

AGREEMENT dated \_\_\_\_ between the CITY OF NEW YORK (“CITY”) acting by and through its Department of \_\_\_\_\_ (“Department”), having an office located at \_\_\_\_\_, and \_\_\_\_\_ (“Contractor”) a [not-for-profit][for-profit] corporation having its principal office located at \_\_\_\_\_.

*[AGENCIES MAY INSERT APPROPRIATE WHEREAS CLAUSES. THE FOLLOWING CLAUSES ARE ILLUSTRATIVE RATHER THAN REQUIRED.]*

WHEREAS, Contractor provides services to \_\_\_\_\_; and

WHEREAS, the Department procured those services through [or insert other procurement method here or provide whatever description of the procurement process the agency chooses] and

WHEREAS, Contractor, having been awarded the Contract, is ready, willing and able to perform;

NOW, THEREFORE, the parties agree as follows:

## **ARTICLE I — 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.** “Board of Directors” or “Board” means the board of directors, board of trustees or a similar body vested with the duty and responsibility for management and oversight of Contractor’s affairs as they relate to its performance under this Agreement.

**B.** “Budget” shall mean the line-item costs and/or the performance based measures or fee-for-service rate schedule attached hereto as Appendix C.

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

**D.** “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.

**E.** “Comptroller” shall mean the Comptroller of the City of New York.

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

**G.** “Department” shall mean the City agency that has entered into this Agreement.

**H.** “Fiscal Agent” shall mean an entity (if any) retained by the Department, or retained by the Contractor at the direction of the Department, to issue payments to third parties on behalf of the Contractor or otherwise to assist the Contractor in the administration of its financial affairs.

**I.** “Fiscal Manual” shall mean a set of instructions provided by the Department to the Contractor documenting the applicable policies and procedures of the Department for Contractor to use in such matters as record-keeping, bookkeeping, reporting, invoicing and claiming, budgeting, cost allocating, procurement and payroll, as may be amended by the Department. The Fiscal Manual is incorporated by reference and may be found online at [Department’s website]. The Fiscal Manual is not intended to amend the material terms of this agreement with respect to either the Scope of Work, or the terms and conditions of this document or Appendix A.

**J.** “Improper Related Party Transaction” shall mean a Related Party Transaction that violates Not-for-Profit Corporation Law section 715.

**K.** “Key Employee” shall mean any person who is covered by the definition of “key employee” in Not-for-Profit Corporation Law section 102(a)(25). Key Employees are persons, not including City officers and employees acting within the scope of their official government duties, in a position to exercise substantial influence over the affairs of the Contractor, including voting members of the Board, the president, chief executive officer, chief operating officer, the treasurer and chief financial officer, and persons with a material financial interest in a provider-sponsored organization (as defined in 42 U.S.C. § 1395w-25), and anyone else meeting the definition of a person in a position to exercise substantial influence in 26 U.S.C. section 4958(F)(1)(A) and 26 CFR section 53.4958-3(C), (D), and (E).

**L.** “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.

**M.** “Related Party” shall mean (i) any director, officer or Key Employee of the Contractor or any affiliate of the Contractor; (ii) any relative of any director, officer or Key Employee of the Contractor or any affiliate of the Contractor; or (iii) any entity in which any individual described in clauses (i) and (ii) of this definition has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

**N.** “Related Party Transaction” shall mean any transaction, agreement or any other arrangement in which a Related Party has a financial interest and in which the Contractor or any affiliate of the Contractor is a participant.

**O.** “State” shall mean the State of New York.

## **ARTICLE II — TERM OF AGREEMENT**

**Section 2.01 Term.** The term of this Agreement begins on [redacted] for a period of [redacted] ( ) years through [redacted].

**Section 2.02 Renewal.** The Department, in its sole discretion, may renew this Agreement [insert # of renewals] for a period of [insert # of years] for each renewal. The Department, in its sole discretion, reserves the right to modify the length of the renewal term listed above, provided that the total term of this Agreement after the exercise of all of the options to renew shall not exceed        ( ) years. All renewals shall be on substantially the same terms and conditions contained in the Agreement. Any renewal will not be effective unless and until the renewal is registered pursuant to New York City Charter §328. The Department shall renew this Agreement by giving written notice to the Contractor prior to the expiration date of this Agreement and prior to the expiration date of any renewal option. The Department will endeavor to give the Contractor notice ninety (90) days prior to renewal. Failure to give notice at least 90 days prior to renewal shall not impair the Department's right to exercise its option to renew and shall not invalidate an option exercised by the Department.

**Section 2.03 Future funding.** Since the period of performance contemplated by this Agreement involves performance by the Contractor in a subsequent City fiscal year(s), funding for this Agreement is subject to the appropriation of funds for such subsequent City fiscal year(s). Contractor also understands that the Department is under no obligation to continue its funding after the expiration of the term of this Agreement.

## **ARTICLE III — SCOPE OF WORK AND BUDGET**

### **Section 3.01 Scope of work.**

A. **Services and Activities.** Contractor shall provide the services and activities in program areas or programs listed and described in the Scope of Work attached hereto as Appendix B.

B. **Healthy food environment.** The City aims to reduce the prevalence of chronic disease, such as obesity, diabetes and cardiovascular disease, by improving dietary intake of its citizens. Accordingly, in addition to the services set forth in Appendix B, the Contractor shall make best efforts to distribute to any staff members providing services to program participants under the Agreement and to program participants funded in whole or in part by this Contract, any healthy food promotional materials provided to the Contractor by the Department.

