books and Records. All the books, records, and case files of the Provider, including those with respect to the delivery of Contract Services, shall be kept separate or identifiable from those relating to other activities of the Provider. All books, records, and case files shall be maintained at the location or locations specified in Annex A. The Provider's obligations under this Section shall continue beyond the termination of this Agreement.

Section 4.03 Special Provision Regarding Electronic Storage of Records. Any transfer by the Provider of its records to electronic storage must be performed in accordance with all applicable Medicaid standards.

Section 4.04 Audit and Inspection.

With respect to case files, only those case files related to Eligible and/or Referred Children shall be available for audit and inspection.

Section 4.05 Provider Audits. In each Contract year, the Provider shall provide for an audit of all financial aspects of the Provider's provision of Contract Services, by an independent certified public accountant. As part of its audit, the auditor should include tests of the billing records for compliance with Federal and State Early Intervention law and regulations, the Department's procedures, and the applicable terms of this Agreement. The Provider shall provide copies of all such audit reports to the Department within thirty (30) Days of the reports' issuance.

ARTICLE V. PAYMENTS FOR SERVICES

Section 5.01 General Payment Obligation. Upon the delivery of Contract Services on behalf of a Referred or Eligible Child pursuant to the Act and the Regulations, in accordance with the terms and provisions of all other Sections of this Agreement, and upon a submission of a Claim for these services, the Department or its Fiscal Agent will reimburse the Provider for these services in accordance with this Article, unless otherwise specifically agreed to by the Provider and the Department, or unless otherwise specifically provided for in this Article. Unless otherwise specifically provided for in this Article or the Regulations, all reimbursements under this Agreement shall be on a fee-for-service basis for individual Referred and/or Eligible Children as set forth in the Act and Regulations, and at the applicable rates as set forth by the NYSDOH.

Section 5.02 Timeliness of Claims. The Provider shall submit Claims for Contract Services within one hundred and twenty (120) Days from the date that the service was provided.

Section 5.03 Payment Contingent Upon Receipt of Aid. If any State or Federal government department or agency fails to approve aid in reimbursement to the Department for payments made hereunder by the Department to the Provider for expenditures made during the term of this Agreement because of any act, omission or negligence on the part of the Provider, then the Department may deduct and withhold from any payment due to the Provider an amount equal to the reimbursement denied, and the Department's obligation shall be reduced by any such amounts. In such an event, if there is a balance due to the Department after it has made a final payment to the Provider, the Provider agrees promptly to reimburse the Department the amount of the balance due the Department in accordance with the Procedures Manual. The provisions of this Section shall survive the expiration or termination of the Agreement.

Section 5.04 Rates and Claiming for Assistive Technology Devices. Rates and Claims for reimbursement of Assistive Technology Devices shall be in accordance with the Procedures Manual.

Section 5.05 No Duplication of Payments. Payments for Contract Services shall be deemed to be payment in full for such services and in no manner shall the Provider be reimbursed from the Medical Assistance Program, Parents, or from any private insurance for such Contract Services.

Section 5.06 NYEIS. When NYEIS, a State-developed web-based Early Intervention case management and fiscal system, becomes available, the Provider shall use it for, at a minimum, all acceptances and rejections of referrals for Service Coordination, Evaluation, and other services, and to request service authorizations.

Section 5.07 VENDEX-Related Fees. The Provider shall be responsible for payment of any and all VENDEX-related fees required under Procurement Policy Board Rule 2-08(f)(2). These fees shall be deducted from any payments made to the Provider pursuant to this Agreement.

Section 5.08 Frequency of Payments. The Department will reimburse or deny no less than ninety (90) percent of Claims for Contract Services under this Agreement within ninety (90) days of the date that the Claim is submitted, or, if reimbursement is being deferred pursuant to Section 3.13(e)(iii), ninety (90) days from the date the insurance information required under that section is received by the Department. The ninety (90) percent figure will be calculated using all Claims and all Providers of Contract Services. For Claims pending beyond such ninety (90) day period, the Department and the Provider will participate in a process designed to resolve said Claims within an additional forty-five (45) days through either payment or denial. If the Department does not substantially meet the ninety (90) percent figure, the Department will meet, upon request, with early intervention provider representatives to discuss methods to meet such figure.

