

HHC Terms and Conditions

Form 110-96

Part II

ARTICLE I

SPECIFIC TERMS

1. **SPECIFIC CONTRACT TERMS.** The specific terms of this Contract between the Corporation and the Contractor, such as the nature of the goods and/or services to be supplied hereunder (the “Goods” and/or the “Services”), the price, payment terms, the quantity of the Goods and/or Services, the timing for delivery and/or performance etc. are as set forth in any request for proposals or for bids issued by the Corporation, Contractor’s proposal or bid made in response to a request for proposals or bids, a purchase order issued by the Corporation or by a separate document that sets forth all relevant business terms, as the case may be (such term-specific documents shall be incorporated herein by reference as “Part I of this Contract.” The Contractor shall furnish and deliver the Goods and/or Services in the manner, within the delivery time, and to the destination as specified in Part I of this Contract, and shall accept the sums set forth therein as full compensation. If the Goods purchased hereunder are, by their nature or trade practice, subject to variations in quantity, an overrun or under-run may be permitted by the Corporation. The percent and applicability (by item or entire quantity) is set forth in Part I of this Contract.

2. **INCONSISTENCIES.** In the event of any inconsistencies between or among these Terms and Conditions and the elements of Part I of this Contract, the following principles shall apply: Part II of this Contract shall control over any portion of Part I of this Contract; any separate document that sets forth the relevant terms and conditions shall control over any other portion of Part I of this Contract; and the Corporation’s request for bids or request for proposals shall control over the Contractor’s bid or proposal submitted in response thereto.

3. **GOODS AND SERVICES.** This form is to be used with contracts for goods or services or goods and services. References that are inapplicable to the particular transaction are to be ignored. For example, references to the delivery of goods should be ignored in contracts for services only.

ARTICLE II

SPECIFICATIONS; DEFECTS; GUARANTIES

1. **COMPLIANCE WITH SPECIFICATIONS; WARRANTY.** All Services and/or Goods, including any parts thereof, shall comply in all respects with the standards provided for in Part I of this Contract. The Contractor guarantees all Goods, including any parts thereof, against any defects of workmanship, construction and material and all Goods shall be new and not previously used. All Services shall be performed by the Contractor in a good and workmanlike manner. The Contractor will repair or replace within 30 days from date of notice by the Corporation, at its own expense and to the reasonable satisfaction of the Corporation, any Goods that have become defective within one year from date of acceptance of final delivery of such Goods by the Corporation, provided that such defect was not caused solely by negligence on the part of the Corporation. Within 30 days of notice by the Corporation, the Contractor will correct any Services improperly performed.

2. **INSPECTION AND REJECTION OF GOODS.**

(a) The Corporation may inspect the Goods at the point of delivery, or at any other place of its choosing. The Corporation may make additional inspections at the plant of the Contractor or of the manufacturer

or packer. The Corporation's exercise of such inspection right shall not waive any right to later reject, revoke acceptance, or recover damages for Goods which were initially accepted but that are later determined to be defective, nor shall it waive the Contractor's obligation to deliver conforming Goods. The Corporation may withhold or revoke acceptance of or reject any Goods which are found, upon examination, not to conform to the terms of the Contract provided that prompt notice of rejection is given.

(b) The Contractor shall remove any nonconforming Goods at its own expense within a reasonable time after being notified of a rejection. Rejected Goods left longer than ten days after notice of rejection may be regarded as abandoned and the Corporation may dispose of them at the reasonable cost of the Contractor.

(c) The Corporation shall not be obligated to sell or resell any rejected Goods to minimize the Contractor's damages.

(d) Any right of the Contractor to "cure" as defined in Section 2-508 of the New York Uniform Commercial Code shall be exercised by the Contractor within a reasonable time.

(e) The Contractor shall bear the reasonable cost of any further inspections required due to the Corporation's justified rejection or revocation of acceptance.

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

3. **REPLACEMENT GOODS OR CORRECTIVE SERVICES.** Should Section 2, above become operative, a new guarantee period of one year shall become effective for Goods so repaired or replaced and for any Services corrected, dating from the time of acceptance of final delivery of such repaired or replaced Goods by the Corporation, or from the date of performance of such corrective Service by the Contractor. The original one year guarantee will remain in effect on all Goods and Services that were not defective.