C. **New York City Food Standards.** This paragraph applies only if this Agreement includes a requirement that the Contractor supply food to program participants as a material part of the client services funded by the Department. The City aims to reduce the prevalence of chronic disease, such as obesity, diabetes and cardiovascular disease, by improving dietary intake of its citizens. Accordingly, the Contractor shall provide a healthy food environment in connection with the client services provided under this Agreement by complying with the attached New York City Agency Food Standards with regard to the provision of food to program participants under this Agreement, including compliance with the New York City Food Standards for beverage vending and food vending machines (<http://www.nyc.gov/html/doh/html/cardio/cardio-vend-nutrition-standard.shtml>) for any vending machines to which program participants are granted access.

**Section 3.02 Budget.** Contractor shall provide such services and activities in accordance with the Budget. Contractor may request modifications to the Budget in the manner prescribed in the Fiscal Manual.

**Section 3.03 Payment.** The Department shall pay the Contractor an amount not to exceed \$\_\_\_\_\_ (\_\_\_\_\_ dollars) for all services provided under the Agreement. Payment shall be made in accordance with the Budget and the Fiscal Manual. *[The Department must insert a provision stating the terms of payment (e.g., deliverables, unit prices, line item budget reimbursement)].* This Agreement shall not obligate the Department beyond the dollar amount designated as the maximum contract amount in the absence of a duly executed written contract amendment registered pursuant to section 328 of the New York City Charter.

### **Section 3.04 Cost allocating and duplication.**

A. **Duplication.** Contractor represents and warrants that the work to be performed under this Agreement shall in no way duplicate any work performed under other agreements between the City and Contractor, nor under any agreement with any other governmental funding source, except upon the express written permission of the Department. Costs attributable to the program and not paid for by the City are not duplication (e.g. program enhancements, unreimbursed portions of staff salaries) but are subject to the cost allocation provisions set forth below. Noncompliance with this Section shall constitute a material breach of this Agreement.

B. **Cost allocation plan.** Contractor shall accurately and equitably allocate costs which are attributable to the operation of two or more programs among such programs, or which are costs attributable to two or more governmental funding sources, by a method which represents the benefit of such costs to each program or funding source.

[Remainder of section intentionally omitted].

**Section 3.05 Cost of living increases.** Where the Contractor's industry has experienced an increase in costs (*e.g.*, salary, wage or fringe benefit cost of living increases, a change in the prevailing or living wage, a renegotiated collective bargaining agreement, an industry-wide increase in the Producer Price Index (PPI) for fuel or energy), and the Office of Management and Budget (OMB) or another independent agency has determined in writing that additional funds will be made available to a City agency for the class of contracts pursuant to which the Contractor provides the same or substantially similar services, then the Department shall adjust the Budget to account for such increases in costs to the extent that such increases have been authorized by the City for contracts within such class of contracts and to the extent that funds are appropriated for such purposes. Any cost of living increase will not be effective unless and until an amendment to the contract is registered pursuant to New York City Charter §328.

## **ARTICLE IV — FISCAL PROCEDURES**

**Section 4.01 Cooperation and compliance.** Contractor hereby agrees to fully cooperate and comply with the Fiscal Manual on all fiscal matters related to this Agreement.

### **Section 4.02 Accounts**

A. Contractor shall establish and maintain one or more separate accounts for the funds obtained from or through the City of New York related to this and all other agreements with the City, and shall maintain records for such account to track and clearly identify the funds obligated through this Agreement.

B. Contractor shall notify the Department of the name, locations and account numbers of all bank accounts in which any funds pursuant to this Agreement are maintained, and of any change in the name, location, or account numbers of such accounts within five (5) days of such establishment or change. Such bank shall have a branch located in New York City unless otherwise approved by the Department.

C. Contractor shall notify the Department of the names, titles, and business addresses of such persons authorized by the Contractor to receive, handle or disburse monies under this Agreement, including the company name and company address where such persons are not employees of the Contractor. Such notification must be in writing and furnished to the Department within five (5) days from the execution of this Agreement, and within five (5) days from any subsequent change or substitution of authorized signatories.

**Section 4.03 Advance.** The amount of any advance to be paid to Contractor under this Agreement shall be determined solely by the Department in accordance with its Fiscal Manual and any

applicable Comptroller directives. The funds shall be used exclusively for the payment of expenditures and obligations authorized by and properly incurred pursuant to the Budget.

**Section 4.04 Financial records, reporting and invoicing.** Contractor shall submit financial reports and invoices to the Department in accordance with the terms of the Fiscal Manual. Any supporting documents required to be maintained by this Agreement or the Fiscal Manual shall be made available for inspection and reproduction by the Department, the City Comptroller, and such other persons as authorized by the Department, including the Inspector General for the Department and the Department of Investigation. Contractor acknowledges that repeated failure to submit required financial reports within the time limits prescribed may result in termination of this Agreement.

**Section 4.05 Procurement requirements.**

A. [Paragraph intentionally omitted].

B. [Paragraph intentionally omitted].

C. [Paragraph intentionally omitted].

D. **M/WBE suppliers.** Contractor is encouraged to utilize businesses and individual proprietors listed on the NYC Online Directory of Certified MWBE Businesses, available at [www.nyc.gov/sbs](http://www.nyc.gov/sbs), as sources for its purchases of goods, supplies, services and equipment using funds obtained through this Agreement. Contractor is also encouraged to utilize businesses and individual proprietors owned/operated by people with disabilities as sources for its purchases of goods, supplies, services and equipment using funds obtained through this Agreement.

E. **Disputes with suppliers.** Contractor, without recourse to the City or the Department, shall be responsible for the settlement and satisfaction of all contractual obligations and administrative issues arising out of any procurement or leasing contracts paid with funds obtained through this Agreement.

