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Chapter 1: Introduction

1.1 Summary

The City of New York Department of Health and Mental Hygiene’s Fiscal Guidelines Manual is a reference document provided to assist Community Based Organizations (CBOs) as well as department personnel in properly carrying out agency fiscal duties and fulfilling their compliance responsibilities. The manual provides an overview of the major financial management practices of the contract agency and describes the policies, procedures, forms and other tools which are required for effective operations.

The policies and procedures followed by the Department of Health and Mental Hygiene (“DOHMH”) are in compliance with Federal, State, and City regulations. The requirements outlined in this DOHMH Fiscal Manual must be adhered to by all Community Based Organizations (“CBOs”) funded by DOHMH, all fiscal partners, contracted entities and vendors with whom the department has entered into service agreements with.

1.2 WHO TO CALL WITH QUESTIONS

All inquiries should be directed to the NYC DOHMH Call Center at:

(347) 396-7975

You may send an inquiry in writing to the following address:

**NYC Department of Health/Internal Accounting
P.O. Box 8400
Long Island City, NY 11101-8400**

1.3 OVERVIEW – CONTRACT PROCUREMENT

Contract procurement describes the process the City uses to purchase construction services, goods, human services, professional services, and standardized services. Generally, the City procurement process takes the following steps:

1. An agency need is identified.
2. A solicitation is written and published.
3. A competition is held.
4. A vendor is selected and a determination is made concerning its responsibility.
5. A contract is negotiated and signed.
6. The contract is registered by the Office of the Comptroller.
7. Needs Identification and Solicitation

The New York City Department of Health and Mental Hygiene has dedicated procurement staff assigned to work with agency program staff in identifying needs to support the agency mission. Our agency has an Agency Chief Contracting Office

(ACCO) to ensure that the rules set by the Procurement Policy Board (PPB) and other applicable laws and initiatives are followed during the entire procurement process.

1.4 THE ACCO

The Office of the Agency Chief Contracting Officer (ACCO) procures cost effective and quality goods, services, and construction projects that meet the needs of the Office's customers. The Office provides agency units with technical assistance related to procurement and contract management issues. The Office ensures compliance with applicable laws, the PPB Rules, and Executive Orders.

1.5 CONTRACT REGISTRATION

The Contract Registration Unit processes all legally executed contracts greater than \$25,000 and is responsible for submitting the final contract package requests to the NYC Comptroller's Office for registration. NYC Comptroller's Office registration approval is based upon the accuracy and legality of the submission, bidding and review process throughout the life of the contract. The DOHMH has no control over the review and approval process performed by the NYC Comptroller. The Contract Registration Unit will review all approved contracts and supporting documentation received from the ACCO's office to assure compliance with Federal, State and City regulations. The Contract Registration Unit will monitor the status of all submitted contracts to the Comptroller for approval.

1.6 CONTRACT PAYMENTS

The Contract Payment Unit processes payments for all authorized payment claims for services or goods, based upon on the legal execution of contracts in accordance with NYC Comptroller's Directives, PPB rules and NYC Prompt payment rules. Services/goods paid for by the unit include, but is not limited to Consultants, CPA's, intra-city services and Capital projects.

The Contract Payment Unit receives and processes payments for claims from all areas of the department, which consists of the various divisions of the Department of Health (DOH), and the division of Mental Hygiene (MH).

The Contract Payment Unit compiles and researches payment and journal entry information to assist representatives of DOHMH and vendors.

1.7 Mental Hygiene Contracts

The Division of Mental Hygiene develops and monitors *the Agency's largest human service portfolio* of contracts and other agreements.

Each mental hygiene contract is supported by a Contract Analyst, who oversees contract registration and fiscal administration. Your Contract Analyst is the best resource for responding to your contracting queries.

Chapter 2 – Contract Management

2.1 SCOPE OF SERVICES

The Department of Health and Mental Hygiene requires the awarded contractor to provide a written scope of work fully depicting the services and activities to be administered for all contracted services in accordance with City regulations. All of the services specified in Scope of Work for the applicable budget year are required to be fully completed no later than the end of that budget year.

The services must be provided in accordance with generally accepted standards of professional quality and care and in compliance with applicable standards of care of the New York State Department of Health, the New York City DOHMH, and all other New York State and New York City social services regulatory agencies recognized or in effect during the term of the Agreement.

2.2 TERM OF CONTRACT

Should funds not be appropriated by the federal government and/or awarded to the Department by the grant-making party or funding source, contractual agreements shall terminate automatically and the Department shall give the Contractor prompt written notice of same. Upon receipt of such notice, Contractor agrees to cancel promptly as many outstanding obligations attributable to contracted agreements as possible. In the event of termination, the reduction of funds appropriated by the federal government and awarded to the Department for the life of the contract, or re-allocation, any unexpended or unencumbered monies advanced or otherwise paid to the Contractor under contractual agreement shall be immediately refunded to the Department. The obligations of Contractor contained in the last two sentences of this paragraph shall survive the termination or expiration of contractual agreements.

2.3 RENEWALS

The Department has the discretion to review, renew, modify and/or cancel existing contract agreements as it finds necessary. However the department follows term guidelines as stated above to monitor and control contract deliverables. All renewals are generally on substantially the same terms and conditions contained in the initial agreement. Any renewals are not effective until the renewal is registered pursuant to New York City Charter §328. For more information please go to the following link:
http://24.97.137.100/nyc/rcny/Title9_4-04.asp

2.4 FUTURE FUNDING

Since the period of performance designated by contractual agreement involves performance by the Contractor in a subsequent City fiscal year(s), funding for all agreements are subject to the appropriation of funds for such subsequent City fiscal year(s). Contractor also understands that the Department is under no obligation to continue its funding after the expiration of the term of the contractual agreement.

2.5 DUPLICATION OF FUNDING

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

2.6 VENDEX AND CONTRACT MANAGEMENT FEES

Pursuant to Procurement Policy Board Rule 2-08(f)(2), contractors will be charged a fee for the administration of the VENDEX system, including the Vendor Name Check process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable required fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350.

2.7 COST ALLOCATION PLAN

Contractor shall accurately and equitably allocate costs which are attributable to the operation of two or more programs among such programs, or which are costs attributable to two or more governmental funding sources, by a method which represents the benefit of such costs to each program or funding source. The Contractor shall upon commencement of services or as soon thereafter as practicable develop and deliver to the Department a cost allocation plan for the Department's approval.

No cost allocation plan shall be approved by the Department unless such a plan:

1. Relates to allowable costs as defined in applicable laws, regulations and policies of the federal, State and City governments;
2. Relates to costs necessary for the Contractor's performance pursuant to contractual agreement;
3. Fairly and accurately reflects the actual allocable share of such cost with respect to contractual agreement;
4. Is developed in accordance with generally accepted accounting principles; and
5. Is accompanied by such supporting documentation as the Department deems necessary to evaluate the plan.

NOTE: A cost allocation plan approved by the Department may only be modified with the written approval of the Department.

Notwithstanding any provision in this Section to the contrary, the Department further reserves the right to withhold any payments to the Contractor for allocated costs in the event that the Department determines that the cost allocation plan is unsatisfactory in whole or in part, or determines that such allocated costs have been incorrectly determined, are not allowable, or are not properly allocable pursuant to contractual agreements and or approved cost allocation plan.

Chapter 3: Fiscal Procedures

3.1 PROMPT PAYMENT

- (a) **Policy.** It is the policy of the City of New York to process contract payments efficiently and expeditiously so as to assure payment in a timely manner to firms and organizations that do business with the City.
- (b) *Definitions.* In this section, the following words have the meanings indicated.

Applicable Interest Rate. Interest shall be the maximum amount allowed by law or such lower uniform interest rate as may be set jointly by the Comptroller and OMB.

Designated Billing Office. The office or employee designated in the contract to which a proper invoice is to be submitted by a contractor.

Discount Date. The date by which, if payment is made, a specified invoice payment reduction, or discount, can be taken.

Invoice Received or Acceptance Date ("IRA Date")—Goods and Services.

(i) For purposes of determining a payment due date for goods and services and the date on which interest will begin to accrue and for no other purpose, an invoice received or acceptance date ("IRA date") is defined as the later of:

(A) The date a proper invoice is actually received by the designated billing office if the agency annotates the invoice with the date of receipt at the time of receipt, or

(B) The seventh day after either the date on which the goods are actually delivered or the services are actually performed, unless:

((a)) the agency has actually accepted and approved the goods or the services before the seventh day (in which case the acceptance date shall substitute for the seventh day after the delivery or performance date), or

((b)) a longer acceptance period is required by law or included in the contract to afford the agency a practicable opportunity to inspect, test, and accept the goods or evaluate the services (in which case the date of actual acceptance or the date on which such longer acceptance period ends shall substitute for the seventh day after the delivery or performance date).

Proper Invoice. A written request for a contract payment that is submitted by a vendor in good faith setting forth the description, price, and quantity of goods or services delivered or rendered, in such form and supported by such documentation as an agency may require, and any other documents required by contract.