ARTICLE VI. EMERGENCY CONTRACEPTION

This Article is applicable if the Provider is a facility operating pursuant to Article 28 of the New York Public Health Law which provides emergency medical care. Pursuant to Section 6-125 of the New York City Administrative Code, the Provider agrees as follows:

A. The Provider agrees to inform rape victims presenting to its emergency department of the availability of emergency contraception and, if requested, to administer, if medically appropriate, such contraception in a timely manner. "Rape victim" means any female person who alleges or is alleged to have been raped and presents to a hospital. "Emergency contraception" shall mean one or more prescription drugs, used separately or in combination, to be administered to or self-administered by a patient in a dosage and manner intended to prevent pregnancy when used within a medically recommended amount of time following sexual intercourse and dispensed for that purpose in accordance with professional standards of practice, and which has been found safe and effective for such use by the United State Food and Drug Administration.

B. The Provider agrees to provide the New York City Department of Health and Mental Hygiene, on an annual basis, a report indicating the following information with respect to each reporting period: (i) the number of rape victims treated in such hospital's emergency department; (ii) the number of rape victims treated in such hospital's emergency department which were offered emergency contraception; (iii) the number of rape victims treated in such hospital's emergency department for whom the administration of emergency contraception was not medically indicated and a brief explanation of the contraindication; and (iv) the number of times emergency contraception was accepted or declined by a rape victim treated in such hospital's emergency department.

C. The Provider agrees to provide the New York City Department of Health and Mental Hygiene a copy of its protocol for treatment of victims of sexual assault, which hospitals are required to establish pursuant to Section 405.19 of title 10 of the codes, rules and regulations of the State of New York.

IN WITNESS WHEREOF, the Department and the Provider have duly executed this Agreement as of the date set forth below.

Date of Agreement:

THE CITY OF NEW YORK

Executive Deputy Commissioner
Department of Health and Mental Hygiene

By:

Term of Agreement

Name of Provider:

By:

Term of Renewal Option(s) (if any)

Title:

/ / - / /
/ / - / /
/ / - / /

Date:

(Note: Affix Corporate Seal)

APPROVED AS TO FORM;
CERTIFIED AS TO LEGAL AUTHORITY
BY THE OFFICE OF CORPORATION
COUNSEL ON

State of New York)
County of _____) :SS

Sworn to before me on
this ____ day of _____ 2010.

Notary Public
(Note: Affix Notary Stamp)

APPROVAL AS TO FORM OF A CONTRACT BY STANDARD TYPE OF CLASS

Agency: New York City Department of Health and Mental Hygiene

Contract: Early Intervention Agreements

Pursuant to Section 394 of the New York City Charter, I hereby approve as to form the annexed contract by standard type of class. This approval is valid for a period of one (1) year from the date hereof and for a maximum of 130 contracts.

The above approval is made on the express understanding that the substantive language of the contract will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the contracts requiring names, dates, dollar amounts, or other similar details may be completed.

APPROVED AS TO FORM AND
CERTIFIED AS TO LEGAL AUTHORITY

ACTING CORPORATION COUNSEL

DATE:

APPENDIX A

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR
CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN AND CLIENT SERVICES**

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

A. “Agency Chief Contracting Officer” or “ACCO” shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

B. “Agreement” shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” shall mean The City of New York.

D. “City Chief Procurement Officer” or “CCPO” shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. “Commissioner” or “Agency Head” shall mean the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

F. “Comptroller” shall mean the Comptroller of the City of New York.

G. “Contractor” shall mean the entity entering into this Agreement with the Department.

H. “Days” shall mean calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” shall mean the City agency that has entered into this Agreement.

J. “Law” or “Laws” shall mean the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. “PPB Rules” shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 et seq.

M. “State” shall mean the State of New York.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that 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 City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

A. The Contractor represents and warrants that 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 conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of 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 his or her personal

interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

Section 2.03 Fair Practices

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy or directive, the prices and other material terms set forth in this Agreement which have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section.

Section 2.04 VENDEX

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Political Activity

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for

public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.06 Religious Activity

There shall be no religious worship, instruction or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

Section 2.08 Bankruptcy and Reorganization

In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency

shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

Section 3.02 Subcontracting

A. The Contractor shall not enter into any subcontract for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the City and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

D. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

G. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers'

Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, 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 of this Section shall be deemed a material breach of this Agreement.