**Section 4.06 Limitation on use of funds.**

A. **Proper purposes.** No funds obtained through this Agreement shall be spent for any expense not incurred in accordance with the terms of the Agreement. All such funds shall be administered in accordance with the Fiscal Manual.

[Remainder of section intentionally omitted].

**Section 4.07 Recoupment of disallowances, improperly incurred costs and overpayments.** The Department may, at its option, either require the Contractor to reimburse the Department or withhold for the purposes of set-off any monies due to Contractor under this Agreement up to the amount of any disallowance or improperly incurred costs resulting from any audits of Contractor, the amount of any overpayment to Contractor with regard to this Agreement or to any other agreement between the parties hereto, including any agreement(s) that commenced prior to the commencement date of this Agreement, and/or amounts incurred on any Improper Related Party Transaction. Prior to the imposition of

withholding for the purposes of set-off, the Department will provide the Contractor with an opportunity to be heard upon at least ten (10) days prior written notice.

**Section 4.08 Failure to earn funds.** In the event that Contractor fails to earn funds for any part of the Budget within the time indicated therein (i.e., the fiscal year unless otherwise indicated) or at the level of expenditures indicated therein, the Department reserves the right, in its discretion, to recoup any funds advanced and not earned. If Contractor fails to earn funds in the budget, the Department reserves the discretion to reduce the budget going forward to account for the expected future level of earnings.

#### **Section 4.09 Provisions Applicable When Fiscal Agent Disburses Funds To Contractors**

**A. Payment by Fiscal Agent.** Where the Department has retained a Fiscal Agent to make payments to third parties on behalf of Contractor, then the Contractor is obligated to use the Fiscal Agent to make payment to third parties at the Department's direction, including for the purchase of such goods, supplies, services and/or equipment made by Contractor under this Agreement. Where the Department directs that Contractor utilize a Fiscal Agent, Contractor shall not pay any obligations on its own behalf except to the extent specifically allowed by this Agreement and the Department's Fiscal Manual.

**B. Payroll processing by Fiscal Agent.** In the event that a Fiscal Agent is processing the Contractor's payroll, Contractor shall deliver to the Fiscal Agent signed and dated time and attendance records for each staff member and consultant to be paid under this Agreement, in the form required and delivered at the time required by the Fiscal Agent and the Department's Fiscal Manual. Subject to the Department's approval, the Fiscal Agent shall prepare the payroll checks and supporting materials based on the documents submitted.

**C. Fiscal Agent documentation.** Upon reasonable request and approval by the Department, Contractor shall have the right to inspect any fiscal documents relating to this Agreement as may be maintained by a Fiscal Agent, if applicable. Contractor may request from the Department copies of any or all the following documents relating to the funds to be provided hereunder, with said documents to be furnished by the Fiscal Agent, subject to the Department's approval, within a reasonable time of the request: monthly budget and expenditure reports; budgets and budget modifications; and audit reports, where available.

### **ARTICLE V — RECORDS, DELIVERABLES, AUDITS AND REPORTS**

**Section 5.01 Records to be maintained.** In addition to any other records required to be maintained and/or provided for inspection pursuant to this Agreement, Contractor shall maintain and make available to the Department for inspection, upon reasonable request, the following documents: tax returns; audit reports; all programmatic records and accounts maintained in connection with this Agreement, including program, research and other reports and publications prepared in connection with this Agreement; all financial books, records and accounts reflecting payments made by Contractor for petty cash expenditures in connection with this Agreement; all applicable licenses and permits; Board member lists and all minutes and attendance sheets (dated and signed) for meetings of the Board of Directors and any of its committees responsible for the oversight of the program(s) funded under this Agreement; certificate of incorporation and by-laws; all other contracts related to providing services under this Agreement, to which Contractor is a party and the contract terms coincide, in whole or in part,

with the term of this Agreement; the Contractor's Conflict of Interest Policy, if applicable pursuant to Not-for-Profit Corporation Law section 715-a; the Contractor's Whistleblower Policy, if applicable pursuant to Not-for-Profit Corporation Law section 715-b; the documents concerning the Board's approval of a Related Party Transaction, if applicable pursuant to Not-for-Profit Corporation Law section 715; any Related Party's disclosure statement, if applicable pursuant to Not-for-Profit Corporation Law section 715-a(c); and any other records or materials reasonably requested at such reasonable times and places and as often as may be reasonably requested. Contractor shall permit the Department and its authorized representatives including the Department's Inspector General, the Comptroller of the City of New York, the New York City Department of Investigation, or their designees, or other interested federal, State or City agency representatives, to attend all meetings of the Board of Directors and to be present at the program site(s) to observe the work and activities being performed in connection with this Agreement.

**Section 5.02 Deliverables and reports.** Contractor shall submit the deliverables and periodic reports required by this Agreement, in accordance with the Scope of Work attached hereto. Contractor shall administer such assessment tools, collect and report such data, maintain records, make reports and take such other actions as may be directed by the Department.

**Section 5.03 Audit disclaimers.** If any audit of Contractor's records shall include a Disclaimer of Opinion relating to any contract with the Department or other funding sources, said Disclaimer shall be ground for termination of this Agreement.

**Section 5.04 Federal audit requirements.** If applicable, the Contractor shall fulfill the audit requirements of the Federal Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Organizations," and shall provide such audit to the Department within thirty (30) days after its receipt of the final audit by the Contractor from the preparing accountant.

**Section 5.05 State charities registration and audit requirements.** If the Contractor is required by New York State law to register with and make annual filings to the Charities Bureau of the New York State Office of the Attorney General, timely compliance with such requirements shall be deemed a material term of this Agreement. Contractor shall make available to the Department all such filings, including any audit and/or financial report required to be submitted with such filings, within thirty (30) days of receiving such final audit or financial report from its preparer, and in no event later than ten (10) days following the filing of such audit or financial report with the Charities Bureau.