4. **REPAIR, REPLACEMENT OR CORRECTION BY THE CORPORATION.** If the Contractor fails to repair or replace any defective Goods within 30 days from the date of notice given in accordance with Section 2, above, the Corporation, without limiting any other remedy available to it, may repair or replace such defective Goods at its own reasonable expense, and may subtract the reasonable cost of the repair or replacement from any money due to the Contractor. If there is no money due to the Contractor, the Contractor shall pay the Corporation the reasonable cost of such repair or replacement. This guarantee is in addition to, and not in substitution of, any express or implied guarantee or warranty which the Contractor may offer as part of the consideration for the purchase of the Goods, or which is applicable to this Contract as a matter of law.

ARTICLE III **DELIVERY OF GOODS/PERFORMANCE OF SERVICES**

1. **QUANTITIES.** The quantities of Goods to be provided under Part I of this Contract are merely estimates based upon experience or projected requirements. The Corporation will order the quantities it actually requires, and shall neither be compelled to order more than it requires, nor shall it be limited by the total estimated amount. The Corporation shall be under no requirement to purchase any greater quantity of Goods than those that it actually orders.

2. **RISK OF LOSS.** The Contractor shall bear the risk of loss of all Goods until the Corporation has inspected and accepted them or ten days after delivery, whichever comes first. If the Corporation revokes acceptance, the Contractor bears the risk of loss thereafter.

3. **CONTAINERS AND REELS.** Delivery containers and reels shall become the property of the Corporation.

4. **DELIVERY HOURS.** Deliveries shall be made between 8:00 A.M. and 12 Noon and 1:00 P.M. and 3:30 P.M. Monday through Friday, except holidays, and at other times by special arrangement.

5. **DELIVERY TIME.** Delivery time shall be computed in calendar days.

6. **DELAY IN DELIVERY OF GOODS; DAMAGES FOR DELAY.**

(a) The time of delivery may be extended in either of the following ways:

(1) If the delivery by the Contractor is delayed by an act or omission of the Corporation, the Contractor shall be allowed a corresponding extension of time for delivery, and no claim for the delay or damages resulting therefrom shall be made by or allowed to the Contractor; or

(2) If the delivery by the Contractor is delayed by a *force majeure* event such as acts of God, war, civil insurrection, strikes, weather, etc. then the Contractor shall promptly give notice to the Corporation of the circumstances and their anticipated duration and the Contractor shall be allowed an extension of the time for delivery of one day for each day of such delay. However, should such extension subject the Corporation to an emergency necessitating the purchase of the Goods involved elsewhere, the Corporation may purchase such Goods without liability to the Contractor. To the extent such purchases are made, the Corporation shall be relieved of the obligation to purchase such Goods from the Contractor and the Contractor shall be relieved of the obligation to furnish such goods to the Corporation.

(b) Any extension of the time for delivery pursuant to subdivision (a) (1) and (2) of this Article III, (4) conditioned upon the Contractor's prompt notification of the Corporation, before the time for delivery expires, of the necessity for such an extension.

(c) If the Contractor's performance is delayed by any reason under the reasonable control of the Contractor, or if the Contractor fails to notify the Corporation as required under subparagraph (a) and (b) above, the Contractor must pay the Corporation one-half of one per cent (0.5 %) of the contract value of the delayed Goods for each calendar day of the delay. This sum does not constitute a penalty, but has been designated in view of the difficulty of accurately ascertaining the loss the Corporation will suffer by reason of such delay. The Corporation may deduct and retain the amount of said charges out of any money which may be due or become due to the Contractor under this Contract. Alternatively, the Corporation may, in its discretion, obtain the Goods elsewhere without liability to the Corporation. If the new purchase price is higher than the purchase price under this Contract, the Corporation may deduct and retain the amount of the increase from any money which may be due or become due to the Contractor under this Contract and the Contractor shall be liable to the Corporation for any remaining excess.

(d) The delivery and acceptance of any Goods after the delivery date shall not be deemed a waiver of the right of the Corporation to terminate this Contract if permitted under any other provision of this Contract.

7. **LABELS** The original, un-mutilated label or marking of the manufacturer must be securely affixed to all Goods customarily labeled or identified. Failure to comply with this requirement may be considered

sufficient cause for rejection. When a label or marking is required by any regulatory agency, it must be affixed to all Goods delivered under this Contract.

