**THIS AGREEMENT**, effective July 1, 2020,between the **City of New York (“City”)** acting by and through its Department of Youth and Community Development    (**“Department”**)

(**“Contractor”**),a not-for-profit corporation having its principal office located at

**RECITALS**

**WHEREAS**, Contractor is a community-based not-for-profit corporation or other public service organization; and

**WHEREAS**, Contractor relies on funding from various sources in order to support its operations; and

**WHEREAS**, pursuant to Procurement Policy Board Rules § 1-02(e), the City Council has appropriated Discretionary Funds to be applied for the enhancement of the services Contractor provides; and

**WHEREAS**, Contractor is ready, willing and able to use these Discretionary Funds to enhance its services;

**NOW, THEREFORE,** the parties agree as follows:

**ARTICLE 1. TERM**

The term of this Agreement shall be from July 1, 2020 through June 30, 2021. The Department shall have the right to terminate this Agreement without cause provided that written notice of termination is given at least thirty (30) days prior to the effective date of the proposed termination.

**ARTICLE 2. SCOPE OF SERVICES**

A. Contractor shall provide services in the manner and at the levels set forth in the attached Exhibit A. If requested by the Department, Contractor shall submit to the Department, within thirty (30) days of completion of all services under this Agreement, a final report summarizing the services performed under this Agreement, including cumulative quantitative and qualitative data relative to the objectives and general operations of Contractor paid for through this Agreement.

1. Contractor’s provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes. There shall be no religious worship, instruction or proselytizing as part of or in connection with Contractor’s provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.
2. 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, 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.

**ARTICLE 3. FINANCIAL PROVISIONS**

A. Maximum Reimbursable Amount

The Maximum Reimbursable Amount for this Agreement shall not exceed inclusive of out of pocket expenses, in accordance with the budget contained in the attached Exhibit A. No liability shall be incurred by the City beyond the amount of such monies.

B. Invoices

Invoices shall be submitted no more frequently than once every thirty (30) days. The invoices shall be in a form established by the Commissioner and shall be accompanied by appropriate supporting documentation and any other information deemed necessary by the Department. Upon receipt and approval of an invoice, the Department shall remit to Contractor a payment of its approved charges in accord with the budget contained in Exhibit A. The City may disallow for payment any expenses or charges which were not authorized or documented in accord with the terms of this Agreement or for failure to deliver any required service or work product to the satisfaction of the Department. Payment for the last month of the Agreement shall be contingent upon approval of the final report and bill by the Department.

C. Advances

Once this Agreement is duly registered with the New York City Comptroller’s Office, the Department shall advance $0 (up to a maximum of 50% of the Maximum Reimbursable Amount for contracts of $10,000 or more, or up to 100% for contracts less than $10,000), in accordance with the Department’s Fiscal Manual. The funds shall be used exclusively for the payment of expenditures and obligations authorized by and properly incurred pursuant to the budget.

D. Audit

All receipts, management and disbursement of funds provided by the City pursuant to this Agreement, and the books, records and accounts evidencing such receipts, management and disbursements, are subject to audit by the City, including the City Comptroller, pursuant to the powers and responsibilities conferred upon the City by the New York City Charter and Administrative Code (the “Charter” and “Administrative Code,” respectively), as well as all orders and regulations promulgated pursuant thereto.

**ARTICLE 4. INDEMNIFICATION AND INSURANCE**

A. Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City, its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with law or any of the requirements of this Agreement. Insofar as the facts or law relating to any of the foregoing would preclude the City, its officials or employees from being completely indemnified by Contractor, the City and its officials and employees shall be partially indemnified by Contractor to the fullest extent permitted by law.

B. Workers’ Compensation, Employer’s Liability, and Disability Benefits

1. Workers’ Compensation, Employer’s Liability, and Disability Benefits. Contractor shall maintain Workers’ Compensation Insurance, Employer’s Liability Insurance, and Disability Benefits Insurance, in accordance with the laws of the State of New York on behalf of, or in regard to, all employees providing services under this Agreement.
2. Proof of Insurance. Prior to or upon execution of this Agreement, Contractor shall submit proof of Contractor’s Workers’ Compensation Insurance and Disability Benefits Insurance or a Certificate of Attestation of Exemption to the Department in a form approved by the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance.