Required Payment Date or Interest Eligibility Date. The date by which a contract payment must be made in order for an agency not to become liable for interest payments.

Receiving Report. This report may be used by a receiving unit to inform others, such as the purchasing, warehousing, accounting, and quality assurance departments, of the receipt of goods purchased or acceptance of services rendered. A receiving unit may, in some cases, also verify that goods and services conform to specification requirements and may include on the receiving report evidence of the acceptance of the goods and services.

Retainage. The right of the City pursuant to a contract and/or law to withhold from the invoice and retain a specified percentage of payment until such time as it is to be released pursuant to the contract and/or law.

(c) Standards for prompt payment.

(1) **Starting the payment period.** The period available to an agency to make a timely payment of an invoice without incurring an interest penalty shall begin on the IRA date.

(2) **Required payment date.** The required payment date shall be:

(i) thirty days; or

(ii) in the case of contract changes, sixty days; or

(iii) in the case of substantial completion payments or final payments on construction contracts, sixty days after the IRA date, except as described in paragraph (3) below; or

(iv) except as provided in subdivision (d)(4)(iv), the required payment date for the release of retained amounts shall be in accordance with the contract and law, and thirty days after the submission of a proper invoice for the return of the retained amounts.

(3) **Extension of the required payment date.** The date by which a contract payment may be made without the payment of interest may be extended by the time taken to satisfy or rectify any of the following:

(i) The Comptroller, in the course of an audit, determines that there is reasonable cause to believe that payment may not be properly due, in whole or in part, due to fault of the vendor;

(ii) The necessary City, State, or federal government appropriation required to authorize payment has not been made;

(iii) A proper invoice must be examined by the State or federal government prior to payment;

(iv) The goods have not been delivered or the construction or services have not been performed in compliance with the terms and conditions of the contract;

(v) in the case of substantial or final payments on construction contracts, the ACCO determines that the vendor has failed to properly submit the necessary documents and other submissions prescribed by the contract specifications and requirements or by law in order to enable the agency to process the final payment properly and expeditiously; and

(vi) When the required payment date falls on a weekend or City holiday, the required payment date shall be extended to the next following business day.

(4) **Proper invoice required to initiate payment.** A proper invoice submitted by the vendor shall be required to initiate payment, except where the contract provides that the vendor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

(5) **Receipt and acceptance of goods and services.** Agencies shall ensure that receipt and acceptance are executed within seven days unless otherwise specified in the contract. Receiving reports and invoices shall be stamped or otherwise annotated with the date upon receipt in the designated billing office.

(d) **Interest eligibility and computation.**

(1) **Eligibility.** When payments are made after the required payment date, interest shall be paid to the vendor based on the IRA date. Interest shall be computed at the maximum amount allowed by law, or such lower uniform rate set jointly by the Comptroller and OMB. Such interest rate shall not apply to contracts where, as part of the contract obligation, the City is required to pay an interest rate other than the rate determined by the Comptroller and OMB.

(2) The interest rate shall be reviewed every six months by the Comptroller and OMB to determine its continued applicability. The new interest rate for each upcoming six-month period, i.e., July 1 through December 31/January 1 through June 30, shall take effect on payments made on or after the effective date and shall be published by the CCPO in the City Record as soon as is practicable after such determination is made, not to exceed thirty days. The CCPO shall notify in writing all ACCOs of this action.

(3) Interest shall not be paid where:

(i) Payment on the invoice is delayed because of a disagreement between an agency and a vendor over the amount of the payment and other issues concerning compliance

with the terms of a contract. Payments shall be made, and as required by these Rules, interest shall be paid, on undisputed amounts;

(ii) The failure to make the contract payment is the result of a lien, attachment, or other legal process against the money due to the vendor;

(iii) Amounts are temporarily withheld in accordance with the contract; or

(iv) The amount of the interest payment is less than twenty-five dollars.

(4) The following types of payments are ineligible for interest:

(i) Payments under the eminent domain law;

(ii) payments to the federal government, to any state or City agency or their instrumentalities, to any duly constituted unit of local government or any of their related instrumentalities, to any public authority or public benefit corporation;

(iii) Payment in a situation where the City takes a deduction permitted by law or contract against all or part of a payment due the vendor; or

(iv) Where, for reasonable cause, the City determines not to release or to reduce retainage upon completion or substantial completion of a construction contract.

(5) Interest that is due shall be paid within twenty days of payment of the original invoice. The failure to make an interest payment within such twenty days shall not generate additional interest.

(6) The Comptroller and OMB may, for a limited period of time not to exceed thirty days per calendar year, jointly defer the City's obligation to pay interest when the City is experiencing a shortage of cash. In such event, the CCPO shall provide, at the earliest practicable opportunity, written notice to ACCOs of this action and its expected duration. Notice of this action shall be published by the CCPO in the City Record as soon as is practicable after such determination is made, not to exceed thirty days. The CCPO shall provide similar written notice of subsequent action either to extend or cancel this period of deferral.

(e) *Additional requirements for construction and construction-related services contracts.*

(1) *Progress payment.* An agency may not approve a request for a progress payment unless the request includes:

(i) Substantiation of the amounts requested, including:

(A) An itemized list of the amounts requested related to the various elements of work required by the contract,

(B) A listing of the amount included for work performed by each subcontractor under the contract,

(C) A listing of the total amount of each subcontract under the contract,

(D) A listing of the amounts previously paid to each such subcontractor under the contract, and

(E) Additional supporting data in a form or detail required by the contract or the resident engineer;

(ii) Certification by the prime contractor, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(B) payments to subcontractors and vendors have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the

payment covered by the certification, in accordance with their subcontract agreements and the requirements of these Rules; and

(C) The application does not include any amounts that the prime contractor intends to withhold or retain from a subcontractor or vendor in accordance with the terms and conditions of their subcontract/agreement except as may be allowed.

(2) *Subcontracts.*

(i) All construction contracts awarded by the City shall include:

(A) a payment clause that obligates the prime contractor(s) to pay each subcontractor and vendor (including a materials vendor) not later than seven days after receipt of payment out of amounts paid to the contractor by the City for work performed by the subcontractor or supplier under that contract and that provides for the payment of interest by the prime contractor in accordance with Section 106-b of the New York State General Municipal Law on amounts not timely paid to a subcontractor, and

(B) A clause requiring the prime contractor to include in each of its subcontracts a provision requiring each subcontractor to include the same payment clause in their contracts with each lower-tier subcontractor or vendor.

(ii) If a prime contractor is paid interest earned due to late payments by an agency, the proportionate share of that interest shall be forwarded by the prime contractor to each of its subcontractors and vendors.

(f) *Determination of appropriations against which interest penalties shall be charged.* Except where otherwise required by law, an interest payment required by these Rules shall be paid from the agency expense budget of the agency awarding the contract, provided however that if the obligation to make an interest payment is incurred in whole or in part due to another agency's involvement in the payment process, then the portion of the total interest payment that is attributable to delays by that agency shall be charged to that agency's miscellaneous budget.

(g) *Responsibilities.* Each Agency Head is responsible for the following:

(1) Assuring timely payments and the payment of interest penalties where required;

(2) Publishing lists of designated agency contacts within their payment centers or finance offices to provide vendors with assistance in determining the status of their invoices;

(3) Issuing internal instructions, as necessary, to implement these Rules. Such instructions shall include provisions for monitoring the causes of any interest penalties incurred, taking necessary corrective or disciplinary action, and dealing with inquiries from vendors;

(4) assuring that effective control systems are established and maintained to provide reasonable assurance that administrative activities required under these Rules are effectively and efficiently carried out;

(5) Assuring that inspectors general and internal auditors periodically review implementation, as they and their Agency Head deem appropriate. Copies of reports on audits and reviews should be provided to the CCPO and Comptroller upon issuance.

(6) Establishing a quality control program to assess performance of payment systems and provide a reliable way to estimate payment performance.

(h) *Reporting Requirements.* PPB shall coordinate and publish an annual prompt payment performance report detailing each agency's performance pursuant to Charter Section 332. PPB shall additionally make cumulative prompt payment performance

statistics available upon request. All reports shall be distributed to the CCPO, OMB, and Comptroller and shall be posted on the City's website in a location that is accessible by the public simultaneously with their publication.

(1) *Report contents.* The annual prompt payment report shall contain the following information for both expense and capital expenditures:

- (i) Agency performance in descending order by percentage of on-time payments,
- (ii) amount and percentage paid by the "Required Payment Date" or "Interest Eligibility Date" by agency in descending order as contrasted with the total amount eligible for payment,
- (iii) Distribution of interest penalties paid by agencies as a result of late payments, and
- (iv) Trend information as to how agencies are performing as compared with previous time periods, i.e., past year, past six months, quarter to quarter.

3.2 ACCOUNTS

DOHMH requires contractors to establish, maintain and track separate accounts for the funds obtained from the Department. The contractor is also required to notify the Department of the name, locations and account numbers of all bank accounts in which any funds pursuant to any contract agreement are maintained, and of any change in the name, location, or account numbers of such accounts within five (5) days of such establishment or change.