8. **PACKING, PACKAGING, MARKING.** Goods delivered to the Corporation shall be packaged in accordance with standard commercial practices and any applicable specifications, and in to prevent damage in transit. Each package shipped or delivered shall be marked with the order number, item number, a brief description of the content, and the place of delivery (building, floor, and room number).

9. **DELAY IN PERFORMANCE OF SERVICES; DAMAGES FOR DELAY.**

(a) The time of performance in respect of any Services may be extended in either of the following ways:

(i) If performance by the Contractor is delayed by an act or omission of the Corporation, the Contractor shall be allowed a corresponding extension of time for performance, and no claim for the delay or damages resulting therefrom shall be made by or allowed to the Contractor; or

(ii) If performance by the Contractor is delayed by a *force majeure* event such as acts of God, war, civil insurrection, strikes, weather, etc. then the Contractor shall promptly give notice to the Corporation of the circumstances and their anticipated duration and the Contractor shall be allowed an extension of one day for each day of such delay. However, should such delay in performance of the Services subject the Corporation to an emergency necessitating the hiring of the Services involved elsewhere, the Corporation may hire such Services without liability to the Contractor. To the extent such Services are hired elsewhere, the Corporation shall be relieved of the obligation to hire such Services from the Contractor and the Contractor shall be relieved of the obligation to furnish such Services to the Corporation.

(b) Any extension of the time for delivery pursuant to subdivision (a) (1) and (2) of this Article III, (8) is conditioned upon the Contractor's prompt notification of the Corporation, before the time for performance expires, of the necessity for such an extension.

(c) If the Contractor's performance is delayed by any reason under the reasonable control of the Contractor, or if the Contractor fails to notify the Corporation as required under subparagraph (a) and (b) above, the Contractor must pay the Corporation one-half of one per cent (0.5 %) of the contract value of the delayed Services for each calendar day of the delay. This sum does not constitute a penalty, but has been designated in view of the difficulty of accurately ascertaining the loss the Corporation will suffer by reason of such delay. The Corporation may deduct and retain the amount of said charges out of any money which may be due or become due to the Contractor under this Contract. Alternatively, the Corporation may, in its discretion, obtain the Services elsewhere without liability to the Corporation. If the new contract price is higher than the price under this Contract, the Corporation may deduct and retain the amount of the increase from any money which may be due or become due to the Contractor under this Contract and the Contractor shall be liable to the Corporation for any remaining excess.

10. **DUPLICATE AND OVERSHIPMENTS.** If the Contractor should ship a duplicate order or over-ships any order, the Contractor shall remove the excess Goods at its own expense upon request by the Corporation. If the Contractor fails to remove such Goods within 30 days, the Corporation may dispose of them and charge the Contract with the reasonable cost of such disposal.

ARTICLE IV
PAYMENT

1. **BILLING; AUDIT.**

(a) The Contractor shall bill the appropriate hospital or other operational unit of the Corporation as specified by the Corporation.

(b) At the Corporation's request made upon reasonable notice, the Contractor shall make available all records and records pertaining to this Contract directly or indirectly, for audit, inspection and/or investigation by the Corporation, the City of New York (the "City"), acting through its Comptroller, the U.S. government or any other persons authorized by the Corporation. Such audit, inspection and/or investigation may include examination and review of the source and application of all funds from the City, the State of New York (the "State"), the Federal Government, private sources, or any other source.

(c) The Contractor shall, upon the Corporation's notice submit documentation and justification in support of all invoices rendered by the Contractor under this Contract to permit the evaluation of the accuracy of the invoices.

(d) The Contractor shall maintain separate and accurate books and records in accordance with generally accepted accounting procedures. The Contractor shall retain such documents for six years after the final payments or termination of this Contract, whichever is later.

(e) If an audit, inspection, or investigation is commenced, the Corporation may withhold payment hereunder until the Contractor provides the cooperation required hereunder.

2. **PAYMENT.** The Corporation will make every effort to pay invoices on a timely basis after proper delivery of goods or performance of services. The Corporation may also avail itself of any discounts for payment within prescribed times when so provided in Part I of this Contract. The qualification for any such discount will be calculated from the receipt of the Goods or the performance of the Services, as the case may be, or from the date of the invoice for the same, whichever is later. The Corporation will not pay penalties or interest charges.