**Section 5.06 Additional audit and financial reporting requirements.**

A. If any Contractor is exempt from making annual filings to the Charities Bureau of the New York State Office of the Attorney General, the Contractor will, at direction of City, provide the City with annual disclosure reports equivalent to those filings that Contractor would have filed with the State had they been required to file. As of the effective date of this Agreement, the requirements are as follows:

1. Contractors with gross revenues less than \$250,000 in any fiscal year shall file a copy of the annual unaudited financial report that it is required to file pursuant to Not-for-Profit Corporation Law section 172-b(2-a) with the Department.



2. Contractors with gross revenues between \$250,000 and \$500,000<sup>1</sup> in any fiscal year shall file an annual financial statement with the Department, which includes an independent certified public accountant's review report in accordance with the "statement on standards for accounting and review services" issued by the American Institute of Certified Public Accountants. The financial statement shall be prepared in conformance with generally accepted accounting principles (GAAP), including compliance with all pronouncements of the Financial Accounting Standards Board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for-profit organizations.

3. Contractors with gross revenues in excess of \$500,000<sup>2</sup> shall file with the Department an annual audit report by an independent certified public accountant. Said audit report shall contain an opinion, signed by such certified public accountant that the financial statements are presented fairly in all material respects and in conformity with GAAP, including compliance with all pronouncements of the Financial Accounting Standards Board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for-profit organizations, and that the financial sheet and balance sheet present fairly the financial operations and position of the organization. The financial report must be signed by the president or other authorized officer and the chief fiscal officer under penalties of perjury that the statements are true and correct to the best of their knowledge.

B. Contractors receiving funds pursuant to this Agreement in excess of \$1,000,000 will, at direction of City, provide to the Department an audit report from an independent certified public accountant containing an opinion that the Contractor has appropriately allocated costs in accordance with the terms of the Agreement, including that the costs have not been improperly double-charged between multiple City and/or State contracts or between multiple governmental funding sources. The Contractor may satisfy this requirement by including the appropriate analysis in any audits required pursuant to Section 5.04 or 5.05.

C. The Contractor must submit all required audit and financial reports under this Section to the Department within thirty (30) days after receipt of the final audit from its accountant and, if no audit is required, within thirty (30) days of filing with the Attorney General, but in any event no later than twelve (12) months after close of the audit period, or such period as determined by the Department. The audit and financial reports shall comply with the applicable provisions in the Fiscal Manual throughout the term of this Agreement, including terms mandating the audit period and frequency of such audits and reports.

D. The Department may in its sole discretion conduct its own programmatic or financial audits of the Contractor.

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<sup>1</sup> As of July 1, 2017, this provision applies to contractors with gross revenues between \$250,000 and \$750,000. As of July 1, 2021, this provision applies to contractors with gross revenues between \$250,000 and \$1,000,000.

<sup>2</sup> As of July 1, 2017, this provision applies to contractors with gross revenues in excess of \$750,000. As of July 1, 2021, this provision applies to contractors with gross revenues in excess of \$1,000,000.

## **ARTICLE VI — PERSONNEL PRACTICES AND RECORDS**

**Section 6.01 Definition of employee.** The term “employee” as used in this Article shall be limited to salaried personnel and shall include neither consultants under contract to the Contractor to provide specified services nor participants in the program who are being paid as trainees.

### **Section 6.02 Compensation of certain employees, Vacancies, and Board of Directors.**

**A. Employee list.** Contractor shall submit to the Department within thirty (30) days of the execution of this Agreement and at the beginning of each new fiscal year a list of certain employees, which shall include the Executive Director, Chief Financial Officer, Chief Operating Officer, or the functional equivalent of such positions, and the senior financial and programmatic supervisory personnel involved directly or indirectly in the performance of this Agreement. For each listed employee, Contractor shall provide the current total compensation (including all benefits), all sources of the employee’s total compensation, whether from this contract or another City, State, Federal or private source, and the dollar amount of compensation from each such source.

**B. Vacancies.** Contractor shall notify the Department in writing within ten (10) days of their occurrence any appointments to or resignations from the positions of Executive Director, Chief Financial Officer and/or Chief Operating Officer, and/or the senior programmatic supervisory personnel or the functional equivalent of such positions.

**C. Board compensation.** Contractor shall submit to the Department within thirty (30) days of the execution of this Agreement and at the beginning of each new fiscal year a listing of all members of its Board of Directors and identify any of its members who receive compensation in any form, including but not limited to salary, stipend, per diem payments and/or payments for services rendered, from the Contractor or its affiliates, together with the amount of any such compensation, regardless of the source of its payment, and a description of its purpose.

**Section 6.03 Collective bargaining.** Contractor acknowledges that neither the City nor the Department is responsible or shall be liable for any obligations contained in any agreement into which Contractor or a representatives of Contractor has entered concerning the collective bargaining rights or benefits of its employees paid in full or in part by funds provided through this Agreement. Furthermore, Contractor agrees to abide by all applicable Laws governing the use of funds in connection with union activities.

### **Section 6.04 Recruitment and hiring of staff.**

**A. Maintenance of skilled staff.** Contractor shall maintain sufficient personnel and resources, including computer technology, to deliver the services described in the Scope of Work and perform necessary administrative functions throughout the term of this Agreement, including but not limited to: program evaluation; program monitoring; program research and development, including the preparation of reports required by this Agreement; fiscal reporting, review, audit, and close-out of the Program; and implementation of any corrective actions required by the Department.

