

MEMORANDUM OF UNDERSTANDING

between

THE CITY OF NEW YORK HEALTH AND HOSPITALS CORPORATION

and

THE CITY OF NEW YORK DEPARTMENT OF INVESTIGATION

This agreement, with an effective date of November 30, 2015 (the "Agreement"), is between the New York City Health & Hospitals Corporation ("HHC"), located at 125 Worth Street, New York, New York 10013 and the City of New York ("City") Department of Investigation ("DOI"), located at 80 Maiden Lane, New York, New York 10038.

WHEREAS, HHC is a public benefit corporation that operates 11 acute care hospitals, four nursing homes, six diagnostic and treatment centers, and more than 70 community-based primary care sites in the City, which in the aggregate serve over six million New Yorkers annually; and

WHEREAS, HHC has approximately 35,000 employees and a total expense budget, for Fiscal Year 2016, of approximately \$8.2 billion, of which a portion comes from the City as subsidies, grants, and payment for services; and

WHEREAS, DOI is a law enforcement agency established pursuant to Chapter 34 of the New York City Charter, with jurisdiction over any agency, officer, or employee of the City, or any person or entity doing business with the City, or any person or entity who is paid or receives money from or through the City or any agency of the City; and

WHEREAS, pursuant to the aforementioned Chapter 34 of the New York City Charter, DOI has jurisdiction over HHC, its officers, employees, board members and any person or entity with which HHC does business; and

WHEREAS, DOI is responsible for, among other things, promoting and maintaining integrity and efficiency in municipal operations, by among other things, conducting criminal and other investigations into the business, functions, accounts, methods, and personnel of City agencies, which investigations may lead to preventive controls and operational reforms to improve the way agencies run; and

WHEREAS, pursuant to a resolution of the HHC Board of Directors (the "HHC Board"), dated July 28, 1977, HHC approved the creation of an internal Inspector General to perform with respect to HHC systems evaluation and review, internal audit and investigations which internal Inspector General since then has been employed by HHC and reports to directly to the President and the Chair of HHC's Board of Directors; and

WHEREAS, pursuant to a letter of agreement dated December 12, 1986, the then President of HHC and DOI Commissioner recognized the "full statutory jurisdiction of DOI under the City Charter to investigate HHC" and agreed:

- that the HHC Inspector General shall promptly inform the DOI of all matters in which it is determined that there is a likelihood of corruption or other criminal activity. With respect to such matters the Inspector General shall proceed in collaboration and cooperation with the DOI and keep the DOI updated on the progress of any instance in which either makes referrals of criminal matters to an appropriate prosecuting attorney. HHC recognizes the full statutory jurisdiction of DOI under the City Charter to investigate HHC.
- to consult with the Commissioner prior to the hiring or firing of any HHC Inspector General or any of the senior staff of that office, and agrees that no such hirings or firings by HHC shall take place over the written objection of the Commissioner.
- that apart from the above, the direction of and all managerial responsibility for the Office of the HHC Inspector General including, but not limited to, personnel evaluations, salaries, budgets and disciplinary sanctions will continue to be the sole responsibility of HHC and not of DOI. The Commissioner of DOI further agrees to give the President or Chairman of HHC notice of any investigation conducted by DOI involving HHC except in those rare cases where such notice would jeopardize the investigation.

WHEREAS, DOI and HHC have expressed their mutual desire to prevent fraudulent activity, mismanagement and corruption in connection with HHC’s activities through cooperation and coordination and agree that the creation of an independent Office of the Inspector General under the authority, control and supervision of DOI, rather than HHC, will better serve to meet these goals than to continue having HHC overseen by an internal inspector general.

WHEREAS, on October 22, 2015, the HHC Board adopted a resolution authorizing the President of HHC to enter into a Memorandum of Understanding with DOI to create an Office of the Inspector General for HHC under the authority and control of DOI to replace the existing office within HHC; and

WHEREAS, pursuant to a letter agreement executed by the President of HHC on October 22, 2015 and accepted by the Commissioner of DOI on October 30, 2015, HHC and DOI agreed that:

1. The existing internal HHC Office of the Inspector General shall be abolished.
2. A new Office of the Inspector General for HHC (“HHC OIG”), under the exclusive authority and control of DOI, shall be created. The direction, staffing and resource needs of the HHC OIG shall be determined by DOI.
3. The entire expenses of the HHC OIG, including but not limited to salaries and other benefits for the staff thereof, the cost of appropriate office space, and “other than personal services,” shall be paid for by HHC, in accordance with [this Agreement.]

