

These will appear in the award	<p>(AGREEMENT:</p> <p>(</p> <p>(FIRST:</p> <p>(SECOND:</p> <p>(THIRD:</p> <p>(FOURTH:</p> <p>(</p>	<p>An opening statement of the agreement between the New York City Health and Hospitals Corporation and the vendor</p> <p>A statement of the supplies/services to be supplied</p> <p>PURCHASE ORDERS PLACED BY HOSPITALS/FACILITIES</p> <p>PERIOD of the contract/agreement</p> <p>Agreement of the New York City Health and Hospitals Corporation to pay the vendor.</p>
--------------------------------	---	---

FIFTH: QUANTITIES

The Contractor (also referred to herein as "Seller") agrees that the quantity (quantities) to be provided as are hereinafter set forth, are estimates based upon experience or estimated projected requirements. The Contractor agrees that the Corporation will neither be compelled to order any quantity of any item, nor will it be limited by the total estimated amount, but the quantity (quantities) to be ordered shall be such as may be actually required.

SIXTH: INSPECTION

a) The Corporation shall have the right to inspect the Goods at the point or points of delivery. The Corporation reserves the right to make additional inspection at the plant of the manufacturer, packer or Seller. The exercise by the Corporation of the right of inspection shall in no way be deemed a waiver by the Corporation of any right later to reject, revoke acceptance, or recover damages for Goods and/or services accepted that are not in fact free from patent or latent defects, or of the Seller's obligation to deliver conforming Goods and/or services. The Corporation may withhold or revoke acceptance of or reject any Goods and/or services which are found, upon examination, not to conform to the terms of the Contract. On foodstuffs and drugs, no written notice of rejection need be given, whereas in all other instances, such notice will be in writing.

b) The Seller shall remove any nonconforming Goods at its own expense within a reasonable time not to exceed five (5) days after notification of any rejection. Rejected Goods left longer than five (5) days will be regarded as abandoned property and the Corporation shall have the right to dispose of them as its own property.

c) The Seller bears the risk of loss of all Goods and/or services until inspected and accepted; if acceptance is revoked, the Seller bears the risk of loss thereafter.

d) The Corporation shall be under no obligation to sell or resell any rejected Goods, whether perishable or nonperishable or whether or not such Goods are threatened to or do depreciate in value, in order to minimize the Seller's damages.

e) Any right of the Seller to "cure" as defined in Section 2-508 of the New York Uniform Commercial Code, shall be employed by the Seller within a reasonable time. Such reasonable time as determined by the Corporation shall be conclusive on the Seller.

f) The Seller shall bear the reasonable cost of all further inspections required by reason of any rejection or revocation of acceptance.

g) The Corporation reserves the right, before making an award, to conduct examinations to determine whether or not the goods proposed to be furnished meet the specifications and requirements set forth in the bidding documents. If such examination shows that the specifications or requirements are not complied with, or that the goods proposed to be furnished do not meet the specifications or requirements called for, the Corporation may reject such bid and may award the purchase order and/or Contract to the lowest responsible bidder. It is understood, however, that the Corporation is not obligated to make any such examination before an award. It is further understood that the making or waiving of such examination in no way relieves the vendor from fulfilling and meeting the specifications, requirements and conditions of the purchase order and/or Contract.

SEVENTH: WORKERS' COMPENSATION INSURANCE

The Contractor shall procure and maintain during the life of this agreement, Workers' Compensation Insurance and Disability Benefits Insurance in accordance with the laws of the State of New York and shall furnish the Corporation with two certificates of such insurance.

EIGHTH: NEW YORK LABOR LAW

a) The Seller shall maintain safe working conditions during the performance of this Contract. Failure to maintain such conditions constitutes a material breach of this Contract.

b) Contractor hereby agrees to comply with the following:

NEW YORK LABOR LAW SECTION 220-e

(1) In the hiring of employees for the performance of work under this contract or any sub-contract hereunder, neither the Seller, sub-contractor, nor any person acting on behalf of such Seller or sub-contractor shall by reason of race, creed, color 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 Seller, sub-contractor, nor any person acting on his behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color or national origin.

(3) There may be deducted from the amount payable to the Seller by the Corporation under this Contract a penalty of five (5) dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract.