## **B. Background checks.**

1. The Contractor shall be responsible for the recruitment and screening of employees and volunteers performing work under the Agreement, including the verification of credentials, references, and suitability for working with clients and participants. Where consistent with State and federal law, if directed by the Department, the Contractor will undertake the fingerprinting of employees and volunteers, including applicants, in accordance with instructions from the Department.

2. The Contractor shall comply with Article 23-A of the New York State Correction Law and Section 296(15) and (16) of the New York State Executive Law when considering an applicant's prior criminal convictions in determining their suitability for employment. In accordance with Article 23-A, nothing in this Agreement shall be construed to limit a Contractor's authority to withdraw conditional offers of employment for any lawful reason, including the determination that the candidate has a conviction that bears a direct relationship to the duties and responsibilities of the position sought, or their hiring would pose an unreasonable risk to property or to the safety of individuals or the general public.

3. With respect to any employment governed by Article 23-A of the Correction Law or Section 296 of the New York State Executive Law, except where the Contractor obtains prior written approval from the Department, the Contractor shall not ask questions regarding an applicant's prior criminal convictions, juvenile delinquency adjudications, or youthful offender adjudications on any preliminary employment application documents or ask questions about an applicant's prior criminal convictions, juvenile delinquency adjudications, or youthful offender adjudications before or during the first interview with the applicant.

4. Consistent with the requirements of Executive Law §296(15) and (16), following the first interview, the Contractor may ask applicants to disclose their prior criminal convictions and any arrests or criminal accusations that are pending and have not been terminated in favor of the applicant. Agencies shall limit their review and consideration of an applicant's criminal convictions to (i) an individual's felony convictions in the state of New York or in any other jurisdiction; (ii) an individual's unsealed misdemeanor convictions in the state of New York or in any other jurisdiction; and (iii) any pending charges against the applicant. Consistent with State law, past arrests not leading to a criminal conviction shall not be considered. (Please note that, pursuant to Section 380.1 of the Family Court Act, juvenile delinquency adjudications are not criminal convictions. Also, pursuant to Section 720.35(1) of the Criminal Procedure Law, a youthful offender adjudication is not a criminal conviction.) In addition, the Contractor may request a waiver from the Department of any provision of this Section and be permitted to ask relevant questions pertaining to the qualifications to hold a specific position, upon demonstrating the need for such waiver.

5. Notwithstanding any other provision of this Section, if the Contractor is hiring for positions requiring licensure, including positions such as interns and apprentices for such licensed positions (e.g. prospective attorneys), the Contractor may ask applicants the same questions asked by the licensing body, in accordance with New York State law. In addition, if the Contractor is hiring for positions where certain convictions or violations are a bar to employment in that position under Law, the Contractor may ask questions about those convictions or violations.

6. Where practicable, the Contractor shall provide for the review by a supervisor of a decision not to hire based on prior criminal convictions.

### **C. Drug-free workplace.**

1. Contractor shall conspicuously post at any facility at which activities funded in whole or in part through this Agreement occur, a statement notifying all staff that the manufacture, distribution, dispensing, unauthorized possession, and unauthorized use of controlled substances are prohibited and specifying the actions that will be taken against employees for violation of such prohibition (the “Drug-Free Workplace Policy”). Contractor shall provide a copy of the Drug-Free Workplace Policy to each staff member as part of his or her initial employment orientation with Contractor, and shall inform such staff member that compliance with the terms of the Drug-Free Workplace Policy is a mandatory condition of employment or retention of employment. Contractor shall provide the Department with a written certification that its Facility complies with the Drug-Free Workplace Policy prior to commencement of services funded through this Agreement.

2. Contractor shall provide an on-going drug-free awareness program to inform all staff about the dangers of drug abuse in the workplace; the Contractor’s enforcement of its Drug-Free Workplace Policy; the availability of drug counseling, rehabilitation and employee assistance programs; and the penalties that may be imposed upon staff and clients or participants for violating the Drug-Free Workplace Policy.

3. Contractor shall require staff members to notify Contractor in writing of his/her arrest or conviction for violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such arrest or conviction. Contractor shall thereafter notify the Department within ten (10) calendar days of Contractor’s receipt of the above-described notice of conviction from a staff member or of the date Contractor otherwise received actual notice of such conviction.

4. Contractor shall take one of the following actions within thirty (30) calendar days of receiving notice of such a conviction with respect to any staff member so convicted: (a) appropriate personnel action, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (b) requiring such convicted staff member both to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, State, or local health, law enforcement, or other appropriate agency, and to make a good faith effort to continue to abide by the Drug-Free Workplace Policy.

### **Section 6.05 Board of Directors.**

A. Except as provided in Paragraph B of this Section 6.05, the Contractor’s employees and members of their immediate families, as defined in Paragraph C of this Section 6.05, 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.

B. If the Board has more than five (5) members, then Contractor’s employees and members of their immediate families 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 and members of their immediate families are prohibited from deliberating and/or voting and being present during deliberation and/or 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 and members of their immediate families 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.

C. 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. For the purposes of this Section 6.05, 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 paragraph, a member of the Board is deemed to exercise authority over all employees of the Contractor.

D. 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.

This Section 6.05 shall apply only if Contractor is a not-for-profit corporation.