**[NOTE: THE AGENCY MAY WAIVE PARAGRAPH C FOR CONTRACTS LESS THAN $25,000.]**

C. Commercial General Liability Insurance and Commercial Automobile Insurance

1. Commercial General Liability Insurance. Contractor shall maintain Commercial General Liability Insurance in the amount of at least One Million Dollars ($1,000,000) per occurrence for bodily injury (including death) and property damage, One Million Dollars ($1,000,000) for personal and advertising injury (unless waived in writing by the Department), and One Million Dollars ($1,000,000) in the aggregate, covering operations under this Agreement. Coverage shall be at least as broad as the coverage provided by the most recently issued Insurance Services Office (“ISO”) Form CG 00 01, and shall be “occurrence” based rather than “claims-made.” Such Commercial General Liability Insurance shall include the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26.
2. Commercial Automobile Liability Insurance. If vehicles are used in the provision of services under this Agreement, Contractor shall maintain Commercial Automobile Liability Insurance in the amount of at least One Million Dollars ($1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non‑owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01.
3. Requirements. The policies of insurance required under this Article 4(C) shall be provided by companies that may lawfully issue such policies and have an A.M. Best rating of at least A- / VII, a Standard & Poor’s rating of at least A, a Moody’s Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department. All such insurance shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.
4. Waiver. Contractor waives all rights against the City, including its officials and employees, for any damages or losses that are covered by Commercial General Liability Insurance (whether or not such insurance is actually procured or claims are paid thereunder) or any other liability insurance applicable to the operations of Contractor and/or its subcontractors in the performance of this Agreement.
5. Proof of Insurance. Prior to or upon execution of this Agreement, Contractor shall provide the following proof of Commercial General Liability Insurance and, if vehicles are used in the provision of services under this Agreement, Commercial Automobile Insurance:
   * 1. A certificate of insurance, the required additional insured endorsement for the Commercial General Liability Insurance policy, and a completed “Certification by Insurance Broker or Agent” in the form contained in Exhibit D; or
     2. A copy of the Commercial General Liability Insurance and, if applicable, Commercial Automobile Insurance policies as certified by an authorized representative of the issuing insurance carrier.
6. Demand for Policy. Contractor shall provide the City with a copy of the Commercial General Liability Insurance policy or the Commercial Automobile Insurance policy or both upon demand by the Commissioner or the New York City Law Department.

**ARTICLE 5. CONFLICTS**

A. Procurement of Agreement

Contractor represents and warrants that Contractor is in compliance with the requirements of the New York City and New York State Lobbying Laws (Administrative Code § 3-211 *et seq*. and Legislative Law § 1-a *et seq*., respectively) and that any individual or organization who conducted any lobbying on Contractor’s behalf in order to solicit or secure this Agreement or the funding for this Agreement is disclosed on the attached Exhibit C. Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. Conflict of Interest

1. Contractor represents and warrants that neither it nor any of its directors, officers, members, partners, or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with Contractor in the performance of this Agreement.

2. Consistent with Charter § 2604 and other related provisions of the Charter, the Administrative Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Article 5(B)(2) shall not prevent directors, officers, members, partners, or employees of Contractor from participating in decisions relating to this Agreement where their sole personal interest is in Contractor.

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

4. Except as provided in Article 5(B)(5) below, Contractor’s employees and members of their immediate families, as defined in Article 5(B)(6) below, may not serve on the Board of Directors of 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.

5. 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 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.

6. Without the prior written consent of the Commissioner, no person may hold a job or position with Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person’s relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Article 5(B)(6), a member of the Board is deemed to exercise authority over all employees of Contractor.

C. Conflict of Interest Policy

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

a. A definition of the circumstances that constitute a conflict of interest;

b. Procedures for disclosing a conflict of interest;

c. 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;

d. 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;

e. A requirement that the existence and resolution of the conflict be documented in Contractor’s records, including in the minutes of any meeting at which the conflict was discussed or voted upon;

f. Procedures for disclosing, addressing, and documenting Related Party Transactions, as defined below, in accordance with Not-for-Profit Corporation Law §715; and

g. A requirement that each director annually submit the statement required pursuant to Article 5(C)(2), below.

2. 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 or a designated compliance officer 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 Contractor has a relationship, and any transaction in which Contractor is a participant and in which the director might have a conflicting interest. The Board Secretary or designated compliance officer 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.

3. The following definitions apply to this Agreement:

a. “Related Party” means any person associated with Contractor who is covered by the definition of “related party” in Not-for-Profit Corporation Law § 102. Related parties do not include City officials and employees acting within the scope of their official governmental duties.

b.“Related Party Transaction” means any transaction, agreement, or any other arrangement in which a Related Party has a financial interest and in which Contractor or any affiliate of Contractor is a participant that is covered by the definition of “related party transaction” in Not-for-Profit Corporation Law § 102.

**ARTICLE 6. PAID SICK LEAVE**

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.[[1]](#footnote-2) Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

* such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
* such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
* closure of such employee’s place of business by order of a public official due to a public health emergency; or
* such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSLL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

* an independent contractor who does not meet the definition of employee under New York State Labor Law § 190(2);
* an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;
* an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
* an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
* an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
* an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
* an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
* a participant in a Work Experience Program (WEP) under New York State Social Services Law § 336-c.

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA’s website at http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed $50 for each employee who was not given appropriate notice.

Records

An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in Administrative Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed $500 for a first violation, $750 for a second violation within two years of the first violation, and $1,000 for each succeeding violation within two years of the previous violation.

More Generous Polices and Other Legal Requirements

Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

ARTICLE 7. ASSIGNMENT, SUBCONTRACTING AND USE OF CONSULTANTS

A. This Agreement shall not be assigned by Contractor in whole or in part under any circumstances. Contractor shall not enter into any subcontract for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. Contractor shall not employ any consultant (whether or not such consultant is a subcontractor) using funds obtained, in whole or in part, under this Agreement without the prior approval by the Department of the consultant. All subcontracts and consulting agreements paid for with funds obtained in whole or in part under this Agreement must be in writing.