ARTICLE V BREACH AND TERMINATION

1. **EMERGENCY**

(a) Whenever, in the reasonable opinion of the Corporation, an emergency arises during the performance of this Contract, the Corporation may suspend or terminate this Contract in whole or in part without liability being incurred by either the Corporation or the Contractor; provided, however, the Corporation shall pay for all Goods previously delivered or for Services previously performed. To exercise the right set forth in this Article V, (1), the Corporation shall give prompt notice to the Contractor invoking this provision and stating the nature of the emergency, its expected duration and the extent of the suspension or termination of this Contract.

(b) If this Contract is terminated in whole or in part pursuant to this Article V, the Corporation may purchase goods to replace the Goods to have been purchased under this Contract.

2. **TERMINATION.** The Corporation shall have the right to terminate this Contract, in whole or in part:

- (i) Upon 30 days' notice to Contractor if the Contractor has breached this Contract and has failed to cure such breach within such 30 day period; provided however if such breach is of such a nature that it cannot be cured within such 30 day period, the Contractor shall be allowed a reasonable time within which to cure

provided that the Contractor gives notice to the Corporation within such 30 day period of its intention to cure and the manner in which it intends to cure and the Contractor thereafter diligently and expeditiously prosecutes such cure to completion and provides regular notices to the Corporation of its progress.

- (ii) Upon 10 days' notice to the Contractor, if the Contractor becomes insolvent, or in the event of the commencement of any proceeding under the Federal or State Bankruptcy Act by or against the Contractor, either voluntarily or involuntarily, or if a receiver for the Contractor's assets has been appointed.
- (iii) Upon 30 days' notice to the Contractor, if the Corporation deems that termination would be in the best interest of the Corporation or the City.

ARTICLE VI **LEGAL DISPUTES**

1. NOTICE; VENUE

(a) All disputes which arise out of the performance of this Agreement shall initially be presented to the Corporation's Procurement Review Board to obtain a determination by that body. The determinations of the Procurement Review Board shall not be binding upon either party; however the Contractor shall not pursue its legal or equitable remedies against the Corporation without having first obtained a determination of the Procurement Review Board. Any complaint subsequently brought by the Contractor must allege that the matter had first been presented to the Procurement Review Board and a determination was rendered.

(b) Any action or proceeding by or against the Corporation shall be brought in the courts of New York State or of the United States sitting in the State of New York, County of New York. The parties shall consent to the dismissal and/or transfer to any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Article VI, (1)(b), the Contractor shall be responsible, and shall promptly reimburse the Corporation, for any attorneys' fees incurred to remove the action

2. **GOVERNING LAW.** Any disputes arising out of this Contract shall be resolved by application of the laws of the State of New York as the same is applied to contracts entered into and wholly to be performed within the State of New York.

3. **LIMITATIONS ON ACTIONS.** No action shall lie or be maintained against the Corporation upon any claim based upon or arising out of this Contract unless such action is commenced within six months of the termination or expiration of this Contract.

4. **NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES.** No claim for personal liability shall be made by the Contractor against any individual officer, agent or employee of the Corporation or the City related to anything done or omitted in connection with this Contract and no claim shall be made by the Corporation against any individual, officer, agent or employee of the Contractor except in the case of any fraud by any of the latter.

ARTICLE VII **EMPLOYMENT**

1. **EQUAL OPPORTUNITY COMPLIANCE.** The Contractor shall comply with Chapter 56 of the New York City Charter (formerly Mayor's Executive Order 50, dated April 25, 1980, as amended) and the rules and regulations promulgated thereunder, including, *inter alia*, that it will not engage in any unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, citizenship status, sexual orientation or affectional preference in all employment decisions including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff and termination and all terms and conditions of employment except as provided by law. This clause shall also apply to sub-contractors or any other person acting on the Contractor's behalf. The Corporation may deduct a penalty of five (\$5) dollars per person from the amount payable to the Contractor under this Contract for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract. Further, the Corporation may cancel or terminate this Contract and the Contractor shall forfeit all amounts due or to become due hereunder for a second or any subsequent violation of this Article VII of this Contract.