NOW THEREFORE, the parties hereby agree as follows:

1. The internal HHC Office of the Inspector General, created pursuant to the July 28, 1977 resolution of the HHC Board, is abolished.

2. A new Office of the Inspector General for HHC ("HHC OIG"), under the authority and control of DOI as described herein, is created.

3. The HHC OIG shall be staffed by: (a) an Inspector General ("Inspector General") who shall be appointed by the Commissioner of DOI ("Commissioner") in his sole discretion and after consultation with the President ("President"); and (b) such other staff as the Commissioner of DOI shall deem appropriate. Up to fifty-eight (58) HHC OIG personnel shall be appointed pursuant to this Agreement. The staffing of the HHC OIG may be increased by up to twenty-five (25) additional personnel without the need to amend this Agreement, if, in the Commissioner's sole discretion, such additional personnel are necessary to effectuate the purposes of this Agreement. The Commissioner shall have the right to terminate the appointment of the Inspector General at any time following consultation with the President. Subject to the requirements of the New York State Civil Service Law and any applicable collective bargaining agreement, DOI shall be under no obligation to appoint to positions in the HHC OIG, HHC personnel who worked in the former office of the internal HHC inspector general. The consultation with the President provided for under this paragraph shall consist of verbal or written notice by the Commissioner to the President of the Commissioner's intention to appoint or terminate the appointment of the Inspector General and shall not require the approval of the President of the Commissioner's determination to so appoint or terminate the appointment of the Inspector General.

4. The Inspector General and all other employees of the HHC OIG shall be deemed to be employees of HHC. HHC shall be responsible for the payment of the salaries and benefits of the Inspector General and other staff of the HHC OIG. HHC may, consistent with the terms of this Agreement, seek indemnification for this responsibility in whole or in part from the Office of the Mayor pursuant to a separate agreement between HHC and the Office of the Mayor, the form of which agreement DOI shall have the right to approve. In no case, however, may HHC agree to the funding of fewer HHC OIG staff positions than the number set forth in paragraph 3 above. Subject to the provision set forth in paragraph 3 above regarding consultation with the President regarding the appointment and termination of the appointment of the Inspector General, the Commissioner shall have the exclusive authority to: (a) hire and remove; (b) set the salaries of; (c) assign the duties and responsibilities of; and (d) promote or demote the Inspector General and staff of the HHC OIG.

5. The Inspector General shall report to the Commissioner or his or her designee.

6. The Commissioner and/or his or her Executive Staff shall have the exclusive authority to approve, monitor and supervise all HHC OIG investigations and shall approve the issuance of all subpoenas, the making of all arrests and the making of all referrals of matters to other law enforcement or prosecutorial agencies.

7. The Inspector General shall have the discretion to refer complaints, allegations or information that do not appear to involve fraud, corruption or other criminal activity to HHC for appropriate review and disposition. HHC shall report to the Inspector General on the results of any such review and disposition, and shall immediately inform the Inspector General and cease any investigative action (except as required by law, regulation, or accrediting agency or body) should evidence of fraud, corruption or other criminal activity become evident during HHC's review of matters referred to HHC by the Inspector General.

8. To the maximum extent feasible, consistent with maintaining the integrity of an

investigation and subject to confidentiality constraints imposed by law or necessary agreements with other law enforcement agencies, the Commissioner or Inspector General, or their respective designees, shall keep the President informed with regard to any matters as to which it is determined that there is a substantial likelihood of corruption or other criminal conduct, or any matters where the investigation itself is likely to impact substantially the operation of HHC or the timely procurement of necessary material, equipment, supplies or services.

9. The HHC OIG shall be provided with appropriate office space, to be approved by DOI, and equipment for a professional law enforcement agency, the costs of which shall be borne by HHC in accordance with budgets provided for in Paragraph 10 below.

10. DOI shall develop annual budgets for the HHC OIG, subject to approval and appropriation by HHC. Such budgets shall provide annual appropriations both for Personnel Services (in accordance with the requirements of Paragraphs 3 and 4 above), and for Other Than Personnel Services, adequate to ensure the effective performance of the duties and responsibilities of the Inspector General.