B. Contractor must specifically identify in the scope of services and budget attached to this Agreement as Exhibit A the nature and value of any subcontract or consultant intended to be paid for with funds obtained, in whole or in part, under this Agreement. Contractor must supply a signed Disclosure and Compliance Certification form for each such subcontractor or consultant, in the form of Exhibit B to this Agreement. Prior to entering into any additional subcontract or consulting agreement intended to be paid for with funds obtained in whole or in part under this Agreement, Contractor shall submit a written request for the approval of the proposed subcontractor or consultant to the Department, giving the name and address of the proposed subcontractor or consultant and the nature and value of the services that it is to perform and furnish, along with a signed Disclosure and Compliance Certification form. At the request of the Department, a copy of the proposed subcontract or consulting agreement shall be submitted to the Department. For subcontracts (including consultants who are subcontractors), the proposed subcontractor’s VENDEX Questionnaire must be submitted, if required, within thirty (30) days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, Contractor shall provide any other information demonstrating that the proposed subcontractor or consultant has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Department shall make a final determination in writing approving or disapproving the subcontractor or consultant after receiving all requested information. For proposed subcontracts and consultant agreements that do not exceed Twenty-five Thousand Dollars ($25,000), the Department’s approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) days of the Department’s receipt of the written request for approval (including the signed Disclosure and Compliance Certification form) or, if applicable, within forty-five (45) days of the Department’s acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. Nothing contained in the agreement between Contractor and the subcontractor or consultant shall impair the rights of the City. Nothing contained in the agreement between Contractor and the subcontractor or consultant, or under the Agreement between the City and Contractor, shall create any contractual relation between the subcontractor or consultant and the City. All subcontractors and consultants shall be specifically bound by Article 1 of Rider 1 attached to this Agreement; the City may enforce such provisions directly against the subcontractor or consultant as if the City were a party to the subcontract or consulting agreement.

D. For determining the value of a subcontract or consulting agreement, all subcontracts and consulting agreements with the same individual or entity shall be aggregated.

E. The Department may revoke the approval of a subcontractor or consultant granted or deemed granted pursuant to Paragraph (A) of this Article 6 if revocation is deemed to be in the interest of the City in writing on no less than ten (10) days’ notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, Contractor shall cause the subcontractor (including any consultant that is a subcontractor) to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

F. Individual employer-employee contracts are not subcontracts or consultant agreements subject to the requirements of this Article 6.

**ARTICLE 8. MISCELLANEOUS**

A. Independent Contractor Status

Contractor and the Department agree that Contractor is an independent contractor, and not an employee of the Department or of the City of New York.

B. Employees of Contractor

All experts or consultants or employees of Contractor who are employed by Contractor to perform work under this Agreement are neither employees of the City nor under contract to the City, and Contractor alone is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement.

C. Non-Discrimination

Contractor agrees not to engage in any unlawful discriminatory practice as defined and pursuant to the terms of Title VIII of the Administrative Code, the New York State Human Rights Law, and Federal law.

D. Compliance with Law

Contractor shall render all services under this Agreement in accordance with the applicable provisions of Federal, State, and local laws, rules, and regulations as are in effect at the time such services are rendered, including all applicable provisions pursuant to the New York Non-Profit Revitalization Act of 2013, as amended.

E. Retention of Records; Inspection; Observation

1. 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 (not including Schedule B to IRS Form 990); audit reports; all programmatic records and accounts maintained in connection with this Agreement, including, for the avoidance of doubt, all participant and attendance information collected pursuant to the workscope attached hereto as Exhibit A or maintained in connection with the provision of services under this Agreement; publications, program research, and other reports 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 and any of its committees responsible for the oversight of the program(s) funded under this Agreement; governing documents (e.g., 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; and any other records or materials reasonably requested at such reasonable times and places and as often as may be reasonably requested. Upon request by the Department of a record that contains protected personally identifiable information as such phrase is defined in Administrative Code § 10-501 or a record that if disclosed would constitute a waiver of a legal privilege or violate the law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession’s services in New York State, Contractor may redact such personally identifiable or privileged information or other information that if disclosed would violate the law or such professional code. In addition, Contractor may, upon request to and written approval from the Department, which approval may not be unreasonably denied or delayed, withhold from disclosure to the Department certain categories of documents that are not protected by a legal privilege or other law but where Contractor reasonably believes that disclosure of such documents would interfere with or impair the provision of services under this Agreement.
2. Contractor shall permit the Department and its authorized representatives including the Department’s Inspector General, the Comptroller, 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. If observation of particular work or activity would constitute a waiver of a legal privilege or violate the law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession’s services in New York State, Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

F. Conflict of Laws/Forum

All disputes arising out of this Agreement shall be interpreted and decided in accordance with the laws of the State of New York. Contractor agrees that any and all claims asserted by or against the City arising under this Agreement shall be heard or determined either in the Federal or State courts located in the City and County of New York.