2. **MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES.** In accordance with New York State Executive Law, Article 15-A and 9 NYCRR Part 143, contractors awarded Contracts and Sub-Contractors with fees in excess of \$25,000 must comply with the New York State M/WBE Program. Pursuant to the requirements, a goal of ___% was established, ___% MBE and ___ % WBE. Failure to satisfy any requirements established under this Article and in accordance with New York State Executive Law, Article 15-A and 9 NYCRR Part 143 may result in administrative action by the Corporation. Requests for waiver of this requirement during the term of this Agreement must be made prior to final payment. Requests for waiver must satisfy the requirements of New York State Executive Law, Article 15-A, and 9 NYCRR, Section 143.7 ("Waiver") and Section 143.8 ("Good Faith Effort") thereof. Should the requested waiver be denied, the Contractor may request an administrative hearing within seven calendar days of the Contractor's receipt of the denial.

3. **LABOR LAW COMPLIANCE.** The Contractor shall comply with Section 6-109 of the Administrative Code of the City of New York, and with New York Labor Law Section 220-e:

- (i) In the hiring of employees for the performance of work under this Contract or any sub-contract hereunder, neither the Contractor, sub-contractor, nor any person acting on behalf of such Contractor or sub-contractor shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates. The Contractor, sub-contractor, and any person acting on his behalf shall not in any manner discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, disability, sex or national origin. The Contractor shall not refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person or ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person firm or corporation except in order to comply with the Corporation's or a governmental entity's equal employment opportunity requirements.
- (ii) As prescribed by New York Labor Law Section 220-e, there may be deducted from the amount payable to the Contractor under this Contract a penalty of \$50 for each person, for each calendar day during which such person was discriminated against or intimidated in violation of the non-discrimination provisions of this Article VII, (3).

- (iii) As prescribed by Section 6-108 of the NYC Administrative Code, any person or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the non-discrimination provisions of this Article VII, (3) shall, upon conviction thereof, be punished by a fine of not more than \$100 or by imprisonment for not more than 30 days, or both.
- (iv) Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York labor Law or by NYC Administrative Code Section 6-109, all persons employed by the Contractor in the performance of this Contract shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by law.
- (v) Any breach or violation of any part of this Article VII, (3) shall be deemed a material breach of this Contract.
- (vi) This Contract may be canceled or terminated by the Corporation and all sums due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this Article VII, (2) of this Contract.

ARTICLE VIII
INDEMNITY/INSURANCE

1. **INSURANCE REQUIREMENTS.** The Contractor shall not commence performing services under this Contract unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

(a) The Contractor shall maintain, at its expense, Commercial General Liability Insurance covering the Contractor as Named Insured and the Corporation as an Additional Insured in the amount of at least Two Million Dollars (\$2,000,000) per occurrence. Such insurance shall protect the Corporation and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Contract. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

(b) At the Corporation’s direction, if professional services are provided pursuant to this Contract, each of the Contractor and all subcontractors of the Contractor providing professional services, shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Contract in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Contract arising out of the negligent performance of professional Services or caused by an error, omission or negligent act of the Contractor or of its employees.

(c) Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

(d) In addition to the other coverage required hereunder, the Contractor shall maintain, and ensure that each subcontractor maintains, all insurance coverage required by law.

(e) If vehicles are used in the provision of Services, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

(f) If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

2. GENERAL REQUIREMENTS FOR INSURANCE COVERAGE AND POLICIES

(a) All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Corporation.

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

(c) There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Corporation. Any such self-insurance program shall provide the Corporation with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

(d) The Contractor's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

3. PROOF OF INSURANCE

(a) For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following prior to the commencement of any activities under this Contract. ACORD forms are not acceptable proof of workers' compensation coverage.

- i. C-105.2 Certificate of Workers' Compensation Insurance;
- ii. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
- iii. Request for WC/DB Exemption (Form CE-200);
- iv. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
- v. Other proof of insurance in a form acceptable to the Corporation.

(b) For each policy required under this Contract, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Corporation prior to the commencement of any activities under this Contract. All Certificates of Insurance shall be (i) in a form acceptable to the Corporation and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) accompanied by the endorsement in the Contractor's general liability policy by which the Corporation has been made an additional insured pursuant to this Contract. All Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies

referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

(c) Certificates of Insurance confirming renewals of insurance shall be submitted to the Corporation prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of this Contract.

(d) The Contractor shall provide the Corporation with a copy of any policy required under this Article upon the demand for such policy by the Corporation.