(4) This Contract may be canceled or terminated by the Corporation 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 of the Contract.

NINTH: EQUAL OPPORTUNITY COMPLIANCE

This Contract is subject to the requirements of Mayor's Executive Order No. 50 (April 25, 1980) ("E.O. 50") as amended, and the rules and regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this Contract, the Contractor agrees that it:

(1) will not unlawfully discriminate against any employee or applicant for employment because of race, creed, color, national origin, citizenship status, sex, age, handicap, marital status, sexual orientation or affectional preference 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 in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference;

(3) will state in all solicitations of advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard or race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference or is an equal employment opportunity employer;

(4) will send to each labor organization or representative of workers with that 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) if this Contract is over \$50,000, will furnish before the Contract 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 Director of the Corporate Equal Employment Opportunity Office (EEO Office); and

(6) will permit the EEO Office to have access to all relevant books, records and accounts for the purpose of investigation to ascertain compliance with such rules, regulations, and orders.

The Contractor understands that in the event of its non-compliance with the nondiscrimination clauses of this Contract or with any rules, regulations, or orders issued by the EEO Office, such non-compliance shall constitute a material breach of the Contract and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the EEO Office, the Director may direct the imposition of any or all of the following sanctions:

- (i) disapproval of the Contractor;
- (ii) suspension or termination of the Contract;
- (iii) declaring the Contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the EEO Office may recommend to the President of the Corporation that a board of responsibility be convened for purposes of declaring a contractor who has failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be nonresponsible.

The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 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 subcontractor or purchase order as may be directed by the Director of the EEO Office as a means of enforcing such provisions including sanctions for noncompliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification 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.

TENTH: FAIR PRACTICES

a) The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. No elected official or other officer or employee of the Corporation, nor any person whose salary is payable in whole or in part from the Corporation payroll or the City Treasury, shall participate in any decision relating to this Contract which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly interested; nor shall any person have any interest, direct or indirect, in this Contract or the proceeds thereof.

b) The Contractor represents and warrants that (1) neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of services hereunder, and (2) in the performance or rendering of services hereunder, no person having such interest or possible interest shall be employed by it.

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

(1) The prices in this Agreement have been arrived at independently without our collusion, consultation, communication or agreement, without the intent of restricting competition, as to any matter relating to such prices with any other competitor;

(2) Unless otherwise required by law, the prices that have been quoted in this Agreement and on the bid submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the bid opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the Contractor to induce any other person, partnership, corporation or other entity to submit or not to submit a bid with the intent of restricting competition.

(4) The fact that the Contractor (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subsection 2 or 3 above.

d) The Contractor hereby represents and warrants that it (1) is not in arrears to the Corporation or the City of New York upon debt or contract, and is not a defaulter, as surety or otherwise, upon any obligation to the Corporation or any agency of the City of New York or State of New York, nor is there any proceeding pending relating to its responsibility or qualification to receive public contracts, and (2) has paid all applicable City income, excise, and other taxes due from all years it has conducted business activities in the City.

e) For a breach or violation of the representations or warranties set forth in paragraphs a, b, c, and d of this Article, the Corporation shall have the right to annul this Agreement immediately without notice or liability, entitling the Corporation to recover all monies paid hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due or paid under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the Corporation for the violation or breach of said representations and/or warranties, nor shall it constitute a waiver of the Corporation's right to claim damages or refuse payment or to take any other action provided for by law or this Agreement.

ELEVENTH: BILLING; AUDIT

a) The Contractor shall bill the appropriate Hospital submitting invoices in triplicate.

b) The Contractor shall make available, upon request of the Hospital, the Corporation or their designee, or the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Comptroller, all records including but not limited to books, vouchers, invoices, supporting documents and accounts which pertain to and affect this agreement directly or indirectly, for audit, inspection and/or investigation. Such audit, inspection and/or investigation 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.

c) The Contractor shall submit any and all documentation and justification in support of fees under this agreement as may be required by the Corporation and the Comptroller so that they may evaluate the accuracy of the charges.

d) The Contractor agrees to maintain separate and accurate books, records, documents and other materials in accordance with standard accounting procedures and practices. The Contractor agrees to retain such documents for six years after the final payment or termination of this agreement, whichever is later.

e) If an audit, inspection, or investigation is commenced, the Corporation has the right to withhold payment until all the requirements set forth above have been satisfactorily met by the Contractor.