G. PPB Rules

This Agreement is subject to the Rules of the Procurement Policy Board of the City of New York, Rules of the City of New York, Title 9, §1-01 *et seq*. (“PPB Rules”). In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

H. Additional Applicable Laws and Provisions

This Agreement is subject to the Investigations Clause, the additional provisions set forth in the attached Rider 1, and the Department’s Fiscal Manual, available on-line at [https://www1.nyc.gov/assets/dycd/downloads/pdf/FY20\_(CCMS)\_Program\_Expense\_Summary\_Report\_(PERS)\_Fiscal\_Manual-as-of05.10.19.pdf](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww1.nyc.gov%2Fassets%2Fdycd%2Fdownloads%2Fpdf%2FFY20_(CCMS)_Program_Expense_Summary_Report_(PERS)_Fiscal_Manual-as-of05.10.19.pdf&data=02%7C01%7CMarkDavis%40dycd.nyc.gov%7Cec028930fa2c4ecb808c08d859a8ecd7%7C32f56fc75f814e22a95b15da66513bef%7C0%7C0%7C637357929341287889&sdata=LMa0oreWQIqmRat4C6uh91w3lNTUz3V%2FbVvD0NGwYq0%3D&reserved=0). In addition, Contractor shall complete and execute the attached Tax Affirmation.

I. Notices

All notices and requests hereunder by either party shall be in writing and directed to the address of the parties as follows:

**City Contact:**

New York City Department of Youth and Community Development

2 Lafayette Street, 21st Floor

New York, New York

Attn: Office of Legal Affairs

**Contractor Contact:**

Attn:

J. Merger

This written Agreement 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.

K. Board Compensation

Contractor shall submit to the Department upon execution of this Agreement a listing of all members of its Board of Directors and such related information as is listed in Exhibit A herein. Within thirty (30) days of a request, Contractor shall further identify and provide a list to the Department of 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 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.

**ARTICLE 9. DISPUTE RESOLUTION**

All disputes between the City and Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of PPB Rules § 4-09. The procedure for resolving all such disputes set forth in PPB Rules § 4-09 shall be the exclusive means of resolving any such disputes. The dispute resolution provisions of this article and PPB Rules § 4-09 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.

**EXHIBITS**

* Attached Riders, including New York City Food Standards;
* Exhibit A, Designated Program Services Workscope;
* Exhibit A-1, Budget;
* Exhibit A-2, Fee Waiver Request Form;
* Exhibit B, Conflict of Interest Disclosure and Compliance Certification Form;
* Exhibit C, Lobbying Certification Form; and
* Exhibit D, Certification by Insurance Broker or Agent.

**[NO FURTHER TEXT ON THIS PAGE]**

**RIDER 1**

**ARTICLE 1. INVESTIGATIONS CLAUSE**

A. The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a United States, State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

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

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

(2) If any non‑governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

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

E. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

(1) The party’s good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

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

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in C(1) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. (1) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(2) 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.

(3) 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 City or otherwise transacts business with the City.

(4) 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.

G. In addition to and notwithstanding any other provision of this Agreement the Commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days’ written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by Contractor, or affecting the performance of this Agreement.

**ARTICLE 2. VOTER REGISTRATION: NEW YORK CITY CHARTER § 1057-a**

A. Participating Agencies

Pursuant to Charter § 1057-a, participating City agencies are required to include in all new or renewed agreements with contractors having regular contact with the public in the daily administration of their business a mandate that they follow the guidelines of the Article. The participating City agencies are: the Administration for Children’s Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; the community boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms

In accordance with Charter § 1057-a, the Contractor, if a contractor having regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

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

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

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

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

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

(6) For the purposes of Part A of this article, the word “contractor” shall be deemed to include subcontractors having regular contract with the public in the daily administration of their business.

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

1. Assistance in Completing Forms

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

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

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

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

(4) The provision of Part B services by the Contractor may be subject to Department protocols, including one on confidentiality.

D. Required Statements

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

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

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

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

(4) The Contractor and the Contractor’s employees shall not:

(a) seek to influence an applicant’s political preference or party designation;

(b) display any political preference or party allegiance;

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

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

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this article are material conditions of this Agreement. In the event the Department receives information that the Contractor is in violation of the provisions of this article, the Department shall review such information and give the Contractor an opportunity to respond. If the Department finds that a violation has occurred, the Department shall have the right to terminate this Agreement and procure the services or work from another source in any manner the Department deems proper. In the event of such termination, the Contractor shall pay to the Department, or the Department in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this Agreement and the cost to the Department of completing performance of this Agreement either itself or by engaging another contractor or contractors.

**ARTICLE 3. PARTICIPATION IN AN INTERNATIONAL BOYCOTT: NEW YORK CITY ADMINISTRATIVE CODE § 6-114**

A. The Contractor agrees that neither the Contractor nor any substantially‑owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of l979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Contractor or a substantially‑owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of l979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render forfeit and void this contract.