*Note – Contractor banks shall have a branch located in New York City unless otherwise approved by the Department.

The Department also requires contractors to notify the Department of the names, titles, and business addresses of persons authorized by the contractor to receive, handle or disburse monies under any contract agreement, including the company name and company address where such persons are not employees of the contractor.

*Note – Notification must be in writing and furnished to the Department within five (5) days from the execution of contractual agreement of both parties, and within five (5) days from any subsequent change or substitution of authorized signatories.

3.3 PAYMENT ADVANCES

The amount of any payment in advance of services to a contractor shall be determined solely by the Department on a case by case basis in accordance with this Fiscal Manual and any applicable NYC Comptroller directives and New York City regulatory requirements. The funds shall be used exclusively for the payment of expenditures and obligations authorized by and properly incurred pursuant to the pre-determined and approved budget. Any change to this policy must be approved by the Office of the DOHMH Deputy Commissioner of Finance or its designee. The DOHMH will field requests related to payment advances, but need not disclose process or decision making details to inquirers. The DOHMH makes no guarantee that advances of funds will

always be available or available at all. The DOHMH reserves the right to perform reconciliations against service levels and funds provided, and base payables upon the decisions stemming from those outcomes.

3.4 FINANCIAL RECORD, REPORTING AND INVOICING

All contractors shall submit financial reports and invoices to the Department in accordance with the terms of the NYC Comptroller and any supporting documents required to be maintained by contractual agreement. The Fiscal Manual shall be made available for inspection and reproduction by the Department, the City Comptroller, and other persons as authorized by the Department, including the Inspector General for the Department and the Department of Investigation. Contractor acknowledges that repeated failure to submit required financial reports within the time limits prescribed may result in termination of contractual agreements, and constitutes a breach in service.

3.5 LIMITATION ON USE OF FUNDS

Proper purposes

No funds obtained through contraction of service shall be spent for any expense not incurred in accordance with the terms of agreements and this manual. All such funds shall be administered in accordance with this Fiscal Manual.

Real property

No funds obtained through contractual agreement between DOHMH and contractor shall be spent for the purchase of any interest in or improvement of real property, unless included in the Budget or otherwise authorized in writing by the Department.

Disallowed costs

Any cost found by the Department, the City or any auditing authority that examines the financial records of the Contractor, and is found to be improperly incurred shall be subject to reimbursement to the City. Failure to make said reimbursement shall be grounds for termination of contractual agreements.

3.6 RECOUPMENT OF DISALLOWANCES, IMPROPERLY INCURRED FUNDS AND OVERPAYMENTS

The Department may, at its option, either require the Contractor to reimburse the Department or withhold for the purposes of set-off any monies due to Contractor under contractual agreement up to the amount of any disallowance or improperly incurred costs

resulting from any audits of Contractor, and/or the amount of any overpayment to Contractor with regard to agreements between the parties. Prior to the imposition of withholding for the purposes of set-off, the Department will provide the Contractor with an opportunity to be heard upon at least ten (10) days prior written notice.

Failure to spend funds

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

Failure to earn funds

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

3.7 PROVISIONS APPLICABLE WHEN FISCAL AGENT DISBURSES FUNDS TO CONTRACTORS

Payment by Fiscal Agent

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

Payroll processing by Fiscal Agent

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

Fiscal Agent documentation

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

Chapter 4: Procurement Requirements

4.1 PROCUREMENT RECORDS

It is the contractor's obligation to retain proper and sufficient bills, vouchers, duplicate receipts and documentation for any payments, expenditures or refunds made to or received by the contractor in connection with any DOHMH contractual agreement. Contractors may maintain a petty cash fund, however, no expenditures may be made from such fund for procurements valued in excess of \$1,000. Contractor shall make all procurement expenditures in excess of \$1,000 by check or credit card.

4.2 EXTENT OF COMPETITION REQUIRED

Contractor shall retain records which detail the method of procurement, the basis for selection or rejection of a contractor, consultant or supplier and the basis for the contract price. If federal or State Laws require procurement methods other than those set forth herein, then Contractor shall also comply with such procurement methods.

Contractor must solicit and document at least three (3) written estimates for any payment made or obligation undertaken in connection with contractual agreement for any purchase of goods, supplies, or services (including but not limited to consulting services) for amounts in excess of \$25,000. The monetary threshold applies to payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity. Payments made or obligations undertaken will not be artificially divided in order to avoid the requirements of this paragraph.

For any payment made or obligation undertaken in connection with contractual agreement for any purchase of goods, supplies, or services (including but not limited to consulting services) for amounts between \$5,000 and \$25,000, Contractor shall conduct sufficient market research and/or competition to support its determination that the price

of such purchased goods, supplies, services or equipment is reasonable. The monetary thresholds apply to payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity. Payments made or obligations undertaken will not be artificially divided in order to avoid the requirements of this paragraph.

The City may retain the services of a Group Purchasing Organization (GPO) to facilitate the purchase of supplies or other items. If the City retains such a GPO, the Department may direct Contractor to utilize the services of such GPO. If the Contractor is directed by the Department to use the GPO, Paragraph B shall not apply and the procurement requirements will be satisfied met through the use of the GPO.

4.3 M/WBE suppliers

Contractors are encouraged to utilize businesses and individual proprietors listed on the NYC Online Directory of Certified MWBE Businesses, available at www.nyc.gov/sbs, as sources for its purchases of goods, supplies, services and equipment using funds obtained through contractual agreement. Contractor is also encouraged to utilize businesses and individual proprietors owned/operated by people with disabilities as sources for its purchases of goods, supplies, services and equipment using funds obtained through contractual agreement.

4.4 Disputes with suppliers

Contractors are responsible for the settlement and satisfaction of all contractual obligations and administrative issues arising out of any procurement or leasing contracts paid with funds obtained through contractual agreement.

Chapter 5: Budgets

The program budget provides two major functions in contract management: Planning and Control.

5.1 Planning

The budget is the basic tool for allocating available resources in order to efficiently and effectively achieve program objectives. It summarizes the decisions made by the contract agency and DFTA regarding the staff to be employed and the other resources to be purchased in order to produce the services specified in the contract. The budget projects what funds will be used to deliver various groups of contracted services, by splitting all available funds into Cost Centers.

5.2 Control

The budget is the basic guide for monitoring expenditures to insure compliance with the contract and restrictions imposed on the various funding streams by their donors.

Contract agencies should monitor expenditures on a regular basis to insure that spending is in accordance with available contract funds. This includes monitoring spending in specific cost centers, such as Congregate Meals and Education/Recreation, and specific budget lines, to ensure that costs do not exceed the funds allocation. In cases where contractors exceed their DFTA contracted budgets the sponsors must be ready to provide supporting documentation i.e. invoices and cancelled checks to prove that current Fiscal Year funds were not used to pay for prior year expenses.

Chapter 6: Program Evaluation and Monitoring

Monitoring Plan

The Department shall develop and implement a monitoring plan for each type of program and service to be provided by the Contractor hereunder and consistent with the guidelines of HUD. The monitoring plan shall include all services and contract deliverables to be provided by the Contractor and will specify clear and understandable standards for Contractor's performance. The monitoring plan shall be consistent with contractual agreement and shall include a time frame for all management and oversight functions such as site visits, reporting and similar monitoring and evaluation events. The Contractor shall comply with and fulfill all requirements of the monitoring plan, including implementing remedies for programmatic, fiscal, operational or other deficiencies identified by the Department in a timely fashion. Where such remedies are not implemented in a timely fashion, expenditures associated with operations designated by the Department as deficient may be disallowed for payment in the sole discretion of the Department.

Evaluation Criteria

The Contractor's performance will be evaluated based on its compliance with contractual agreement. The evaluation criteria include, but are not limited to: timeliness of deliverables and reports; timeliness of services; achievement of level of services; staff appropriateness and continuity; program procedures and methods; program record keeping and reporting; physical environment and equipment; compliance with applicable local, state, and/or federal housing quality standards and regulations, adherence to target populations and target areas; compliance with eligible activities and eligible person criteria, including income, stipulated by HUD; adherence to performance outcome measures activities; internal financial controls; timeliness and accuracy of fiscal reports and payment requisitions.

EVALUATION PROCEDURES

All contractors are required to cooperate fully with the Department regarding the

evaluation of the services provided through department funding and are obligated to advise and consult with employees and/or officials of the Department.

Inspections

The Department, its employees, representatives and designees, shall have the right at any time, given reasonable notice, to inspect the site where services are performed and to observe the services being performed by the Contractor. The Contractor shall render all assistance and cooperation to the Department, its employees, representatives and designees in making such inspections and shall assure the Department ready access to the Project Site and all medical, financial or other records and reports relating to the services provided hereunder. The Department shall have the responsibility for determining contract compliance.