TWELFTH: GENERAL RELEASE

The acceptance by the Contractor, or by any person claiming under the Contractor of final payment hereunder, and audited by the Corporation, shall be a general release to the Corporation from all claims and causes of action and of any liability to the Contractor, or its legal representatives for anything done or furnished under the terms and the provisions of this agreement.

THIRTEENTH: PERFORMANCE

a) The Seller shall furnish and deliver the Goods and/or services in the manner, within the delivery time and to the destination, all as herein specified. The Seller shall accept as full compensation therefor the sums herein above set forth.

b) The Time of Performance may be extended in either of the following ways:

(1) If the Performance of the Seller is delayed by an act or omission of the Corporation, the Seller shall be allowed a reasonable extension in the Time of Performance, and no claim for the delay or damages resulting therefrom shall be made by or allowed to the Seller; or

(2) If the Performance of the Seller is delayed by causes beyond the control of either party, the Seller shall be allowed a reasonable extension of the Time of Performance. Should such delay inconvenience the Corporation by creating an emergency and thus necessitating the purchase of the Goods involved elsewhere, which necessity shall be conclusively determined by the Corporation, the Corporation shall have the right to purchase such Goods without liability to the Seller. To the extent such purchases are made, the Corporation shall be relieved of the obligation to purchase such Goods from the Seller and the Seller shall be relieved of the obligation to furnish such Goods to the Corporation.

c) Any extension of the Time of Performance pursuant to subdivision (b)(1) and (b)(2) of this section is conditioned upon the Seller's prompt notification of the Corporation in writing, before the Time of Performance expires, of the necessity for such an extension. All questions pertaining to such request for an extension shall be determined by the Corporation, including the propriety and degree thereof, and such determination shall be binding and conclusive upon the Seller.

d) The Delivery and acceptance of any Goods and/or services after the Time of Performance shall not be deemed a waiver of the right of the Corporation to terminate this Contract or to require the delivery of any undelivered Goods and/or services in accordance with this contract.

e) The Seller shall employ only competent workers in the performance of this Contract. The Seller's performance of this Contract, or of any other work, shall not cause or result in a suspension of, delay in, or strike upon the work to be performed hereunder by any of the trades working hereon or on any other contracts with the Corporation. If in the opinion of the Corporation, the Seller violates this subdivision, the Corporation may either demand that the incompetent worker be replaced and not again employed in the performance of this Contract, which demand shall be complied with immediately by the Seller, or the Corporation may, upon certification to the Seller, consider the Seller in default.

FOURTEENTH: TERMINATION

If, through any cause, the Contractor shall fail to fulfill in timely and proper manner its obligation under this agreement, or if the Contractor shall violate any of the covenants or stipulations of this agreement, or if the Corporation shall deem it to be in the best interests of the Corporation to terminate this agreement in whole or in part, the Corporation shall thereupon have the right to terminate this agreement in whole or in part by giving written notice to the Contractor of such termination specifying an effective date thereof.

FIFTEENTH: ASSIGNMENT

a) No part of this agreement shall be assigned, transferred, sublet, subcontracted, or otherwise disposed of without the prior written approval of the Corporation.

b) If the Seller shall, without the prior written consent of the Corporation, assign, transfer, convey, sublet or otherwise dispose of this Contract or any part thereof to any person, firm or corporation, this Contract may be revoked and annulled, and the Corporation shall thereupon be relieved and discharged from any and all liabilities and obligations to the Seller growing out of this Contract, and to his assignee or transferee; provided that nothing herein contained shall be construed to hinder, prevent or affect an assignment by the Seller for the benefit of his creditors made pursuant to the statutes of the State of New York.

SIXTEENTH: LIABILITY OF SELLER

a) The Seller shall be solely responsible for all physical injuries including death to its employees or to other persons or damages to any property sustained during its operation and work under this agreement. The Contractor shall be solely responsible for the safety and protection of all its employees.

b) The Seller will indemnify the Corporation for all damages and costs of every nature to which the Corporation may be subjected by reason of any and all claims, including claims related to the injury or alleged injury to the person or property of another resulting or alleged as resulting from the actions of the Seller, its employees, agents, subcontractors or assigns in the performance of this Contract. Until all claims for damages shall have been settled or otherwise disposed of, and evidence to that effect furnished to the Corporation, any or all the monies due or to become due under this Contract may at the Corporation's option be retained by the Corporation in any amount sufficient to meet the Seller's obligations of indemnification. The sufficiency of such amount shall be conclusively determined by the Corporation.