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

**ARTICLE 4. ELECTRONIC FUNDS TRANSFER**

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

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

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

**ARTICLE 5.** **SUBCONTRACTOR REPORTING SYSTEM THROUGH THE CITY’S PAYEE INFORMATION PORTAL**

1. As of March 2013, the City has implemented a new web based subcontractor reporting system through the City’s Payee Information Portal (“PIP”), available at [www.nyc.gov/pip](http://www.nyc.gov/pip). PIP is a self-service site that allows Contractors and Subcontractors to manage their own contact information, view payments from the City, and enroll in commodity codes to receive solicitations. Contractors and subcontractors are required to have a PIP account in order to use the new system. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at [pip@fisa.nyc.gov](mailto:pip@fisa.nyc.gov).
2. In March 2013, new contracts valued over one million dollars ($1,000,000.00) will be required to report subcontract data on-line and in June 2013, all contracts over two hundred fifty thousand dollars ($250,000.00) will also report subcontractor information on-line.
3. In order to obtain subcontractor approval under Article 6 of this Agreement and PPB Rule § 4-13, Contractor is required to list the subcontractor in the system. For each Subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor’s industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within thirty (30) days of making the payment. If any of the required information changes throughout the term of the Agreement, Contractor will be required to revise the information in the system.
4. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement.

**ARTICLE 6. NEW YORK CITY FOOD STANDARDS**

**A. 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 elsewhere in this Agreement, 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 Agreement, any healthy food promotional materials provided to the Contractor by the Department.

B. **New York City Food Standards**. This Article 7 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, search term = “food standards”) for any vending machines to which program participants are granted access.

Rider to Human Services Contracts

Access to Non-Public Areas

Effective April 16, 2018, Local Law 246 of 2017 is codified in the New York City Administrative Code at Section 4-210. The law in part applies to any contractor having regular contact with the public in the daily administration of human services at any location, whether or not on city property, where such services are provided under a City contract. Accordingly, Contractor agrees to the following requirements:

In connection with the services provided under this Agreement, Contractor shall not knowingly permit and shall ensure that its subcontractors do not knowingly permit Enforcement Personnel to have access to non-public areas of the facilities where the services are provided unless:

1. such Enforcement Personnel are authorized to have access pursuant to an agreement, contract, or subcontract;

2. such Enforcement Personnel present a judicial warrant;

3. access is otherwise required by law;

4. such Enforcement Personnel are accessing such non-public areas as part of a cooperative arrangement involving city, state, or federal agencies;

5. access furthers the purpose or mission of a city agency; or

6. exigent circumstances exist.

For the purposes of this rider, the phrase “Enforcement Personnel” means government personnel who are empowered to enforce civil or criminal laws, but excludes personnel of the City, the New York City Department of Education, or a local public benefit corporation or local public authority.

**Identifying Information Rider**

(To supplement the City Standard Human Services Contract,

the Discretionary Fund Contract for human services contracts less than $100,000, other human services contracts and other contracts designated by the Chief Privacy Officer)

**Section 1.01 Background.**

Local Laws 245 and 247 of 2017 (codified at New York City Charter (“Charter”) Section 8 subdivision (h) and the Administrative Code of the City of New York (“Admin. Code”) Sections 23-1201 to -1205) are effective June 15, 2018. Such laws apply to human services contracts and other contracts designated by the City Chief Privacy Officer that involve the collection, retention, or disclosure of “Identifying Information” in connection with services provided under a City contract. Accordingly, in connection with the services provided under this Agreement, Contractor may collect, retain, and disclose Identifying Information only in accordance with the requirements of this Identifying Information Rider, the policies and protocols adopted pursuant to Admin. Code Sections 23-1201 to -1205, the other provisions of this Agreement and as otherwise required by law.

**Section 1.02 Definitions.**

1. “Agency” means the City agency or office through which the City has entered into this Agreement.

1. “Agency Privacy Officer” means the person designated to exercise functions under Admin. Code Sections 23-1201 to -1205 by the Agency through which the City is a party to this Agreement.

1. “City Chief Privacy Officer” means the person designated by the Mayor pursuant to Charter Section 8 subdivision (h) as the City’s Chief Privacy Officer or such person’s designee.

1. “Exigent Circumstances” means circumstances where collection or disclosure is urgently necessary, such that procedures that would otherwise be required cannot be followed.

1. “Identifying Information” means any information provided by the City to Contractor or obtained by Contractor in connection with this Agreement that may be used on its own or with other information to identify or locate an individual. Identifying Information includes, but is not limited to: name, sexual orientation, gender identity, race, marital or partnership status, status as a victim of domestic violence or sexual assault, status as a crime victim or witness, citizenship or immigration status, eligibility for or receipt of public assistance or city services, all information obtained from an individual’s income tax records, an individual’s Social Security number, information obtained from any surveillance system operated by, for the benefit of, or at the direction of the New York City Police Department, motor vehicle information or license plate number, biometrics such as fingerprints and photographs, languages spoken, religion, nationality, country of origin, place of birth, date of birth, arrest record or criminal conviction, employment status, employer information, current and previous home and work addresses, contact information such as phone number and email address, information concerning social media accounts, date and/or time of release from the custody of the Administration for Children’s Services, the Department of Correction, or the New York City Police Department, any scheduled court appearances, any scheduled appointments with the City, the Contractor or its subcontractor that provides human services or other services designated by the City Chief Privacy Officer, and any other category of information designated by the City Chief Privacy Officer.