(e) Acceptance by the Corporation of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

(f) If the Contractor receives notice, from an insurance company or other person that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Corporation.

4. MISCELLANEOUS INSURANCE PROVISIONS

(a) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall provide the insurer with timely notice thereof on behalf of the Corporation. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the New York City Health and Hospitals Corporation as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the Corporation. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the Corporation for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the Corporation.

(b) The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the Corporation at any time.

(c) Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the Corporation from exercising any rights or taking such other actions as are available to it under any other provisions of this Contract or at law.

(d) The Contractor waives all rights against the Corporation, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Contract.

(e) If the Contractor requires any subcontractor to procure insurance with regard to any operations under this Contract and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the Corporation, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

5. LIABILITY OF CONTRACTOR

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

(b) The Contractor will defend, indemnify and hold the Corporation harmless from and against all damages and costs arising out of the actions of the Contractor, its employees, agents, subcontractors or assigns in the performance of this Contract. The Corporation may withhold payments due to the Contractor in a reasonable amount required to meet the Contractor's obligations of indemnification as aforesaid regarding any pending bona fide claims but only to the extent that such claims are not being defended by the Contractor's insurance carrier or such insurance carrier has not otherwise accepted responsibility for such claims.

6. **LIABILITY OF CORPORATION.** The Corporation's liability to the Contractor for breach of any of the provisions of this Contract shall not exceed the amount due to the Contractor for Goods delivered or Services performed under this Contract that remain unpaid at the time of such breach. In no event shall the Corporation be liable to the Contractor for incidental or consequential damages. This clause shall supersede any other inconsistent clause of this Contract.

ARTICLE IX MISCELLANEOUS

1. **AMENDMENTS.** This Contract may not be modified except in writing and signed by the party to be charged.

2. **ASSIGNMENT.** Contractor shall not assign, subcontract, transfer or otherwise dispose of this Contract or any interest therein without first obtaining the Corporation's prior written consent. If the Contractor attempts any of the foregoing without the prior written consent of the Corporation, this Contract may be terminated by the Corporation on notice to the Contractor and the Corporation shall thereupon be relieved and discharged from any liabilities or obligations growing out of this Contract provided that nothing herein contained shall be construed to hinder an assignment by the Contractor for the benefit of its creditors made pursuant to law.

3. **BACKGROUND QUESTIONNAIRES.** If VENDEX Questionnaires were required of the Contractor then the following shall apply.

(a) The Contractor represents and warrants that any Questionnaires submitted as part of the VENDEX process in connection with the Corporation's procurement of this Contract (the "Questionnaires") have been fully answered accordance with the Vendor's Guide to Vendex and duly executed and submitted to the Corporation. The Contractor understands that the Corporation's reliance upon the veracity of the information stated therein is a material condition to its execution of this Contract, and that such information may be in no respect misleading.

(b) The Contractor shall submit newly completed Questionnaires to the Corporation every three years or, if applicable, a "Certification of No Change."

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

4. **COMPLIANCE WITH LAW; HIPAA; NEW YORK STATE HOSPITAL CODE SECTION 400.4.**

- i. The Contractor shall obtain all required approvals and licenses from appropriate Federal, State, and City authorities and render all services under this Contract in accordance with applicable laws, rules and regulations.
- ii. If at any time the Corporation determines that a business associate agreement compliant with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) (“HIPAA”) is required to be executed by both parties to maintain compliance with HIPAA, the Contractor shall comply with such requirement.
- iii. If this Agreement is to be performed within a facility where health services are rendered, then, notwithstanding any other provision in this Contract, the Corporation remains responsible for: (a) ensuring that any services provided pursuant to this Agreement complies with all pertinent provisions of Federal, State and local statutes, rules and regulations; (b) planning, coordinating and ensuring the quality of all services provided; and (c) ensuring adherence to the plan of care established for patients.

5. **ENTIRE AGREEMENT.** This Contract, including Parts I and II of this Contract, contains the entire agreement between the parties with respect to the subject matter hereof and all prior or contemporaneous agreements or understandings whether written or oral are merged into this Contract.

7. **FAIR PRACTICES**

(a) The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to secure this Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee or other consideration, contingent upon the award or making of this Contract. To the best of the Contractor’s knowledge, no elected official, officer or employee of the Corporation or any person whose salary is payable in whole or in part from the Corporation’s payroll or by the City Treasury and who has a personal interest in this Contract shall participate in any decision relating to this Contract.