#### **Section 6.06 Conflict of interest policy.**

A. If required by section 715-a(a) of the Not-for-Profit Corporation Law, Contractor shall maintain a Conflict of Interest Policy that includes, at a minimum, the following provisions:

1. A definition of the circumstances that constitute a conflict of interest;
2. Procedures for disclosing a conflict of interest;
3. A requirement that the person with the conflict of interest not be present at or participate in Board or committee deliberation or vote on the matter giving rise to such conflict;
4. A prohibition against any attempt by the person with the conflict to influence improperly the deliberation or voting on the matter giving rise to such conflict;
5. A requirement that the existence and resolution of the conflict be documented in the Contractor's records, including in the minutes of any meeting at which the conflict was discussed or voted upon;
6. Procedures for disclosing, addressing, and documenting Related Party Transactions in accordance with section 715 of the Not-for-Profit Corporation Law; and
7. A requirement that each director annually submit the statement required pursuant to Section 6.06(B), below.

B. The Conflict of Interest Policy shall require that prior to the initial election of any director, and annually thereafter, such director shall complete, sign and submit to the Board Secretary a written statement identifying, to the best of the director's knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Contractor has a relationship, and any transaction in which the Contractor is a participant and in which the director might have a conflicting interest. The Board Secretary shall provide a copy of all completed statements to the chair of the audit committee or, if there is no audit committee, to the Board Chairperson.

## **ARTICLE VII — PROGRAM FACILITY**

**Section 7.01 Suitability.** Contractor shall maintain all facilities used for the provision of services funded in whole or in part through this Agreement, whether owned, leased, or used pursuant to an in-kind agreement or arrangement, whether permanent or temporary, in a condition suitable to provide services pursuant to this Agreement.

**Section 7.02 Signage.** Upon request by the Department, and consistent with applicable Laws and applicable lease and license requirements, Contractor will prominently display signs inside and outside the facility(ies) used for the program indicating such information as the program name, its sponsorship by the Department, the program activity and the days and hours of operation. In addition, Contractor shall prominently display inside the facility(ies) all signs, provided by the Department, if any, advising of any of the Contractor's obligations with regard to Equal Employment Opportunity laws.

### **Section 7.03 Security and emergency plan.**

A. Prior to the commencement of services under this Agreement, Contractor shall adopt, implement, and instruct staff regarding a written plan to provide for the safety and security of clients, participants, staff, and the Contractor's facility, including procedures to follow during emergencies. Contractor shall maintain a current file of emergency contacts for each client and participant, which shall include the names, addresses, telephone numbers, and locations where such contacts can be reached. A security plan applying to all of Contractor's operations rather than specifically to the City-funded operations shall be sufficient to comply with the terms of this requirement. The Contractor shall cooperate with the City during any emergency affecting the Contractor's services and/or facilities.

B. In the event that a State of Emergency (SOE) is declared by the Mayor of the City, the City may suspend Contractor's normal operations until further notice. No damages shall be assessed for suspension of normal services during this time. All other terms and conditions of this Agreement shall remain in effect, except as modified by a contract amendment registered pursuant to Charter §328 or other appropriate contract action. The Contractor may, at the request of and in a manner determined by the Department, assist the Department in carrying out emergency procedures during a State of Emergency. Emergency procedures shall remain in effect until the Mayor has determined that the SOE has expired. In consideration thereof, the City agrees to indemnify the Contractor against all claims by third parties arising out of the actions of its employees during the SOE that are directed by the City and not otherwise required to be performed under this Agreement, except for those arising out of the employees' gross negligence or intentional misconduct.

## **ARTICLE VIII — CENTRAL INSURANCE PROGRAM**

**Section 8.01 Availability.** If offered to Contractor by the Department, participation in the City-sponsored Central Insurance Program (CIP) plan shall satisfy Contractor's responsibility to obtain any of the types of insurance provided under such CIP plan. The Department may facilitate the provision of this insurance plan as a convenience for Contractor and for the protection of the City. Provision of these plans through the Department is in no way an admission by the Department or the City of liability for acts, omissions or negligence of Contractor or its employees.

**Section 8.02 Cancellation.** The Department reserves the right to cancel or modify any CIP plan offered to Contractor as it deems advisable, and at such time as it deems advisable, in its sole discretion. In such event, or in the event of cancellation by the insurers, the Department will promptly notify Contractor. Contractor must maintain all required insurance at all times during the term of this Agreement either through participation in the CIP plan or through insurance obtained separately by the Contractor.

**Section 8.03 Notification concerning occurrence of incidents.** If Contractor is enrolled in the CIP plan, upon the occurrence of any injury to any client/participant, employee, volunteer, officer, visitor, or any other person, in conjunction with the services funded in whole or in part through this Agreement, and/or of any damage to the facility or any damage to or theft of equipment purchased with funds paid under this Agreement, Contractor shall provide telephone notice to the Department within twenty-four (24) hours of the incident, followed by a written report on the approved Incident Report Form to be delivered to the Department within three (3) business days.

## **ARTICLE IX — REPRESENTATIONS AND COVENANTS OF CONTRACTOR**

**Section 9.01 Eligibility.** Contractor represents and warrants that it has complied and continues to comply with the eligibility requirements set out in the solicitation document (e.g., the request for proposals) under which it proposed for and was awarded this Agreement. Any material change in the eligibility compliance information supplied in Contractor's contract proposal must be reported to the Department within a reasonable time thereof. Failure to do so will be deemed a material breach of this Agreement and could result in termination of this Agreement.

### **Section 9.02 Program services.**

A. Except where expressly set forth in the Scope of Work and approved by the Department, Contractor represents and warrants that eligibility for admission to the services funded through this Agreement shall not be restricted on the basis of actual or perceived race, color, creed, national origin, alienage or citizenship status, sex, gender, sexual orientation, disability (including presence of a service dog), marital status, partnership status, military status, or any other class protected from discrimination by federal, state, or local law.