**Section 1.03 Collection.**

Absent Exigent Circumstances, Contractor shall not collect Identifying Information unless such collection (a) has been approved by the Agency Privacy Officer or the City Chief Privacy Officer and the collection of such Identifying Information is in furtherance of Contractor’s obligations under this Agreement; (b) is required by law or treaty; (c) is required by the New York City Police Department in connection with a criminal investigation; or (d) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.

**Section 1.04 Disclosure.**

* 1. Absent Exigent Circumstances, Contractor shall not disclose Identifying Information unless such disclosure (a) has been authorized in writing by the individual to whom such information pertains or, if such individual is a minor or is otherwise not legally competent, by such individual's parent, legal guardian, or other person with legal authority to consent on behalf of the individual; (b) has been approved by the Agency Privacy Officer or the City Chief Privacy Officer and the disclosure of such Identifying Information is in furtherance of Contractor’s obligations under this Agreement; (c) is required by law or treaty; (d) is required by the New York City Police Department in connection with a criminal investigation; or (e) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.

* 1. If Contractor discloses an individual’s Identifying Information in violation of this Rider, Contractor shall notify the Agency Privacy Officer. In addition, if such disclosure requires notification to the affected individual(s) pursuant to the policies and protocols promulgated by the City Chief Privacy Officer under subdivision 6 of Section 23-1203, in the discretion of the Agency Privacy Officer Contractor shall either (i) make reasonable efforts to notify such individual(s) in writing of the Identifying Information disclosed and to whom it was disclosed as soon as practicable or (ii) cooperate with the Agency’s efforts to notify such individual(s) in writing. The City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any law, administrative or judicial order, or the City Chief Privacy Officer to address the disclosure, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a disclosure by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Agency shall provide Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, Contractor shall pay directly for the costs, detailed above, if any.

* 1. Section 1.04(B) shall not require any notification that would violate any law or interfere with an investigation or otherwise compromise public safety pursuant to subdivision e of Section 23-1204.

**Section 1.05 Exigent Circumstances.**

In the event Contractor collects or discloses Identifying Information due to Exigent Circumstances, with no other basis for collection or disclosure under subdivisions b or c of Section 23-1202, Contractor shall send to the Agency Privacy Officer information about such collection or request and disclosure, along with an explanation of why such Exigent Circumstances existed, as soon as practicable after such collection or disclosure. This section shall not require any such notification for collection or disclosure of Identifying Information that: (a) is required by the New York City Police Department in connection with an open criminal investigation; (b) is required by a City agency in connection with an open investigation concerning the welfare of a minor or other individual who is not legally competent; or (c) occurs in the normal course of performing Contractor’s obligations under this Agreement and is in furtherance of law enforcement or public health or safety powers of the Agency under Exigent Circumstances.

**Section 1.06 Retention.**

Contractor shall retain Identifying Information as required by law or as otherwise necessary in furtherance of this Agreement, or as otherwise approved by the Agency Privacy Officer or the City Chief Privacy Officer.

**Section 1.07 Reporting.**

Contractor shall provide the Agency with reports as requested by the Agency Privacy

Officer or City Chief Privacy Officer regarding the collection, retention, and disclosure of Identifying Information by Contractor. Each such report shall include information concerning Identifying Information collected, retained, and disclosed, including: (a) the types of Identifying Information collected, retained, or disclosed; (b) the types of collections and disclosures classified as “routine” and any collections or disclosures approved by the Agency Privacy Officer or City Chief Privacy Officer; and (c) any other related information that may be reasonably required by the Agency Privacy Officer or City Chief Privacy Officer.

**Section 1.08 Coordination with Agency Privacy Officer.**

The Agency may assign powers and duties of the Agency Privacy Officer to Contractor for purposes of this Agreement. In such event, Contractor shall exercise those powers and duties in accordance with applicable law in relation to the Agreement, and shall comply with reasonable directions of the Agency Privacy Officer and City Chief Privacy Officer concerning coordination and reporting.

**Section 1.09 Conflicts with Provisions Governing Records, Audits, Reports and Investigations.**

To the extent allowed by law, the provisions of this Rider shall control if there is a conflict between any of the provisions of this Rider and, as applicable, either (i) Article 5 of Appendix A (General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services); (ii) if the value of this Agreement is $100,000 or less and the Agreement is funded by City Council Discretionary Funds, Article 7(E) and Rider 1, Article 1 of the Agreement; or (iii) if neither (i) nor (ii) apply, the Investigations Clause, and other provisions concerning records retention, inspections, audits, and reports designated elsewhere in the Agreement. The provisions of this Rider do not replace or supersede any other obligations or requirements of this Agreement.