Program Reviews

The Department will conduct on-site program reviews to evaluate the Contractor and the delivery of the services as set forth in Annex A. The Department may recommend any necessary corrective action to the Contractor to remedy problems and/or deficiencies found during such site visit(s). The Contractor shall have the opportunity to offer a revised recommendation and shall implement such recommendations agreed upon by the Department and the Contractor after discussion between the parties, no later than thirty (30) days from receipt of such recommendations or agreement on revised recommendations. Such corrective action plan shall address remediation within specified time frames. In addition, the Contractor shall participate in meetings conducted by the Department to discuss the services being provided.

Monthly Program Report

The Contractor will submit program reports (“Monthly Program Report”) on a monthly basis to the Department reporting contract delivery events for the previous month. The Report shall detail the progress and status the Contractor made toward implementing programs and services; completing contract deliverables and obstacles to implementation and plans for resolving problems. The Report shall include quantitative and qualitative data specific to the program services related to the types and quantity of services provided and the number and demographics of individuals served, during the report period (as more fully described in Annex A).

Performance data shall include, without limitation, progress on the Performance Outcome Measures, the progress and status of staff hiring, retention and training, the hiring of consultants, development of program outreach, intervention and counseling protocols and educational materials, acquisition of other resources necessary to commence and continue providing services, and an assessment of the progress the Contractor has made toward completing any start-up phase and the commencement of services.

The Report shall be sufficient to fully characterize the month’s work, understand what

has been accomplished, determine whether services are being delivered and whether program targets are being met, and generally to enable the Department to manage and make decisions as to Contractor's contract compliance and eligibility for payment. The report will be due twenty (20) days after the end of the month to which such program report pertains.

The Report shall be in such form as established by the Department and shall be accompanied by supporting documentation, upon request, providing proof of performance of required services as specified in the Scope of Services, and any other supporting documentation deemed necessary by the Department.

Work Report Format

The Contractor will establish and maintain reports in the manner specified in the Scope of Services. The format of such report will be agreed upon between the parties within 30 days of the start of contractual agreement.

Final Expenditure Report

A Final Expenditure Report shall be due within twenty (20) days of the expiration of the budget year which shall detail the financial operations of the Contractor under contractual agreement for such budget year. The Report shall clearly and separately identify the financial operations of the Contractor and shall include the following:

- a. a description of how the report was prepared;
- b. an itemization, by budget category, of all actual expenses not previously presented in any monthly report, and any year-end accruals;
- c. a comparison of total expenditures against budgeted amounts for each budget category;
- d. a reconciliation of aggregate expenditures against cumulative amounts previously paid to the Contractor (including, without limitation, any Advances), and a computation of the balance due to (or from) the Contractor; and
- e. a calculation of the interest due the Department pursuant to Article III (B) (1) of contractual agreement.

Requested HUD Data

Contractor shall provide the Department with data requested by HUD for the Integrated Disbursement and Information System ("IDIS") and/or Outcome Performance Measurement System within fourteen (14) days of any such request.

Performance Measures

The performance measures report, as contained in the Scope of Services, Annex A, shall be included in the monthly and annual reports required under contractual agreement. The report of performance measures shall quantify performance for the month and on a cumulative to date basis. Any and all liquidated damages imposed shall be indicated but in no case shall the total amount of the cumulative liquidated damages exceed five (5.0%) of the Maximum Reimbursable Amount.

MHy – LEVELS OF SERVICE (LOS) ONLINE

All DMH contracted programs must submit Levels of Service data via our provider portal, LOS Online. Failure to submit data for all program units in your contract will result in the withholding of contract payments.

LOS Records Management: Providers must retain all books and records (including supporting documentation) relating to contracted service. In addition, Providers receiving New York State funding, must reference the State Consolidated Budget Reporting and Claiming Manual and the Consolidated Fiscal Reporting and Claiming Manual for guidance.

Additional Questions: Additional questions regarding LOS Online and LOS should be directed to Charles Browning, Data Integrity Specialist, at 347.396.6688 or cbrownin@health.nyc.gov. You may also contact Melissa Osterwind, Senior Director of Contracts and Finance, at 347.396.6717 or mosterwind@health.nyc.gov with any general feedback or comments regarding LOS Online.

Chapter 7: Legal Compliance

Notwithstanding any other provision in contractual agreement, the Contractor remains responsible for ensuring that any service provided pursuant to this contract, complies with all pertinent provisions of federal, state or local statutes, rules and regulations, and that all necessary approvals there under have been obtained.

Confidentiality

All information of a medical nature received by the Contractor in the course of its performance under contractual agreement shall be kept confidential and shall not be disclosed except as permitted by applicable law and with the written consent of the Department.

Approval of Literature

1. Procedure

The Contractor shall submit to the Department the final draft copy of each piece of written material, educational material, test, brochure, flyer, pamphlet, questionnaire, or video developed by it under contractual agreement for review and approval prior to printing. The Department will respond in writing to the Contractor within twenty (20) business days indicating approval or need for modification of the submitted material. Should this response indicate need for modification, specific written guidance will be given to the Contractor. The Contractor shall make the modifications as indicated by the Department, and resubmit the material for the Department's final approval. Should the Contractor disagree with the modifications proposed by the Department a final determination as to the modifications will be made by the Assistant Commissioner. The format and content of educational programs will also be subject to the approval provision of this Section.

2. Acknowledgments

Certain educational materials developed under contractual agreement may be required to bear the following text: "Funded (in whole or in part, if applicable) by the New York City Department of Health and Mental Hygiene." The Department will have sole discretion to designate which materials are to bear the aforementioned text.

Equipment

HOPWA funds are federal funds. Accordingly, equipment (nonexpendable property) purchased with federal funds remains the property of the federal government. On behalf of the federal government, the Department maintains the right to take possession of equipment at the expiration or termination of contractual agreement. Equipment may also be removed if the Agreement is terminated for any reason specified in contractual agreement. The Contractor will mark all equipment purchased with federal funds to indicate federal ownership under HOPWA. The Contractor will establish and maintain property records indicating purchase date, description of property, location of property, unit cost and quantity, and manufacturer's serial, model and/or stock number. The Contractor will make this list available to the Department upon request and annually as part of the Contractor's Annual Expenditure Report.

Purchase

The Contractor must obtain express written consent of the Department prior to the purchase of any equipment that exceeds \$5,000.00 in purchase price, the Contractor shall obtain five (5) bids for the equipment sought, and provide documentation of said bids to the Department, in a manner acceptable to the Department.

Independent Annual Audit Report

In accordance with the U.S. Office of Management and Budget Circular A-133, “Audits of Institutions of Higher Education and Other Non-profit Institutions”, an annual audit of all federal funds received by the Contractor shall be performed by an independent certified public accounting firm. The audit shall be performed in accordance with Government Auditing Standards, issued by the Comptroller General of the United States. The term “all federal funds received” shall include all funds received and disbursed pursuant to contractual agreement. The audit report shall be prepared and certified by a certified public accounting firm that is demonstrably independent of the Contractor and the service being audited. Such audits shall be submitted to the Department in final form at the end of the Contractor’s audit year when completed in accordance with federal guidelines. The obligations of the Contractor under this paragraph shall survive the termination or expiration of contractual agreement.

Records to be Maintained

In addition to any other records required to be maintained and/or provided for inspection pursuant to contractual agreement, Contractor shall maintain and make available to the Department for inspection, upon reasonable request, the following documents: tax returns; audit reports; all programmatic records and accounts maintained in connection with contractual agreement, including program, research and other reports and publications prepared in connection with contractual agreement; all financial books, records and accounts reflecting payments made by Contractor for petty cash expenditures in connection with contractual agreement; all applicable licenses and permits; Board member lists and all minutes and attendance sheets (dated and signed) for meetings of the Board of Directors and any of its committees responsible for the oversight of the program(s) funded under contractual agreement; certificate of incorporation and by-laws; all other contracts related to providing services under contractual agreement, to which Contractor is a party and the contract terms coincide, in whole or in part, with the term of contractual agreement; and any other records or materials reasonably requested at such reasonable times and places and as often as may be reasonably requested. Contractor shall permit the Department and its authorized representatives including the Department’s Inspector General, the Comptroller of the City of New York, the New York City Department of Investigation, or their designees, or other interested federal, State or City agency representatives, to attend all meetings of the Board of Directors and to be present at the program site(s) to observe the work and activities being performed in connection with contractual agreement.

State Charities Registration and Audit Requirements

If the Contractor is required by New York State law to register with and make annual filings to the Charities Bureau of the New York State Department of Law, timely compliance with such requirements shall be deemed a material term of contractual agreement. Contractor shall make available to the Department all such filings, including any audit and/or financial report required to be submitted with such filings, within thirty (30) days of receiving such final audit or financial report from its preparer, and in no

event later than ten (10) days following the filing of such audit or financial report with the Charities Bureau.