SEVENTEENTH: LIABILITY OF CORPORATION

The Corporation's liability to Contractor for breach of any of the provisions of this Agreement shall not exceed the amount due Contractor for services performed under this Agreement that remain unpaid at the time of such loss or damage. The Corporation shall not be liable to Contractor for incidental or consequential damages in any event. This clause shall supersede any other clause of this Agreement that may be deemed inconsistent with it.

EIGHTEENTH: LIMITATIONS ON ACTIONS

No action shall lie or be maintained against the Corporation upon any claim based upon this agreement or arising out of this agreement or out of anything done in connection with this agreement unless such action shall be commenced within six months of the termination of this agreement.

NINETEENTH: INVESTIGATIONS

a) The Contractor hereby agrees to cooperate fully with any investigation, audit, or inquiry conducted by a grand jury, head of a State Department, temporary State Commission or other State Agency, head of a City Department, or other City agency, which is empowered to compel the attendance of witnesses and examine them under oath. Upon the refusal of Contractor or any person to testify in an investigation concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority or with any public department, agency or official of the State of New York or any political subdivision thereof or of a public authority, including the City of New York or any political subdivision thereof, or to answer any relevant questions concerning such transaction or contract, for reasons other than the assertion of his or her privilege against self-incrimination, then:

(1) The President of the Corporation shall convene a hearing, upon not less than five days written notice to the parties involved, in the presence of both parties, at which Contractor may be represented by counsel, to determine if penalties should attach for the failure of the person to testify.

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

(i) The disqualification for a period not to exceed five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the Corporation or City; and/or

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

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

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

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

TWENTIETH: SEVERABILITY

If this agreement contains any unlawful provisions, not an essential part of the general structure of the agreement and which shall appear not to have been a controlling or material inducement to the making thereof, the same shall be deemed to be of no effect and shall, upon the application of either party, be stricken from the agreement without affecting the binding force of the agreement as it shall remain after omitting such provision.

TWENTY-FIRST: AMENDMENTS

No term, provision or condition of this agreement shall be deemed waived, modified or amended unless such waiver, modification, or amendment shall be in writing and the signed approval or a representative of the Corporation authorized by the President to make contract waivers, modifications, and amendments be subscribed thereon.

TWENTY-SECOND: DISPUTES

All disputes and questions of fact which may arise out of the performance of this Contract shall be determined by the Corporation and its determination shall be conclusive on the Seller.

TWENTY-THIRD: NOTICE

The Contractor hereby designates the business address hereinbefore specified as the place where all notices, directions or communications relating to the Contract may be delivered, or to which they may be mailed. Actual hand delivery of such notice, direction or communication to the aforesaid place or by depositing it in a post-paid wrapper addressed thereto in any post office box regularly maintained by the U.S. Postal Service shall be conclusively deemed to be sufficient notice thereof upon the Contractor as to the date of such delivery or depositing.

TWENTY-FOURTH: EMERGENCY

a) Whenever, in the opinion of the Corporation, an emergency situation arises during the performance of this Contract, the Corporation may either suspend or terminate this Contract in whole or in part without liability being incurred by either the Corporation or the Seller.

b) Pursuant to such decision by the President, where this Contract is terminated in whole or in part, the Corporation may purchase such goods and/or services the delivery of which has been canceled (in replacement for those called for in this Contract).

TWENTY-FIFTH: PATENTED ARTICLES

The Seller shall deliver the Goods specified free from the claim of any third party by way of infringement or the like. The execution of this Contract is deemed to be a warranty by the Seller that it has inspected the specifications and has determined that no claim of any third party by way of infringement or otherwise will result from compliance with the specifications. The Seller shall hold the Corporation harmless against any such claim regardless of whether or not the infringement arises out of compliance with the specifications. The Corporation may retain any funds due or to become due to the Seller sufficient to meet all claims arising from such infringements. The sufficiency of such amount shall be conclusively determined by the Corporation.