**Section 1.10 Subcontracts.**

1. Contractor shall include this Rider in all subcontracts to provide human services or other services designated in the policies and protocols of the City Chief Privacy Officer.
2. Contractor agrees that it is fully responsible to the Agency for the compliance with this Rider by its subcontractors that provide human services or other services designated by the City Chief Privacy Officer.

**Section 1.11 Disclosures of Identifying Information to Third Parties.**

Contractor shall comply with the City Chief Privacy Officer’s policies and protocols concerning requirements for a written agreement governing the disclosure of Identifying Information to a third party.

**COVID-19 Rider**

As a result of the COVID-19 pandemic, the following provisions shall apply:

1. Contractor shall provide Program Services during FY21 either in-person (“In-Person Services”) at the site or sites identified in the applicable Appendix/Exhibit for Workscope Program Schedule (the “Site”) or remotely through the use of one or more videoconferencing platforms approved by DYCD (“Remote Services”). The schedule of In-Person Services and Remote Services during FY21 shall be described in the applicable Appendix/Exhibit for Workscope Program Schedule and approved by DYCD.
2. Contractor shall comply with the following requirements in providing In-Person Services during FY21 (the “COVID-19 Public Health Provisions”):
   1. Contractor shall review and comprehend the NY State Forward office re-opening guidance for essential businesses. Per Executive Order 202.6 issued by the Governor of the State of New York, human service providers are designated as essential businesses. Contractor shall submit an electronic affirmation to New York State that it has reviewed the re-opening guidance and shall operate in accordance with such guidance.
   2. Contractor shall complete a “NY State Forward Safety Plan Template” for each Site prior to commencing Program Services for FY21. Each Site shall have a copy of such Safety Plan on file, which shall be made available for inspection upon request to DYCD and other City and State oversight authorities.
   3. Contractor shall designate a Site Safety Monitor at each Site who shall ensure compliance with Contractor’s Safety Plan.
   4. Contractor shall comply with all Executive Orders issued by the Governor of the State of New York related to COVID-19 public health measures, including Executive Order Number 202 “Declaring a Disaster Emergency in the State of New York” issued on March 7, 2020 and continued as of July 21, 2020, for as long as such orders are in effect.
   5. If applicable, Contractor shall comply with the “Reopening New York Child Care and Day Camp Programs Guidelines” and the “Interim Guidance for Child Care and Day Camp Programs During the COVID-19 Public Health Emergency” issued by the New York State Department of Health (“DOH”) as of June 26, 2020.
3. Contractor shall comply with the following requirements in providing all Remote Services during FY21:
   1. Contractor shall utilize one or more secure videoconferencing platforms for the provision of Remote Services during FY21. Contractor shall obtain the necessary subscriptions, licenses, and approvals for the use of such platforms. Contractor shall not infringe upon any intellectual property rights in the use of such platforms. Contractor shall be responsible for installing any software and security updates for such platforms.
   2. Contractor shall have the capacity to conduct meetings, workshops, and trainings remotely using such platforms, and ensure that its staff are properly trained to use such platforms.
   3. Contractor shall keep track of attendance during Remote Services.
   4. Contractor shall ensure accessibility of Remote Services in compliance with the Americans with Disabilities Act.
   5. Contractor shall review and make best efforts to comply with the recommendations in the “Frequently Asked Questions Regarding Remote Program Services” issued by DYCD as of July 14, 2020 and attached hereto as Attachment 1 and made a part hereof in an effort to ensure appropriate staff and participant conduct during provision of Remote Services.
4. Contractor shall comply with any additional DYCD, City, State or federal guidance provided from time to time with respect to COVID-19 Public Health Provisions or with respect to Remote Services.

**ATTACHMENT 1**

**FAQ Regarding Remote Program Services**

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**Frequently Asked Questions Regarding Remote Program Services**

This FAQ is for Providers funded by the New York City Department of Youth and Community Development providing program services remotely in whole or in part. DYCD may update and revise this FAQ.

**Can DYCD-funded program services be provided remotely?**

*Yes, if approved by DYCD as part of your workscope (which may also include in-person services), program services may be provided remotely using video-conferencing applications. Providers should use their discretion in determining whether their program services can be provided remotely, taking into consideration the nature of the services and whether program participants have the ability to access services through the internet.*

**What are some recommended best practices for hosting remote program services?**

*DYCD recommends that you always create a password for your remote meeting. DYCD also recommends that you designate a moderator for your remote meeting. The moderator should be able to control participants’ ability to mute/unmute and share screens and enable/disable private chats between participants. Finally, DYCD recommends that you create a waiting room for your remote meeting, from which the moderator can admit participants into the meeting.*

**Can remote DYCD-funded program services be recorded?**

*Recording of remote program services is permitted if all meeting participants are notified that the meeting will be recorded both in advance of the meeting (i.e. in the meeting invitation) and during the meeting itself (i.e. through an on-screen notification displayed at the beginning of the meeting). Participants must be given the option to turn off their video feed if they do not wish to be recorded.*

**Should parents/guardians be notified if youth are participating in remote program services?**

*Yes, providers should notify parents/guardians if participants under the age of 18 are participating in remote program services. Such notification should occur in advance of the remote meeting and should state the purpose and schedule of the meeting (or recurring meetings), and if it will be recorded. Notification can be done via email.*