Security and Emergency Plan

Prior to the commencement of services under contractual agreement, Contractor shall submit for the Department's review and approval a written plan to provide for the safety and security of clients, participants, staff, and the Contractor's facility, which shall include emergency procedures, including first aid and cardiopulmonary resuscitation training; evacuation procedures; and the identification of the means by which safety and security of clients, participants, staff, and the Contractor's facility will be maintained throughout the term of contractual agreement. Such a plan will insure its clients' basic needs are met in the event of a City-wide emergency or natural and man-made disasters, including extremes of weather, blackouts and other regional and national emergencies. Contractor shall maintain a file of emergency contacts for each client and participant, which shall include the names, addresses, telephone numbers, and locations where such contacts can be reached. Submission of a security plan applying to all of Contractor's operations rather than specifically to the City-funded operations shall be sufficient to comply with the terms of this requirement. The provisions of this Section shall not apply to programs housed in courts or other City-operated locations.

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

Allegations of Abuse or Maltreatment

Contractor will notify the Department within twenty-four (24) hours of determining that reasonable cause exists to suspect that any of Contractor's administrators or staff, including both paid and volunteer, has abused, maltreated, neglected, assaulted or endangered the welfare of any program participant. In addition, if such reasonable cause is found, the Contractor shall take appropriate action to remove the person from the proximity of program participants while the matter is being investigated by the Contractor. The term abuse shall mean the infliction of physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or

protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ. The term maltreatment shall mean (i) treatment that results in serious physical injury other than by accidental means, or (ii) neglect or failure to exercise a minimum degree of care that impairs, or places in imminent danger of being impaired, the physical, mental or emotional condition of a program participant. Contractor shall provide telephone notice to the Department within 24 hours of the incident, followed by a written report, to be delivered to the Department within three (3) business days. Compliance with this reporting requirement does not satisfy any other legally mandated reporting of abuse, such as to the New York State Central Registry (SCR).

i. Capacity Building and Oversight (CBO) Review for Not-for-Profit Contractors

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

k. Notices

All notices and requests are required to be in writing and directed to the address of the parties as follows:

**NYC Department of Health/Internal Accounting
P.O. Box 8400
Long Island City, NY 11101-8400**

l. Affirmation and Insurance

The Contractor shall complete and execute the affirmation and insurance forms annexed to Part I of contractual agreement.

m. Maintenance of Patient Records

With regard to the services rendered hereunder, the Contractor shall be responsible for the appropriate maintenance and custody of medical and social services records of any individual patient and the Department shall not have any responsibility for compliance with, or response to, any subpoenas or other requests for individual patient information.

n. Emergency Contraception Rider

The Contractor shall comply in all respects with the provisions of Section 6-125 of the New York City Administrative Code and conditions in the attached Emergency Contraception Rider. Contractor further acknowledges and agrees that the execution of the attached rider, Emergency Contraception, is a material condition of the Agreement.

Chapter 8: Mental Hygiene Contract Provisions

ARTICLE I. DEFINITIONS

The following terms shall have the meaning defined below for the purposes of mental hygiene human services contracts.

Act means the Local and Unified Services Act, which is Article 41 of the New York State Mental Hygiene Law, as amended.

Actual Income means all fees and other payments earned by the Provider for the provision of Contract Services (as defined below in Section 3.01). Actual Income shall include but not be limited to: a) fees for services paid by clients; b) fees for services paid on behalf of clients by other individuals, corporations (including insurance companies), federal, state and local governments; and c) other income realized in the operation of a program funded under the contractual agreement. Actual Income shall not include: a) any charitable contributions or donations made to the Provider (restricted or unrestricted) to further the general work of the Provider; b) any income earned by the Provider from its endowment; or c) revenue realized from industrial contracts entered into by the Provider pursuant to its operation of a sheltered workshop, insofar as such revenue is exempt from



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being considered a deduction from "net operating costs" under Section 41.03(11)(b) of the Act. Funds from the sources described in the foregoing sentence may be Provider Contribution.

Agreement means the basic contract provisions as set forth in your mental hygiene contract together with Annexes A, B, C, D, E, F (including "Attachment A" to Annex F), G, and H.

Agreement Year means the period of time during which funds are authorized for a specific program unit in an individual City Fiscal Year included in the term of the contractual agreement. Annex B outlines the schedule for funding release by City Fiscal Year.

City means the City of New York.

Contract Services shall have the meaning set forth in Section 3.01.

Gross Cost means the actual cost of personal services and other than personal services provided under the contractual agreement, as incurred by the Provider and included in the claims/expenditure reports submitted to the Department by the Provider for the Agreement Year. Gross Cost that may be defrayed under the contractual agreement is limited to a maximum of the Gross Expenses set forth in each Program Unit Budget.

Gross Expenses means the budgeted aggregate amount of personal services (PS) and other than personal services (OTPS), as specified in the Program Unit Budget, and is the maximum dollar amount of Contract Services that may be defrayed for that specific program unit for the Agreement Year.

Liquidated Damages Amount means a percentage reduction in the Total Contract Cost or Gross Cost, whichever is applicable, due to the Provider's failure to attain Operational Goals set forth in Annex D.

Operational Goals means the applicable goals for the particular program unit funded under the contractual agreement and measured as set forth in Annex D. Failure to meet these goals will result in imposition of a Liquidated Damages Amount.

Program Capacity means the number of Contract Patients (as defined in Section 3.02) who can receive Contract Services from the Provider at any given point in time.

Program Unit Budget means the specific line item budget associated with a specific program initiative and its operational goals. The Program Unit Budget details the Provider's Gross Expenses, Revenue, Provider Contribution, and Total Net Deficit Funding.



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Provider Contribution means the dollar amount the Provider must provide under the contractual agreement to defray the cost of Contract Services. The Provider Contribution may also be referred to as the “Agency Contribution” in the Annexes to the contractual agreement.

Provider Contribution Rate means the ratio derived by dividing the Provider Contribution by the Total Net Deficit Funding specified in each Program Unit Budget. The Provider Contribution Rate may also be referred to as the “Agency Contribution Rate” in the Annexes to the contractual agreement.

Revenue means the amount of Actual Income that the Provider estimates will be earned during the Agreement Year. Revenue for each program unit is specified in each Program Unit Budget.

Rules and Regulations means the Rules and Regulations of the State Department, including amendments as may hereafter be made.

State means the State of New York.

State Department (SDMH) means the New York State Department of Mental Hygiene, or any part thereof, including the New York State Offices of Mental Health, Alcoholism and Substance Abuse Services, and Mental Retardation and Developmental Disabilities, that has any jurisdiction with respect to the contractual agreement, or any successor thereto.

Total Contract Amount means the sum of the Total Net Deficit Funding for each Program Unit Budget included in the Agreement. For each Agreement Year, the maximum Total Contract Amount that may be defrayed under the contractual agreement is set forth in Annex B.

Total Contract Cost means the sum of the Total Net Deficit Costs for the Program Unit Budgets included in the Agreement. For each Agreement Year, the Total Contract Cost that may be defrayed under the contractual agreement is limited to a maximum of the Total Contract Amount for that Agreement Year set forth in Annex B.

Total Net Deficit Cost means Gross Cost less Actual Income and Provider Contribution. The Total Net Deficit Cost that may be defrayed under the contractual agreement is limited to a maximum of the Total Net Deficit Funding set forth in each Program Unit Budget.

Total Net Deficit Funding means the Gross Expenses less Revenue and Provider Contribution. The Total Net Deficit Funding is the maximum amount the Department will reimburse the Provider for the cost of providing Contract Services during the Agreement Year. The Total Net Deficit Funding is outlined in each Program Unit Budget.

Unfunded Accrual means the dollar amount by which the Provider must underspend the Gross Expenses, unless it receives Actual Income in excess of Revenue, in order to avoid having to contribute more than the Provider Contribution toward the cost of providing Contract Services during the Agreement Year. Unfunded Accruals are set forth in each Program Unit Budget.

Section 2.01 General Supervision and Evaluation of Community Mental Hygiene Services. The Department, in furtherance of its responsibilities under the City Charter, or any amendments thereto, and, if applicable, consistent with the Act and applicable Rules and Regulations, shall exercise general supervision and evaluation of Contract Services rendered and facilities maintained by the Provider in connection with the contractual agreement and shall plan with the Provider in order to further the purposes of the contractual agreement and the Local Services Plan approved by the State Department pursuant to Article 41 of the Act. To this end, the Department or its designee shall perform, at regular intervals, program evaluations of the Contract Services, including, if applicable, the success or failure of the Provider to attain the Operational Goals and the other requirements of Annex D, and fiscal audits of the books and records kept by the Provider with respect to the delivery of Contract Services. The Department will provide the Provider with copies of the program evaluations and fiscal audits and will work with the Provider to address any deficiencies noted in the program evaluation and/or any recommendations noted in the fiscal audit.

Section 2.02 Information and Special Analyses. The Provider and the Department shall share general reports and studies received or prepared by them relating to mental health, mental retardation/ developmental disabilities, and chemical dependency services, and generally be informed of developments relating to those services. The Department shall, on an ongoing basis, perform and make available to the Provider analyses based upon the data furnished pursuant to the provisions of the contractual agreement, and, subject to limitations of time and staff, undertake to deliver to the Provider special analyses and evaluations of Contract Services.