(b) The Contractor represents and warrants that (i) neither the Contractor nor any of its directors, officers, members, partners or employees has any conflict of interest nor shall it acquire any such conflict of interest which would affect in any manner the performance of this Contract, and (ii) that for the duration of its Contract, the Contractor shall not employ any person having a conflict of interest which would in any way affect the performance of the Contract.

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

- (i) The prices in this Contract have been arrived at independently without collusion, consultation, communication, agreement, or the intent of restricting competition concerning pricing with other bidders;
- (ii) Unless otherwise required by law, the Contractor has not knowingly disclosed the prices quoted in this Contract and in the Contractor’s bid either directly or indirectly to any other bidder or to any competitor prior to the bid opening; and

- (iii) The Contractor has not attempted to induce any person, partnership, corporation or other entity to submit or not to submit a bid with the intent of restricting competition.
- (iv) That the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items or (iii) has sold the same items to other customers at the prices being bid, does not constitute, without more, a disclosure within the meaning of subsection (ii) or (iii) above.

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

(e) In the event of a violation of the representations or warranties set forth in paragraphs a, b, c, and d above, the Corporation shall have the right to terminate this Contract upon 30 days' notice provided that the Contractor has not explained any alleged breach to the Corporation's satisfaction. In the event of termination, the Contractor shall not claim or be entitled to recover any moneys due under this Contract. This remedy, if affected, shall not constitute the sole remedy afforded the Corporation for the violation or breach of said representations and/or warranties, nor shall it constitute a waiver of the Corporation's right to claim damages or to take any other action provided for by law or this Contract.

8. **NOTICES.** All notices or communications required or permitted to be given hereunder shall be in writing and if to the Corporation shall be sent to 125 Worth Street, Room 527, New York, New York 10013, Attn: General Counsel and if to the Contractor at the address specified in Part I of this Contract. Notices may be sent by hand delivery, the U.S. Postal Service certified mail return receipt requested or by nationally recognized courier next business day delivery. Notices shall be deemed given upon delivery if delivery is made by hand, within three business days if sent by certified mail and on the next business day if sent by recognized courier with next business day delivery specified.

9. **SALES AND EXCISE TAXES.** The Corporation represents that it is exempt from the payment of sales and excise taxes.

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

11. **INVESTIGATIONS.** The Contractor shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Corporation, the State of New York or the City that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath. If the Contractor, an officer or director of the Contractor or any person under the reasonable control of the Contractor 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 any such governmental body 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, State, any political subdivision thereof or local development corporation within the City, then the Corporation may convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties shall attach for the failure of a person to testify. The

penalties that may attach after a final determination may include but shall not exceed: (a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the Corporation or the City; and/or (b) the cancellation or termination of any and all such existing Corporation or City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted hereunder, 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 Corporation or City incurring any penalty or damages on account of such cancellation or termination. Any monies lawfully due for goods delivered, work done, or fees accrued prior to the cancellation or termination shall be paid by the Corporation or the City, as applicable. As used herein, "license" or "permit" shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

12. **PROVISIONS REQUIRED BY LAW.** Any provision that is required by applicable law to be included in this Contract shall be deemed to have been included.

13. **PATENTED ARTICLES.** The Contractor shall deliver the Goods free from the claim of any third party for any form of intellectual property infringement. The execution of this Contract is deemed to be a warranty by the Contractor that it has inspected the specifications and has determined that no such claim will result from compliance with the specifications. The Contractor shall defend, indemnify and hold the Corporation harmless against any such claim regardless of whether or not the infringement arises out of compliance with the specifications. The Corporation may retain any funds due or to become due to the Contractor sufficient to meet all claims arising from such infringements.

14. **INDEPENDENT CONTRACTOR.** The Contractor is an independent contractor, and not an employee of the Corporation or the City and, in accordance with such status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Corporation or the City, by reason hereof, and that they will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Corporation or the City including, but not limited to, Workers' Compensation or Unemployment Insurance Benefits, Social Security or employee retirement membership or credit.

15. **POOR PERFORMANCE BY CONTRACTOR.**

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

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

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

APPENDIX A

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the New York City Health and Hospitals Corporation that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized officer of broker]