B. Contractor further represents and warrants that no clients or participants shall be charged a fee or required to make any other payment or purchase or participate in any activity designed to raise funds as a condition of eligibility for or participation in the services funded through this Agreement, except as required by law or unless a waiver of this provision is approved in writing by the Department. Waivers may be considered under the following conditions: (i) Contractor's total costs for the Services set forth in the Scope of Work exceed the total value of the Agreement; (ii) Contractor's fees for Services and/or the arrangements made to include those participants unable to pay such fees are deemed reasonable and appropriate by the Department; and (iii) the fees are set at a level that does not discourage or impede participation by members of the community to be served by the services.

**Section 9.03 Allegations of abuse or maltreatment.** Contractor will notify the Department within twenty-four (24) hours of promptly determining that reasonable cause exists to suspect that any of Contractor's administrators or staff, including both paid and volunteer, has abused, maltreated, neglected, assaulted or endangered the welfare of any program participant. In addition, if such reasonable cause is found, the Contractor shall take appropriate action to remove the person from the proximity of program participants while the matter is being investigated by the Contractor. The term abuse shall mean the infliction of physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ. The term maltreatment shall mean (i) treatment that results in serious physical injury other than by accidental means, or (ii) neglect or failure to exercise a minimum degree of care that impairs, or places in imminent danger of being impaired, the physical, mental or emotional condition of a program participant. Contractor shall provide telephone notice to the Department within 24 hours of determining that reasonable cause exists,, followed by a written report, to be delivered to the Department within three (3) business days. Compliance with this reporting requirement does not satisfy any other legally mandated reporting of abuse, such as to the New York State Central Registry (SCR).

## **ARTICLE X — MISCELLANEOUS**

**Section 10.01 Headings.** The article and paragraph headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be deemed to define, limit, describe, explain, modify or add to the interpretation or meaning of any provision of this Agreement or the scope or intent thereof, nor in any way affect this Agreement.

**Section 10.02 Order of priority.** During the term of the Agreement, conflicts between the various documents shall be resolved in the following order of precedence, such documents constituting the entire Agreement between the parties:

- Standard Human Services Agreement (this document);
- Appendix A (General Provisions Governing Contracts for Consultants, Professional, Technical and Human Client Services);
- Appendix B (Scope of Work);
- Appendix C (Budget); and
- Fiscal Manual.



## **ARTICLE XI— SUPPORTIVE SERVICES AND TECHNICAL ASSISTANCE**

**Section 11.01 Availability of supportive services and technical assistance.** At its sole discretion, the City may provide, either directly or through its designee, technical assistance to Contractor in such areas as: (1) program planning, development, coordination and dissemination of information; (2) preparation of reports and materials required by the City and/or other governmental entities with jurisdiction over Contractor's activities relating to the operation of services funded through this Agreement; (3) compliance with applicable Laws, guidelines and administrative memoranda; and/or (4) issues or matters affecting Contractor's performance under this Agreement.

**Section 11.02 Training.** At its sole discretion, the City may provide, either directly or through its designee, training/technical assistance to Contractor's employees and Board members, relating to the management and operation of the program funded through this Agreement. If training and/or technical assistance is made available, Contractor must commit appropriate employees and board members to attend/participate at training sessions, as instructed by the City or its designee. Failure to do so may negatively affect Contractor's performance rating, which could in turn lead to termination of this Agreement.

**Section 11.03 Capacity Building and Oversight (CBO) Review for not-for-profit Contractors.** If requested by the Department, the Contractor must complete the Mayor's Office of Contract Services (MOCS) Capacity Building and Oversight (CBO) Review process. As part of that process, the Contractor must submit specified documents to the CBO unit of MOCS, which then conducts an evaluation of the Contractor and its operations for compliance with the terms of its contracts, its own by-laws, internal fiscal controls, applicable laws and regulations, and best practices in not-for-profit organization administration. The specified documents may include, but are not limited to, the Contractor's Internal Revenue Service ("IRS") determination of tax exemption, the most recent IRS Form 990 filing; the most recent audited financial statement (including the auditor's letter to the management), the functional budget for the current fiscal year in the format approved by the Board of Directors, an organizational chart identifying key staff by title, a copy of the most recently-approved Board Minutes, the by-laws of the corporation, a roster of the membership of the Board of Directors and a list of Board committees, the Contractor's current policies and procedures as adopted, and any other organizational documents, whether or not they are specifically required to be maintained pursuant to this contract or applicable laws and regulations. In the course of the CBO review process, MOCS may make recommendations to the Contractor, request the Contractor to take certain remedial actions and/or to implement certain policy changes. Any such recommendations, and the Contractor's responses thereto, will be provided to the Department for its consideration and any appropriate actions under this contract.

**Section 11.04 Disclaimer.** The technical assistance and training that the Department, in its sole discretion, may provide to Contractor shall not be construed to be a condition precedent to Contractor's obligation to provide the services funded through this Agreement in accordance with the Scope of Work.

**ARTICLE XII – APPENDIX A**

**Section 12.01 Appendix A.** The attached Appendix A, “General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services” is incorporated and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

CITY OF NEW YORK

CONTRACTOR

By:

By:

\_\_\_\_\_  
\_\_\_\_\_

Title:

\_\_\_\_\_

Fed. Employer I.D. No. or Soc. Sec. No.