11. Pursuant to this Agreement, HHC agrees to be bound by the provisions of Executive Order 16 of the Mayor of the City of New York, as amended by Executive Orders 72, 78, and 105 (collectively, "EO 16 as amended"), subject to the understanding that EO 16 as amended is deemed to be modified as follows in its application to HHC and its Board members, officers and employees:

- a. Throughout EO 16 as amended, the terms "agency," "any agency," "City agency" or "City" shall be deemed to refer to HHC and references to "Inspector General" shall be deemed to refer to the HHC Inspector General appointed pursuant to this Agreement. References to "officers" of the City or "employees" of the City shall be deemed to refer to officers, board members or employees of HHC.
- b. In Section 3 of EO 16 as amended, the following understandings shall apply:
 - i. Paragraph (a) shall be subject to the provisions of Paragraphs 2 – 6 of this Agreement;
 - ii. Paragraph (c) shall be superseded by the provisions of Paragraphs 8 and 15 of this Agreement;
 - iii. The employment provisions of paragraph (f) shall be superseded by the provisions of Paragraphs 3 and 4 of this Agreement, except for the fourth and fifth sentences of paragraph (f), pursuant to which the Inspector General and any Deputy Inspectors General within the HHC OIG shall be prohibited from promotion into managerial and executive positions within HHC for three years from the date of termination of their employment as Inspector General or Deputy Inspector General; and
 - iv. Paragraph (g) shall be deemed deleted.
- c. In Section 4 of EO 16 as amended, the following understandings shall apply:

- i. The last sentence of paragraph (b) shall be deleted and in its place, the following sentence shall be added: All contracts, leases, licenses or other agreements entered into or issued by HHC shall contain a provision permitting HHC to terminate such agreements or to take other appropriate action upon the refusal of a person dealing with the City or HHC to answer questions in relation to such agreements on the condition of immunity described in this paragraph, except that such a statement shall not be required by HHC in any type of agreement where the Corporation Counsel for the City of New York does not require such a statement.
 - ii. HHC personnel shall not inquire into any complaint, allegation or information of corruption or criminality without first notifying and confirming with the Inspector General or Commissioner. If DOI determines to conduct an investigation on the basis that the subject matter of the complaint, allegation or information may involve corruption or criminality and so informs the President, in writing, within ten (10) business days, HHC shall not conduct an inquiry.
- d. Section 7 of EO 16 as amended, shall be deemed deleted, except that DOI shall conduct background investigations on all staff of the HHC OIG appointed following the effective date of this Agreement. The Memorandum of Understanding between HHC and DOI regarding background investigations, dated November 8, 2002, shall remain in effect.
- e. Section 8 of EO 16 as amended shall be superseded in its entirety by the understanding that the President shall distribute to each director, officer and other employee of the HHC within 90 days of the effective date of this Agreement, and to each director, officer and other employee of the HHC appointed thereafter, a statement explaining the responsibilities of the Commissioner, the Inspector General and all HHC directors, officers and other employees under this Agreement and EO 16 as amended as modified by this Agreement.

12. Pursuant to this Agreement, HHC agrees to be bound by Administrative Code § 12-113, the New York City Whistleblower Law, and any amendments thereto. For the purposes of Administrative Code § 12-113, HHC shall be deemed to be an "agency" of the City of New York.

13. HHC and DOI hereby affirm that the provisions of Chapter 68 of the New York City Charter are as fully applicable to the Board members, officers, and employees of HHC as they are to any other public servant of the City.

14. Except where the Commissioner has approved the referral of a matter to another law enforcement agency pursuant to Paragraph 6 of this Agreement or where the Inspector General has determined that the integrity of a criminal investigation might be compromised, all requests for HHC OIG documents or data, whether in hard copy or in electronic form, by any federal, state or local law enforcement agency shall be subject to prior review and approval by the DOI General Counsel or the General Counsel's designee. All demands or requests for HHC OIG documents made through subpoena or other legal process shall be forwarded to the DOI General Counsel for consultation and

cooperation in preparation of a response that is appropriate to enable HHC to be compliant with law and not in contempt.

15. The Inspector General shall provide the HHC General Counsel or the HHC General Counsel's designee with access to all original records of HHC (deemed to include documents from third parties received in the normal course of business by components of HHC other than the HHC OIG) that are being retained in the custody of the Inspector General. Records prepared after the effective date of this Agreement by the HHC OIG and records, other than original records of HHC or copies of such original records, received after the effective date of this Agreement by the HHC OIG from third parties shall be deemed records of DOI. Any request received by HHC for access to such DOI records under the New York State Freedom of Information Law ("FOIL"), or otherwise, shall be forwarded to DOI's General Counsel. To the extent that documents requested from HHC under FOIL are documents of DOI, HHC will respond as such to the FOIL requestor and provide no further response unless compelled by court order. A copy of any request received by HHC for HHC's records related to the HHC OIG will be shared with DOI's General Counsel and the parties will discuss the best way for HHC to respond consistent with law.