Section 2.03 Review of Program Changes. The Department shall, during the term of the contractual agreement, review any proposal submitted by the Provider to revise the Contract Services and, when agreed to by the parties and, when required by the State, modify Annex A and such other provisions and Annexes as may be necessary. Notwithstanding such Departmental review, the Provider shall not alter the nature or type of services, or the objectives to be achieved or the quality of services as set forth in the description of Contract Services in Annex A, without the prior written consent of the Department and, when required, of the State.

ARTICLE III. BASIC OBLIGATIONS OF THE PROVIDER

Section 3.01 Contract Services. The Provider shall deliver the contract services (“Contract Services”) set forth in Annex A in accordance with the contractual agreement and in accordance with generally accepted standards of professional quality. In addition, Contract Services provided under the contractual agreement which result from a

competitive solicitation shall be delivered in accordance with the solicitation issued by the Department with all addendum and appendices thereto and the proposal submitted by the Provider in response to the solicitation together with all attachments, exhibits and appendices thereto, which are made a part of the contractual agreement as if set forth herein, subject to any modifications contained in the contractual agreement. Any conflict relating to the delivery of the Contract Services to be provided under the contractual agreement shall be settled in accordance with Section 6.10 of the contractual agreement.

The Provider shall not, by reason of the contractual agreement, reduce the other mental health, mental retardation/developmental disabilities and chemical dependency services, if any, which it delivers, unless agreed to in advance and in writing by the Department.

The Provider shall address, in a manner acceptable to the Department, any deficiencies noted in the program evaluations of the Contract Services and/or any recommendations noted in the fiscal audits of the books and records kept by the Provider with respect to the delivery of Contract Services. If the Provider fails to address said deficiencies and/or recommendations, the Department may, in addition to any other remedies under the contractual agreement, withhold payments due the Provider under this or any other agreement with the Department until such time as the deficiencies and/or recommendations are addressed to the Department's satisfaction.

Section 3.02 Contract Patients. The Contract Services shall be primarily available to persons residing in the area of the City specified in Annex A, particularly to those who, because of their personal inability to pay, would not otherwise receive them. No person, however, shall be denied Contract Services because of race, creed, color, sex, age, national origin, handicapping condition, disability, marital status, sexual orientation or inability to pay.

Section 3.03 Levels of Service. Contract Services shall be delivered consistent with the levels of service set forth in Annex A. The levels of service shall be monitored by the Department on a regular basis. The levels of service, as verified by the Department, shall be subject to review and, as appropriate, may be subject to adjustment by the Department in writing if they fall below eighty-five percent (85%) or exceed one hundred twenty percent (120%) of the contracted commitment.

No reduction or increase in the levels of service shall be permitted if the reduction alters the basic nature or adversely affects the quality of the Contract Services. If the Provider fails to provide the levels of service set forth in Annex A, and the Gross Contract Cost is less than the Adjusted Gross Contract Amount, the Department shall make the necessary adjustments in accordance with the limitations of Section 3.07 hereof. The levels of service shall be subject to adjustment by the Provider and the Department if, for reasons beyond the Provider's control (including, but not limited to, failure to receive a pledged contribution or a decrease in reimbursement rates or the Provider's participation in disaster relief activities), the Provider is unable to deliver the Contract Services at the specified level of service. Provider requests for an adjustment in the levels of service commitment must be in writing and must indicate the revised commitment being

requested as well as the basis for the request. The Department will, within forty-five (45) days from the date of receipt of the written request, notify the Provider in writing whether the request has been approved, disapproved or deferred.

If the Provider is delivering Contract Services at a level which, in the judgment of the Department reached after consultation with the Provider, will result in a level of service below the contracted service commitment, the Department may request that the level of service be increased up to the level agreed upon within a specified period of time, which shall not be less than thirty (30) days. The Provider shall address, in a manner acceptable to the Department, the deficiencies noted in the delivery of the level of service contracted for. If the Provider fails to address said deficiencies, the Department may, in addition to any other remedies under the contractual agreement, withhold payments due the Provider under this or any other agreement with the Department until such time as the deficiencies in the delivery of the level of service contracted for are addressed to the Department's satisfaction.

If the level of service is not increased as requested, and where levels of service are not included in the Operational Goals, the Department may, upon thirty (30) days notice to the Provider, take one or more of the following actions: a) terminate the contractual agreement in whole or in part; and/or b) reduce one or more of the following: the Gross Costs, Revenue, Provider Contribution, or Total Contract Amount, and make any other changes as deemed necessary.

For OASAS-funded program units, the Provider shall submit a work plan to DOHMH on April 15th of the Agreement Year for the subsequent Agreement Year, which work plan shall be in accordance with OASAS requirements. Notwithstanding the above, for each and every CSS-funded program unit under the contractual agreement, the Provider shall provide one hundred percent (100%) of the committed service levels in order to be entitled to full reimbursement for each individual CSS-funded program.

Section 3.04 Contract Personnel. The personnel specified in the Personal Services (PS) Schedules agreed to by the parties shall be the employees of the Provider and shall work the hours, provide the services, and receive the compensation indicated therein. The Provider shall hire only professional staff to perform Contract Services who possess the qualifications set forth or implicit in the Personal Services (PS) Schedules. Any changes to hours worked, services provided or compensation paid to any employee will be done in accordance with Section 6.02 of the contractual agreement.

Section 3.05 Minimum Data Set. At the discretion of the Department and in accordance with applicable confidentiality laws, the Provider shall submit a minimum data set for each consumer at the time that the consumer is admitted to and discharged from the Provider's services under the contractual agreement. Such data set for each consumer shall consist of demographic, summary diagnostic, and admission and discharge status information. The events of admission and discharge shall be measured with reference to the Rules and Regulations for those program units of the Provider that

have an operating certificate from the State Department. For those program units that do not, admission and discharge shall be measured by reference to the policies and procedures of the Provider.

Section 3.06 Contract Property. The Provider is authorized to purchase only the Other Than Personal Service items specified in the OTPS Schedules agreed to by the parties (“Contract Property”). The Contract Property shall be deemed to be property of the City and shall be used solely in connection with the delivery of Contract Services. The Provider shall report to the Department acquisitions of equipment or other property under the contractual agreement no later than ten (10) days after receipt. The Provider shall label each piece of equipment with the legend “Property of the City of New York Department of Health and Mental Hygiene.” The Provider shall conduct an annual physical inventory of all items purchased under the contractual agreement and predecessor agreements, if any, and, no later than thirty (30) days after the end of the fiscal year, shall submit an inventory listing to the Department or its representative. The Provider shall maintain an insurance policy which fully covers that property by reason of loss or damage attributable to fire, theft, or any other cause, and which names the Department and the Provider as insureds. The Provider must inform the Department of any theft, loss and/or damage to any such property and of any insurance payments received for stolen or damaged property. Unless otherwise authorized by the Department, the Provider shall deliver all equipment or other property purchased under the contractual agreement to the Department within thirty (30) days after the expiration or termination of the Agreement.

Section 3.07 Accruals/Underspending. If the Provider is expending funds at an annual rate which in the judgment of the Department, made after one-quarter of the Agreement Year has elapsed, will result in a Total Contract Cost substantially less than the Total Contract Amount specified in Annex B, the Department may so notify the Provider. If, after consultation, the Provider is unable to develop to the satisfaction of the Department a plan to rectify the low level of expenditures, or to show good reason why temporary net under-spending is required, the Department may, upon thirty (30) days notice to the Provider, modify Annex B to reflect the reduced Total Contract Cost of the Provider. If such a modification is made, the Department shall make all other changes in the contractual agreement required by the modification of Annex B, including changes in the levels of service at which Contract Services specified in Annex A are to be delivered during the unexpired term of the Agreement Year.

Section 3.08 Actual Income. The Provider shall undertake to collect the Revenue set forth in Annex B. Actual Income will be reported on an accrual basis to the Department.

The Provider shall establish and implement patient fee schedules, subject to the approval of the Department, as required by the State Department. The Provider shall maintain its eligibility for reimbursement under any Federal, State, or local program which provides payment for Contract Services, regardless of whether it is currently eligible therefore or becomes so eligible during the term of the contractual agreement, and shall inform the

Department regarding those programs for which it has pending applications. The Department shall provide assistance in this regard, including information as to the existence of and the application process for those programs. The Provider shall advise the Department that it has applied for and received, or received formal notification of refusal of, eligibility to bill for and collect the Actual Income to which the Provider is entitled by virtue of performing the Contract Services. If the Provider shall arbitrarily refuse to establish and maintain program eligibility for Medicaid, the Total Contract Amount shall be reduced by an amount of Actual Income which the Provider may reasonably be expected to fail to collect by reason of that ineligibility. The Provider, consistent with the provisions of Section 3.02 relating to contract patients and with a view toward increasing the funds available for mental health, mental retardation/developmental disabilities, and chemical dependency services in the City, shall use its best efforts to maximize Actual Income and, in connection therewith, shall comply with all Federal, State, and local laws, rules and regulations concerning the maintaining of books and records, and shall provide promptly to the appropriate Provider all required reports, applications, and other documents.