\_\_\_\_\_

Approved as to Form and  
Certified as to Legal Authority

\_\_\_\_\_  
Acting Corporation Counsel

**ACKNOWLEDGEMENT BY CITY**

STATE OF NEW YORK )

:ss:

COUNTY OF NEW YORK )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be \_\_\_\_\_ of the NEW YORK CITY DEPARTMENT OF [INSERT NAME], the person described in and who is duly authorized to execute the foregoing instrument on behalf of the Commissioner, and he/she acknowledged to me that he/she executed the same for the purpose therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF CONTRACTOR IF A CORPORATION**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the corporation described in and which executed the foregoing instrument; and that he signed his name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF CONTRACTOR IF A PARTNERSHIP**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_  
to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_  
\_\_\_\_\_; that he/she is \_\_\_\_\_ partner of  
\_\_\_\_\_, a limited/general partnership existing under the laws of the State of  
\_\_\_\_\_, the partnership described in and which executed the foregoing instrument; and  
that he/she signed his/her name to the foregoing instrument as the duly authorized and binding act of said  
partnership.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF CONTRACTOR IF AN INDIVIDUAL**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_  
to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_  
\_\_\_\_\_, and that he/she is the individual whose name is  
subscribed to the within instrument and acknowledged to me that by his/her signature on the instrument,  
said individual executed the instrument.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

## **Public Assistance Hiring Commitment Rider for HRA, DHS, and ACS**

A. Except as otherwise provided by subsection G below, Contractor agrees as a condition of this Agreement, to hire at least one Public Assistance Recipient (“PA Recipient”) for each \$250,000 in value of this Agreement, or to the extent that the Contractor enters into other contracts with the Department of the City, for each \$250,000 of the cumulative value of contracts of the Contractor during the term of this Agreement.

B. Such hiring shall be for full-time employment of at least a minimum of thirty-five (35) hours per week. The rate of pay shall be at least 20% above the federal minimum wage, and the duration of the employment shall be for at least one (1) year. In the event that a replacement of a PA Recipient is made by the Contractor during the one (1) year, such replacement shall not count as an additional employee toward Contractor’s hiring requirement set forth herein.

C. Within thirty (30) days of the commencement date of this Agreement (“commencement date”) or fifteen (15) days following notice from the Department that a request for an exemption from the provisions of this Rider has been denied, Contractor shall submit, on forms specified by the Department, information and specifications for the position(s) available.

D. The Contractor may at its option request the assistance of the Department in identifying potential employees. In such case, the Department will refer PA Recipients to the Contractor for employment interviews.

E. Contractor shall hire the number of employees agreed upon pursuant to this Section within ninety (90) days of the commencement date or such longer period as may be specified, in writing, by the Department.

F. In the event Contractor fails to hire the required number of PA Recipients within the required time period, or fails to pay and retain such employees pursuant to the above requirements, Contractor shall pay to the Department or the Department may at its option, deduct from monies due or become due to Contractor, the amount of nineteen dollars and eighteen cents (\$19.18) per employee for each calendar day for which such PA Recipient(s) is/are not employed by Contractor as required by this Article. Such amount is hereby fixed and agreed as liquidated damages.

G. Contractor may apply to the Department for exemption from all or part of the requirements of this Article. Any application for an exemption must be made before the expiration of thirty (30) days after the commencement date of this contract, or any subsequent contract as discussed in subsection 1 herein, and shall be in the form specified by the Department. Exemption may be granted upon a showing that the operation of this Section will constitute an extreme hardship, within the sole discretion of the Department; or to any Contractor not employing twenty (20) or more employees at a place of business within the City of New York.

## **LANGUAGE ASSISTANCE RIDER FOR HRA**

Language Assistance Services. The Contractor shall provide free language assistance services to limited English proficient individuals.

A. Service Delivery. When a limited English proficient individual seeks or receives benefits or services from a Department Contractor, the Contractor shall provide promptly language assistance services in all interactions with that individual, whether the interaction is by telephone or in person. The Contractor shall meet its obligation to provide prompt language assistance services by ensuring that limited English proficient individuals do not have to wait unreasonably longer to receive assistance than individuals who do not require language assistance services.

B. Translation. Where an application or form requires completion in English by a limited English proficient individual for submission to a state or federal authority, the Contractor shall provide oral translation of such application or form as well as certification by the limited English proficient individual that the form was translated and completed by an interpreter. The Contractor shall make all reasonable efforts to provide language assistance services in person by bilingual personnel. The Contractor shall screen bilingual personnel and interpreter personnel for their ability to provide language assistance services. The Contractor shall translate all documents into every covered language, as indicated in subsection 2, below. The Contractor shall provide annual training for bilingual personnel and interpreter personnel and ensure that they are providing appropriate language assistance services.

1. Notices. Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by the Contractor, the Contractor shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the Contractor shall inform the individual in his/her primary language of the right to free language assistance services. The Contractor shall post conspicuous signs in every covered language at all of its offices informing limited English proficient individuals of the availability of free language assistance services. The Contractor shall provide in all application and recertification packages a notice advising participants that free language assistance services are available at its offices and where to go if they would like an interpreter. This notice shall appear in all covered languages.

2. Covered Languages. "Covered Languages" shall mean Arabic, Chinese, Haitian Creole, Korean, Russian or Spanish. Nothing in this section shall preclude a Contractor from providing language assistance services beyond those required in this section.

**CONTINUITY OF OPERATIONS PLAN RIDER: TO BE USED FOR THOSE PROGRAMS  
WHERE CONTINUATION OF SERVICES IN THE IMMEDIATE AFTERMATH OF AN  
EMERGENCY IS ESSENTIAL FOR PUBLIC HEALTH OR SAFETY**

Prior to the commencement of services under this Agreement, Contractor shall submit for the Department's review and approval a written Continuity of Operations Plan (COOP) for its business which indicates its ability to continue the provision of essential services to the Department in the event that a State of Emergency is declared by the Mayor. The vendor should seek guidance from the Department on how to develop a COOP plan. A COOP plan includes, but is not limited to: the identification of an alternate site of business; appointment of alternate personnel for identified essential staff; development of protocols for the safekeeping of vital business records; and, a transportation contingency plan for its employees.