16. To the extent that DOI, pursuant to its authority under EO 16 as amended or its authority to issue subpoenas pursuant to Chapter 34 of the City Charter, requires possession of records from HHC, with respect to which records HHC has a legal duty to maintain the originals, DOI or HHC, at DOI's discretion, shall make copies for DOI of such records and HHC shall, at DOI's request, certify as to the accuracy of such copies. To the extent DOI otherwise takes original HHC records with respect to which HHC has no duty to maintain originals, DOI shall nonetheless return such records to HHC as soon as practicable in DOI's investigative judgment and will deliver copies as soon as possible of any documents that are being removed and not immediately returned, unless, in DOI's judgment, doing so would interfere or threaten to interfere with an ongoing investigation.

17. To the extent that DOI requires access to medical, mental health or other records in the possession of HHC the disclosure of which is limited by local, state or federal law, DOI shall obtain such records pursuant to, as may be necessary: patient or other relevant consent; service on HHC of a subpoena issued pursuant to Chapter 34 of the City Charter; or service on HHC of the order of a court with jurisdiction over HHC. In the event DOI is required to apply for a court order to obtain documents in the possession of HHC, HHC shall not unreasonably oppose any application for such court order. To the extent the records described in this paragraph to which DOI receives access may not by law be redisclosed by DOI to any third party, DOI shall not disclose them.

18. To the extent DOI issues public reports based, in whole or in part, on its review of medical, mental health or other records obtained from HHC containing information the disclosure of which is limited by local, state or federal law, DOI shall provide HHC with a reasonable opportunity to review and comment on such reports prior to public issuance. DOI shall not disclose in, or shall as necessary redact from such reports, information that, by law, may not be publicly disclosed.

19. HHC shall not promulgate any directive, rule or regulation affecting the HHC OIG, other than on routine administrative or personnel matters that are addressed HHC-wide, without prior consultation with the Inspector General or the Commissioner.

20. The HHC General Counsel or the General Counsel's designee shall regularly provide the Inspector General with copies of logs of FOIL requests received by HHC. The Inspector General may request and HHC shall in turn reasonably provide the Inspector General with copies of any such

FOIL requests.

21. DOI and HHC shall use their best efforts to cooperate, and shall respectively issue such policies and procedures as from time to time may be necessary, in order to fully effectuate the terms and purposes of this Agreement.

22. Except as expressly provided in this Agreement, nothing in this Agreement shall be deemed to limit the powers and duties of the Commissioner, the New York City Department of City-wide Administrative Services, the New York City Office of Labor Relations, HHC or any other agency under the City Charter or as may be otherwise provided by law.

23. This Agreement shall continue from year to year unless:

- a. The President notifies the Commissioner, in writing, that this Agreement shall not be renewed, stating the reasons for the decision to terminate this Agreement; or
- b. The Commissioner notifies the President, in writing, that this Agreement shall not be renewed, stating the reasons for the decision to terminate this Agreement.

Any termination of this Agreement by either HHC or DOI shall be made on at least 120 days' notice to the other respective party.

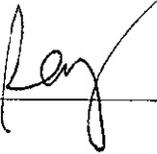
24. This Agreement is conditioned upon the approval by HHC of a budget for Fiscal Year 2016, developed by DOI pursuant to Paragraph 10 above. HHC shall approve a Fiscal Year 2016 budget within 60 days of the effective date of this Agreement; and shall approve budgets for subsequent fiscal years while this Agreement is in effect, within 60 days of the start of the relevant fiscal year. In any fiscal year, the HHC OIG shall be funded at the prior fiscal year's level until an annual budget is developed and approved or until this Agreement is terminated pursuant its terms.

25. Any prior resolutions of the HHC Board regarding the relationship between DOI and the former internal Office of the Inspector General for HHC; and any agreements, understandings or protocols between DOI and the former internal Office of the Inspector General for HHC, are hereby void, to the extent such resolutions, agreements, understandings or protocols are inconsistent with the terms of this Agreement.

- 26. This Agreement may only be modified in a writing signed by the parties hereto.
- 27. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date directly below their respective signatures:

**THE CITY OF NEW YORK
HEALTH AND HOSPITALS CORPORATION**

BY: 

TITLE: President

DATE: 11/30/2015

**THE CITY OF NEW YORK
DEPARTMENT OF INVESTIGATION**

BY: 

TITLE: Commissioner

DATE: 11-30-15