TWENTY-SIXTH: GOVERNING LAW

All disputes which involve this Contract shall be governed by the laws of the State of New York. Any and all claims asserted by or against the Corporation arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the Courts of the State of New York located in the City of New York ("New York State Courts"). To effect this Agreement and intent, the Contractor agrees:

a) A summons in any action arising out of this Contract may issue from any Court in the State of New York having jurisdiction of the subject matter. The summons and complaint against the Seller, served as herein provided, shall be deemed personal service upon the Seller within the State of New York if a copy of each is sent by registered mail addressed to the Seller at the place stated in the bid sheet upon which this Contract was awarded. Within thirty (30) days after the date of mailing a copy of the summons and complaint, the summons and complaint shall be filed with the clerk of the court in which the action is pending, along with the mailing receipt issued by the Postal Service and the affidavit of any officer or employee of the Corporation showing that the summons and complaint were mailed as herein provided. Service shall be complete ten (10) days after such papers are filed; and

b) With respect to any action between the Corporation and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any right it might otherwise have (i) to move to dismiss on grounds of *forum non conveniens*, (ii) to remove to Federal Court; and (iii) to move for a change in venue to a New York State Court outside New York County.

c) If the Contractor commences any action against the Corporation or City of New York in a court located other than in the City, the Contractor expressly waives and relinquishes any right it might otherwise have to move or transfer the action to a United States Court outside the City of New York.

d) If the Contractor commences any action against the Corporation or City of New York in a court located other than in the City of New York, upon request of the Corporation or City, the Contractor shall either consent to a transfer of the action to a Federal Court or a New York State Court in New York City or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a Federal Court or a New York State Court in New York City.

TWENTY-SEVENTH: HEALTH REGULATIONS AND LABELS

a) Any food, drug or other Goods that are found by the Corporation to be unwholesome or otherwise unfit for human consumption or use, shall not be removed by the Seller until examined by the appropriate public authorities. If condemned, such goods shall be disposed of by the Seller in accordance with the rules and regulations of the appropriate public authorities. Should the Seller fail to make disposal within 24 hours after appropriate order to do so, the Corporation may make such disposal and charge the Seller for the cost involved.

b) All Goods that are customarily labeled or identified must have securely affixed thereto the original unmutated label or marking of the manufacturer. Failure to comply with this requirement may be considered sufficient cause for rejection. When a label or marking is required by any regulatory agency, it must be affixed to all Goods delivered under the Contract.

TWENTY-EIGHT: LABOR LAW COMPLIANCE

Contractor hereby agrees to comply with the following:

Section 6-109 of the Administrative Code of the City of New York:

a) Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, all persons employed by the Seller and any subcontractor in the manufacture or furnishing of the Goods used in the performance of the contract will be paid, without subsequent reduction or rebate unless expressly authorized by law, not less than the minimum wage prescribed by law.

b) No part of the work, labor or services will be performed or rendered by the Seller in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the Contract. Compliance with the safety, sanitary and factory inspection laws of the state in which the work is to be performed shall be prima facie evidence of compliance with this paragraph.

c) In the event of any breach or violation of any of the foregoing provisions, and in addition to the foregoing provisions of this paragraph, no contracts shall be awarded to the Seller or subcontractor, as the case may be, or to any firm, corporation, partnership or association in which the Seller or subcontractor has a controlling interest, until three years have elapsed from the date of determination of such breach as prescribed by Section 6-109 of the Administrative Code of the City of New York.

d) Any breach or violation of any of the foregoing subdivisions of this Section shall be deemed a material breach of this contract.

TWENTY-NINTH: ANTI-TRUST

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

THIRTIETH: ENTIRE AGREEMENT

This written agreement, including the bid documents and the terms and conditions of HHC 110-29, contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

THIRTY-FIRST: PARTICIPATION IN AN INTERNATIONAL BOYCOTT

The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended or the regulations of the United States Department of Commerce promulgated thereunder. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Contractor or a substantially-owned affiliated company thereof for, participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended or the regulations promulgated thereunder, the Corporation may, at its option, render void this Contract. The Contractor shall comply, in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the Rules and Regulations issued by the Comptroller thereunder.