If the annual Actual Income exceeds the annual Revenue, the difference shall be applied to the cost of providing Contract Services in accordance with the method set forth in Annex B.

If the annual Actual Income exceeds the annual Gross Expenses, the following will apply unless expressly waived in writing by the Department. The difference between that excess sum and the product of that excess sum multiplied by the Provider Contribution Rate shall be remitted to the City.

If the Actual Income is reasonably expected to fall short of the Revenue due to reasons beyond the Provider's control, the Department may, after review of the Provider's fiscal and program performance under the contractual agreement and subject to the availability of funds and the competing demands therefore, undertake to provide additional funds to the Provider.

Section 3.09 Utilization Management for ACT Teams and Case Management Programs. At the option of the Department, Providers operating ACT teams or case management programs under the contractual agreement shall implement utilization management procedures in accordance with the directives of the Department, in order to ensure that the eligibility of consumers for the services of these programs is periodically reviewed and that consumers no longer needing the same level of service in a specific program are discharged from that program and appropriately referred for further care as clinically indicated.

ARTICLE IV. PAYMENTS FOR SERVICES

Section 4.01 General Payment Obligation. In consideration of the delivery of Contract Services during the term of the contractual agreement and in accordance with the terms and provisions of all other sections of the contractual agreement, the

Department shall pay to the Provider an amount not to exceed the Total Contract Amount less any applicable Liquidated Damages Amount, but no payments shall be made unless and until the Provider has fulfilled its obligations under the contractual agreement.

Unexpended public funds from one Agreement Year cannot be applied to a subsequent Agreement Year. Funding for any subsequent Agreement Year shall be at the sole discretion of the Department. The Department's determination to provide funds during each Agreement Year will be based on such factors as the continued need for the services, adequate performance by the Provider and the appropriation of sufficient public funds for each such Agreement Year. Any amendments, modifications or adjustments to the Annexes shall be in accordance with the provisions of the contractual agreement and the Procurement Policy Board Rules. Absent any amendment, modification or adjustment to the Annexes, the original provisions of these Annexes will remain in effect.

The Provider acknowledges that a portion of the Total Contract Amount is funded with non-City funds, e.g., with grant money from the State to the City. In the event that the City receives an increase in grant funds from the State for the work to be performed under the contractual agreement, the Total Contract Amount shall be adjusted by the amount of such increase, and, as appropriate, the levels of service set forth in Annex A shall be adjusted in proportion to the percentage increase in the Total Contract Amount.

Furthermore, separate from such adjustments, the Department may, at its sole discretion and subject to competing demands for funds, amend the contractual agreement to increase the Total Contract Amount specified in Annex B, provided such amendment is made in accordance with Section 6.03 of the contractual agreement.

Section 4.02 Amount Payable by the City for an Agreement Year. (Mhy) Payment by the City under the contractual agreement, unless otherwise specifically agreed to, shall be governed by the provisions of this Section. When an Agreement Year covers a period of less than twelve months, advance payments will be determined in accordance with the length of the Agreement Year.

In consideration of the delivery of Contract Services the City shall pay to the Provider, in installments, an amount not to exceed the Total Contract Amount specified in Annex B less any applicable Liquidated Damage Amount. The City shall make a first advance payment to the Provider on or after July 1, in an amount not to exceed one twelfth (1/12) of the Total Contract Amount, but said advance payment shall only be made if the Provider has filed a request for advance payment for the month of July and submitted required reports covering the period through the previous April under its agreement (if any) for the previous contract period. The City shall make a second advance payment to the Provider on or about August 1 in an amount not to exceed one twelfth (1/12) of the Total Contract Amount, but said advance payment shall only be made if the Provider has filed a request for advance payment for the month of August and submitted required reports covering the period through the previous May under its agreement (if any) for the previous contract period. The City shall make a third advance payment to the Provider on or about September 1 in an amount not to exceed one twelfth (1/12) of the Total

Contract Amount, but said advance payment shall only be made if the Provider has filed a request for advance payment for the month of September and submitted required reports covering the period through the previous June under its agreement (if any) for the previous contract period.

Thereafter, subject to the foregoing limitations on the Total Contract Amount, the City shall reimburse the Provider for Contract Services on or about the dates specified below, an amount equal to the Gross Cost less Actual Income, less the Provider Contribution and less any advance payments: (a) a payment on or about October 1 based on the July monthly fiscal summary claim; (b) a payment on or about November 1 based on the August monthly fiscal summary claim; (c) a payment on or about December 1 based on the September quarterly expenditure report less any payments made to the Provider for the previous two months of that quarter; (d) a payment on or about January 1 based on the October monthly fiscal summary claim; (e) a payment on or about February 1 based on the November monthly fiscal summary claim; (f) a payment on or about March 1 based on the December quarterly expenditure report less any payments made to the Provider for the previous two months of that quarter; (g) a payment on or about April 1 based on the January monthly fiscal summary claim; (h) a payment on or about May 1 based on the February monthly fiscal summary claim; and (i) a payment on or about June 1 based on the March quarterly expenditure report less any payments made to the Provider for the previous two months of that quarter, provided that the Total Contract Amount specified in Annex B is not exceeded.

However, no payments will be made unless (a) the Provider submits to the Department, within 30 days following the end of the month being reported, a monthly fiscal claim in the form and manner prescribed by the Department; (b) the Provider has submitted to the Department by the date(s) specified in Annex C the levels of service reports for the previous month; (c) the Provider is in full compliance with all other reporting requirements specified in Annexes C and D; (d) the Provider has made all payments due the City under Section 4.04; and (e) the Provider is in compliance with the submission of any corrective action plans as a result of an audit by the Department.

Notwithstanding the provisions stated above, the City may, after submission by the Provider to the Department of a request in such form and supported by such documentation and certification as the Department may require, make supplemental advance payment(s) to the Provider at any time during the Agreement Year, if the Total Contract Amount specified in Annex B is not exceeded. The Provider must show, to the Department's satisfaction, a net cash need for a specific period, and the approval of any supplemental advance payment will be at the sole discretion of the Department.

With regard to Supported Housing Contract Services provided under the contractual agreement, the City shall make a first advance payment to the Provider in an amount not to exceed forty percent (40%) of the Total Contract Amount. Subsequent payments shall be governed by the provisions of this Section.

Section 4.03 Agreement Year End Close-out/Finalization. The Provider shall

submit to the Department, no later than forty-five (45) days after the end of the Agreement Year, the final quarterly expenditure report, covering the period through June 30 of the Agreement Year, in the manner and form prescribed by the Department.

The Department shall review all quarterly expenditure reports submitted by the Provider for the Agreement Year to determine compliance with Section 7.08 of the contractual agreement. Based on this review, the Department will determine the amount of reimbursement the Provider is entitled to for Contract Services provided under each program unit funded under the contractual agreement.

For each non-CSS-funded program unit under the contractual agreement, the maximum amount of reimbursement to which the Provider shall be entitled will be the lesser of the approved actual adjusted net amount or the budgeted adjusted net amount for each such individual non-CSS-funded program unit less any applicable Liquidated Damage Amount.

For each CSS-funded program unit under the contractual agreement, the Provider shall be entitled to one-hundred percent (100%) reimbursement if the Provider provided one-hundred percent (100%) of the committed service level for each such individual CSS-funded program unit less any Liquidated Damage Amount for the term of the contractual agreement. If the Provider provided less than one-hundred percent (100%) of the committed service level for each such individual CSS-funded program unit under the contractual agreement, as required under the last paragraph of Section 3.03, the amount of reimbursement to which the Provider is entitled for each such program unit will be computed at the lesser of the following: a) the actual net unit cost multiplied by the number of units of service provided; or, b) the contractual net unit cost as set forth in the contractual agreement multiplied by the number of units of service provided. For the purposes of the contractual agreement, the actual net unit cost of each program unit shall be computed by dividing the net costs of the individual program unit by the number of units of service provided in that program unit.

If, at the net level, the Provider is overspending in an individual program unit, and underspending in another individual program unit, the Provider may submit a written request to the Department to offset the actual net operating cost of these program units. The Provider must justify, to the Department's satisfaction that the overspending in the program unit occurred due to circumstances beyond the Provider's control. The Department, subject to the availability of funds, may approve said request.

Section 4.04 Refund by the Provider. If, upon the finalization of the Agreement Year, the aggregate amount received by the Provider during that year exceeds the amount due under the contractual agreement, as determined under Section 4.03 of the contractual agreement, the Department shall notify the Provider of the exact amount due to the City for over-reimbursements during the Agreement Year. Immediately, but no later than thirty (30) days after the finalization date, except for good cause shown to the Department, the Provider shall refund to the City the amount due for such over-reimbursement under this or any other agreement.

If the Provider fails to refund amounts due the City for an Agreement Year under this or any other agreement, the Department may, at its discretion (a) withhold payments due the Provider under the contractual agreement until the Provider has made all payments due the City under this or any other agreement; or (b) deduct from payments due the Provider under the contractual agreement, either in installments or in one lump sum, the amount due the City under this or any other agreement.