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e

A. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by New York State Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

B. The provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

Section 4.06 Non-Discrimination: Admin. Code § 6-108

If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by New York City Administrative Code § 6-108, that:

A. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

C. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof,

be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity

A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

4. 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 the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, 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 DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof 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. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

**ARTICLE 5 - RECORDS,
AUDITS, REPORTS, AND INVESTIGATIONS**

Section 5.01 Books and Records

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence, and to utilize appropriate accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section.

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are

subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. 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 Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section.

Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

Section 5.06 Electronic Records

As used in this Appendix A, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City 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.

B. 1. 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 City, or 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, or;

2. 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 a City or State 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 is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

1. 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 City; and/or

2. The cancellation or termination of any and all such existing 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 pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the 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.

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E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's 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.

2. The relationship of the person who refused 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.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. 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 Paragraph D 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 Paragraph (C)(1) 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.

F. Definitions

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

2. The term "person" as used in this Section 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.

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

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

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in

writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the

Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention 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 in order to protect the public interest.

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

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.

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City 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, shall contain no exclusions other than as required by law or as approved by the Department, and shall be "occurrence" based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the City, 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.

C. The Contractor shall ensure that each subcontractor adds the City, together with its officials and employees, as an Additional Insured under all Commercial General Liability Insurance policies obtained by a subcontractor covering work performed by such subcontractor under this Agreement with coverage at least as broad as the most recently issued ISO Form CG 20 26.

Section 7.03 Professional Liability Insurance

A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Contractor 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 One Million Dollars (\$1,000,000) 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.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. 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 (2) 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.

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) 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 ISO Form CA0001, ed. 10/01.

B. 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.

Section 7.07 General Requirements for Insurance Coverage and Policies

A. 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 City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City 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.

E. The City'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.

F. All insurance policies required pursuant to Sections 7.02 and 7.03 shall contain the following endorsement: "This policy may not be cancelled, terminated, modified or changed for any reason other than non-payment unless thirty (30) Days prior written notice is sent by the Insurance Company to the Named Insured, the Commissioner [insert Agency], and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. For non-payment, at least ten (10) Days written notice must be provided."

Section 7.08 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. 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 City.

B. 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 Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this 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.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner 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.

Section 7.09 Miscellaneous

A. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability Insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) Days after such event. Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." Such notice shall also 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, and the identity of

the persons or things injured, damaged, or lost. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

B. 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 City at any time.

C. 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 City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the City, 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 Agreement.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

Section 8.02 Protection of City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the

provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

Section 8.07 Withholding of Payments

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers and employees.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.02 Reductions in Federal, State and/or City Funding

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City 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, including, in the case of the reduction option, but not limited to, 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 budget of this Agreement and in 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 performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction 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 Department 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 Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the

Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

Section 10.03 Contractor Default

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or

federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

Section 10.04 Force Majeure

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster,

civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the “EFT Vendor Payment Enrollment Form” available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any

other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement

shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

3. Agency Head Determination. Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB

may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. Time, Form, and Content of Notice. Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings (“OATH”) or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB’s functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer (“CCPO”) or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller’s Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH’s offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH’s offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

Section 12.06 General Release

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

Section 13.04 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor’s compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan (“Compliance Plan”) which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor’s failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

Section 13.06 Voter Registration

A. Participating Agencies. Pursuant to Charter § 1057-a, if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of

Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

a. seek to influence an applicant's political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.

F. The provisions of this Section do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

Section 13.07 Participation in an International Boycott

A. 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 federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

B. 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, of 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 Comptroller may, at his or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

Section 13.08 MacBride Principles

A. 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.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

Section 13.09 Access to Public Health Insurance Coverage Information

A. **Participating Agencies.** Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. **Applicability to Certain Contractors.** This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. **Distribution of Public Health Insurance Pamphlet.** In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual

with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this

Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except _____.

Full name of Proposer or Bidder *[below]*

Address _____

City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

- B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

- C - Corporation

EMPLOYER IDENTIFICATION NUMBER _____

By _____
Signature

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York 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]

[Name of authorized officer (typewritten)]

[Title of authorized officer (typewritten)]

[Contact Phone Number for Broker (typewritten)]

[Email Address of Broker (typewritten)]

Sworn to before me this

____ day of _____, 201_

NOTARY PUBLIC