THIRTY-SECOND: CONDUCTING BUSINESS IN SOUTH AFRICA AND NAMIBIA

This clause has been rescinded and is no longer applicable.

THIRTY-THIRD: POOR PERFORMANCE BY CONTRACTOR

a) If, in the sole judgment of the Corporation, Contractor's performance of the work or other performance under this Agreement is improper, dilatory, or otherwise not in strict compliance with all requirements of this Agreement, the Corporation may, in addition to any other right or remedy of the Corporation, issue a written warning to Contractor that it is a poor performer (the "Warning"). Such Warning may be issued, at any time prior to the termination of this Agreement. If the Contractor disputes such Warning, Contractor shall give written notice (the "Protest Notice") to the Corporation within 15 business days of receipt of the Warning. The Corporation shall review the matter and deliver a written determination to Contractor either affirming, modifying or rescinding the Warning. If the Corporation does not give Contractor a determination within 45 days of receipt of the Contractor's Protest Notice, the Warning will be deemed to be rescinded on the 45th day following such receipt. Within 90 days but not less than 30 days after the termination of this Agreement (unless the Warning was previously rescinded), the Corporation shall review Contractor's performance and shall either rescind the Warning or shall notify Contractor of his right to appear at a hearing, on not less than five days notice to determine if Contractor shall be classified as a poor performer. At any such hearing, Contractor may be represented by counsel and present or refute evidence and testimony relevant to the issue of Contractor's alleged poor performance. The Corporation shall issue a written decision either classifying Contractor as a poor performer or rescinding the Warning, as the case may be, with the reasons therefor.

b) If Contractor disputes the final poor performer classification by Corporation, Contractor may seek review of the decision by requesting the Corporation, in writing, within ten business days of receipt of the final poor performer classification, to convene a review board. The Corporation's decision shall be final and binding with respect to the classification of Contractor as a poor performer if Contractor does not request a review as herein provided.

c) If Contractor does not dispute the final poor performer classification by Corporation, the Corporation shall upon five days written notice to Contractor and within 15 days of having delivered such written notice to Contractor, convene a board of responsibility to determine if Contractor is a responsible contractor.

d) Contractor agrees to forebear from the commencement of any action or proceeding regarding the Corporation's classification of Contractor as a poor performer, unless the Contractor has requested a review board pursuant to subsection B above, and such board has issued a final decision.

THIRTY-FOURTH: NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Contractor for personal liability against any individual officer, agent or employee of the Corporation or City of New York for, or on account of, anything done or omitted in connection with this Agreement.

THIRTY-FIFTH: BACKGROUND QUESTIONNAIRES

The Contractor states that the Principal, Individual, Business Entity and Not-for-Profit Organization Questionnaires (the "Questionnaires"), as applicable, required for competitively bid contracts for \$100,000 or more, and contracts for \$15,000 or more awarded pursuant to a request-for-proposals, have been duly executed and submitted to the Corporation. The Contractor understands that the Corporation's reliance upon the veracity of the information stated therein is a material condition to its execution of this Agreement, and that such information is in no respect misleading.

The Contractor shall submit the appropriate Questionnaires, or if applicable, an annual "Affidavit of No Change" upon the extension or renewal of this Agreement. Any contractor for which submission requirements for Business Entities or Not-for-Profit Organizations apply shall submit newly completed Questionnaires to the Corporation every three years.

This Agreement shall be a nullity until the Contractor submits fully completed, signed and notarized Questionnaires to the Corporation.

If, for any reason, final review of the Questionnaires and clearance from the Corporation's Office of Inspector General cannot be obtained prior to mutual execution of the contract, the Corporation may terminate this contract immediately upon written notice to the Contractor after receipt of information from the Office of the Inspector General of the kind that would typically be used as a basis for finding a contractor not responsible to receive a contract award. Such notice will provide the Contractor with an opportunity to contest the accuracy of the information before the Corporation's Procurement Review Board. In the event of such termination by the Corporation, the Corporation will pay the Contractor in quantum meruit for services performed to date in accordance with the contract.

THIRTY-SIXTH: COMPLIANCE WITH LAW

Contractor shall obtain all required approvals and licenses from appropriate Federal, State, and City authorities and render all services under this Agreement in accordance with applicable Federal, State and local laws, rules and regulations.