**Are there any other special considerations for remote program services?**

*Yes. DYCD recommends that providers create and distribute a standard of online behavior for meeting participants. This includes prohibiting profanity, nudity, cyber-bullying, and sexual harassment. The meeting moderator should remove any participant who fails to comply with the standard of online behavior. Providers must also ensure that meeting participants know how to use basic functionalities such as turning their camera on/off and muting/unmuting their microphones. Additionally, providers must continue to comply with DYCD’s Incident Reporting Policy and Social Media Policy.*

**Do the City’s records retention and audit requirements apply to remote program services?**

*Yes, any records created during remote program services are subject to the audit and records retention requirements of your City contract. This includes any recording of remote program services.*

**Does the City’s Identifying Information Law apply to remote program services?**

*Yes, remote program services must comply with the City’s Identifying Information Law. Be very mindful of sharing personal identifying information or other sensitive and/or confidential information during remote program services.*

**EXHIBIT A**

**DESIGNATED PROGRAM SERVICES WORKSCOPE**

Requirements for All Designated Program Services

1. If legal services to immigrants on matters of adjusting status are included in the Designated Program Services:
   1. Contractor must either:

i. have a person licensed to practice law in the State of New York who, within the past five (5) years, has acquired a minimum of two (2) years of legal experience in immigration law ("Attorney"), who may be either employed or retained as a consultant by Contractor, and who shall review and sign each application before it is filed and supervise the work of any non-attorney assigned to legal matters; or

ii. have a status of official recognition from the Board of Immigration Appeals ("BIA") for the agency, as well as have staff who are BIA-accredited and oversee the completion of, and sign each application before filing.

* 1. Any Attorney or BIA-accredited staff responsible for completing, reviewing and signing the applications must have the opportunity to meet with each applicant during the process to address any issue(s) which might adversely affect the application.
  2. Professional Liability Insurance shall be maintained by the Contractor or retained Attorney in the amount of at least one million dollars ($1,000,000) per claim. Contractor shall provide to the Department, at the time of the request for approval of this Agreement or any Attorney retainer agreement, evidence of such Professional Liability Insurance on forms acceptable to the Department.

1. Designated Program Services reimbursed under this Agreement shall be of good quality, shall maximize the effectiveness of the Discretionary Funds awarded to them, and shall not be funded from any other public or private source.
2. Designated Program Services and the facility(s) in which they are provided shall have received, and shall maintain for the Term, all applicable certifications, licenses, permits, and governmental approvals.
3. Eligibility for or participation in Designated Program Services shall not be restricted on the basis of actual or perceived age, 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.
4. Designated Program Services shall not be targeted to specialized populations based on actual or perceived age, 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 without written authorization by the Department to do so.
5. Designated Program Services delivered in public or private schools:
   1. shall not be restricted to students who attend the school or their families;
   2. shall be publicly advertised in a manner calculated to invite participation on a non-discriminatory basis by students and families in the community;
   3. shall be limited to out-of-school time activities or other proper public purposes; and
   4. shall be provided only at times other than the regularly scheduled school day.
6. Incidents shall be reported as follows:
   1. Contractor will notify the Department of any injury to any participant, employee, volunteer, officer, visitor, or any other person which occurs in connection with the Designated Program Services and of any damage to the program site or any damage to or theft of equipment purchased with Discretionary Funds. Telephone notification must be given to the Department within twenty-four (24) hours of the incident, followed by a written report on the Department’s Incident Report Form delivered to the Department within three (3) working days.
   2. Contractor will notify the Department of any incident or allegation of abuse of a participant by any of Contractor’s staff, paid or volunteer. The term “abuse” here means any physical, sexual, emotional, or verbal abuse, or any other maltreatment of a program participant. This notification must be made by telephone to the Department immediately upon discovery, followed by a written report on the Department’s Incident Report Form within three (3) working days. Compliance with this reporting requirement does not satisfy any other legally mandated reporting of abuse, such as to the New York State Central Register of Child Abuse and Maltreatment.

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| **Basic Data** | | | | | |
| **Primary Name:** | | | | | |
| **Additional Name:** | | | | | |
| **Name of Executive Director:** | | | | | |
| **Office Location (Street Address & Suite Number):** | | | | | |
| **City:** | | **State:** | | **Zip:** |
| **Contractor General Telephone (1):** | | | | | |
| **Contractor General Telephone (2):** | | | | | |
| **Mailing Address:** | | | | | |
| **City:** | | **State:** | | **Zip:** | |
| **Contact Name/Title:** | | | | | |
| **Contact Telephone:** | | | | | |
| **Contact Fax:** | | | | | |
| **Contact Email:** | | | | | |
|  | | | | | |
| *Board Chairperson Information* | | | | | |
| **Name of Chairperson of the Board:** | | | | | |
| **Address of the Chairperson:** | | | | | |
| **Telephone Number of the Chairperson:** | | | | | |
| **Email Address of Chairperson:** | | | | | |

1. Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to Administrative Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time. [↑](#footnote-ref-2)