The Provider's obligation under this section shall continue beyond the termination of the contractual agreement.

Section 4.05 Final Payments by the City. If, upon the finalization of the Agreement Year, the City owes the Provider for Contract Services, as determined under Section 4.03 of the contractual agreement, the Department shall authorize payment to the Provider in the appropriate amount within thirty (30) days of the date of the finalization.

Section 4.06 Release. The acceptance by the Provider, or by any person claiming under the Provider, of the amount certified as final payment under the contractual agreement, whether by voucher, judgment of any Court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to the City from all liability, claims and causes of action by the Provider, or its legal representative, for anything done or furnished under the contractual agreement.

Section 4.07 Payments Conditional. In addition to the refund payments under Section 4.04, all payments by the City under the contractual agreement shall be subject to revision on the basis of an audit conducted by the Comptroller of the City and, at the option of the Department, by any of the persons specified in Section 5.04. Furthermore, if the State shall fail to approve full State aid reimbursement under the Act by reason of any negligent or unauthorized act or omission of the Provider, including but not limited to the Provider's failure to provide the State any report required pursuant to the contractual agreement, the Total Contract Amount shall be reduced by the amount equal to the sum so not approved, and the City may withhold from any payment due to the Provider under any agreement, or recover from the Provider, an amount equal to the sum so not approved.

Section 4.08 Maintenance of Effort; Amount Payable by the Provider. In consideration of the monies to be paid by the City to the Provider for the delivery of Contract Services, the Provider shall contribute to the cost of Contract Services in installments, an amount equal to the Provider Contribution. No part of the Provider Contribution shall include Actual Income.

Section 4.09 Interest Earned on Public Funds. Interest earned by the Provider on a) public funds received by the Provider from this Department under the contractual agreement and b) funds received by the Provider for the provision of Contract Services (e.g., self-pay, Medicare, Medicaid, VESID payments, governmental grants/contracts) is to be reported by the Provider to the Department as Actual Income.

Section 4.10 Electronic Funds Transfer

a) In accordance with §6-107.1 of the New York City Administrative Code, the Provider agrees to accept payments under the contractual 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 the contractual agreement, the Provider shall designate one financial institution or other authorized payment agent and shall complete the attached Annex G “EFT Vendor Payment Enrollment Form” in order to provide the Commissioner of Finance with information necessary for the Provider 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 Provider shall constitute full satisfaction by the City for the amount of the payment under the contractual agreement. The account information supplied by the Provider to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

b) Commissioner may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements hereunder 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 interest of the City.

ARTICLE V. RECORDS, REPORTS, AUDITS

Section 5.01 Books and Records. All the books and records of the Provider, including those with respect to the delivery of Contract Services which shall be kept separate or identifiable from those relating to other activities of the Provider, shall be made available to the Department or its designee. All books and records are to be maintained at the location that is reported to the Department as specified in Annex C. If these books and records are moved to any other location, the Provider shall so notify the Department in writing.

The Provider shall maintain the financial books and records relating to Contract Services in accordance with Generally Accepted Accounting Principles. Such records shall be subject to review, audit inspection and copying by City and State personnel, upon reasonable notice, subject to the provisions of Section 5.06.

The Provider shall keep and, subject to the provisions of Section 5.05 and in accordance with applicable law, make available to the Department individual medical/patient records for each person provided Contract Services which shall satisfy the requirements of SDMH, including Section 85.9 of the Rules and Regulations and, in any event, shall include all diagnostic studies and records of treatment provided by the personnel of the Provider.

Section 5.02 Reporting Requirements. To aid the Department in discharging its responsibility to supervise and evaluate community mental hygiene services and to ensure fulfillment of State reporting requirements, the Provider (unless excused by SDMH in writing, and the Provider has furnished a copy thereof to the Department) shall complete and submit to the State Department all the forms and reports specified in Annex C by the times specified therein. The Provider shall concurrently submit to the Department copies of the reports and forms specified in Annex C. If applicable, the Provider shall furnish to the Department promptly after its completion a copy of the annual report required by Section 519 of the State Not-For-Profit Corporation Law, and shall, in addition, complete and furnish such other forms and reports as the Department or the State Department may require.

Section 5.03 Record Retention. The Provider shall retain all books and records (including supporting documents) relating to its performance under the contractual agreement for six (6) years from the termination date of the contractual agreement. If the contractual agreement or any program unit within the contractual agreement is terminated, the Provider must notify the Department in writing of the location where records will be stored for the required six (6) years. City and State auditors and any other persons authorized by the Department, including the Department's Inspector General, shall have full access to and the right to examine and copy any of said materials during said period. This record retention provisions of this section shall not apply to client clinical records which shall be retained by the Provider as provided by law.

Section 5.04 Audit, Inspection, and Visitation. Subject to the provisions of Section 5.05 and in accordance with applicable law, the Provider shall during regular business hours make available to the Department, the Comptroller of the City, the State Department, and the State Comptroller, or any persons retained by those agencies, its mental health, mental retardation/developmental disabilities, and chemical dependency services plants and facilities for reasonable inspection and visitation, and all financial, statistical and patient reports, records and memoranda, and other data relating thereto, for audit and inspection. In addition, the Provider shall furnish to the Department, promptly after their completion, copies of the regular annual certified financial statement of the Provider and all audits of Contract Services, other than those conducted under this Section. Upon request, the Provider shall make available to the Department all other annual audits relating to the Provider, such as those performed under Federal OMB Circular A-133. As part of the fiscal audit process, in order to verify that an expense claimed to DOHMH is reasonable and in accordance with the contract, the Department and or its contracted CPA may request any supporting documentation to verify that



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expenses were appropriate, The Provider's obligation under this section shall continue beyond the term of the contractual agreement

If the Provider fails to comply with the provisions of this Section, the Department may:
a) withhold payments due the Provider under this or any other agreement with the Department; and/or b) terminate the contractual agreement upon two-weeks written notice to the Provider.

Section 5.05 Conduct of Patient Record Audits. All examinations, inspections, audits, and visitations under the contractual agreement shall, in the absence of an effective waiver by a client or except as otherwise provided by law, be conducted in accordance with generally accepted standards of patient confidentiality and privilege and shall be performed on a "no name" basis, on the Provider premises, and, at the direction of the Provider, in the presence of a Provider representative.

Section 5.06 Inspector General Reviews. Notwithstanding any provisions herein regarding notice of inspection, in accordance with applicable law all records of the Provider kept pursuant to the contractual agreement shall be subject to immediate inspection, review and copying by the Department's Inspector General without notice.

ARTICLE VI. TERM, MODIFICATIONS, AMENDMENTS, MANDATORY RENEGOTIATION, TERMINATION, LACK OF CERTIFICATION, ASSIGNMENT, EXTENSIONS/RENEWALS, APPEAL PROCEDURE

Section 6.01 Term of Agreement. The term of the contractual agreement, including renewal options (if any), is set forth on the signature page. If the term of the contractual agreement covers more than one Agreement Year (City Fiscal Year), all references herein to payments, reimbursement, income and the like are for a specific Agreement Year, with expense and revenue items to be treated accordingly. Funding for each Agreement Year shall be at the sole discretion of the Department and unexpended public funds from one Agreement Year cannot be applied to a subsequent Agreement Year.

Section 6.02 Modifications. The contractual agreement may be modified, in writing, in accordance with Department directives.

Section 6.03 Amendments. The contractual agreement may be amended from time to time in accordance with the Rules of the Procurement Policy Board of the City of New York. The Provider may submit requests for budget modifications at any time during the fiscal year and in August immediately following the end of the Agreement Year.

Section 6.04 Reduction of Public Funds. Any provision in the contractual agreement to the contrary notwithstanding, if after the signing of the contractual agreement the public funds anticipated to be available to the Department for any/all Agreement Year(s) are reduced, the Department reserves the right to: (a) reduce the

public funds authorized under the contractual agreement by informing the Provider of the amount of the reduction and revising Annexes A and B, as appropriate; or (b) terminate the contractual agreement or any part thereof.

Section 6.05 Termination. a) The City may terminate the contractual agreement at will, in whole or in part, upon a minimum of thirty (30) days' prior notice in writing.

b) The City shall have the right to terminate the contractual agreement, in whole or in part upon a minimum of thirty (30) days' prior notice in writing: 1) under any right to terminate as specified in any section of the contractual agreement; or 2) upon the failure of the Provider to comply with any of the terms and conditions of the contractual agreement.

c) The City shall have the right to terminate the contractual agreement immediately, in whole or in part, by sending written notice to the Provider if conditions at a facility where the Provider performs Contract Services constitute a threat to staff, to patients/clients or to public health or safety.

On the effective date of any termination of the contractual agreement, except as otherwise provided in the contractual agreement, the basic obligations of the parties hereto shall cease and the City shall reimburse the Provider, or the Provider shall remit funds to the City, as the case may be, subject to Sections 4.04, 4.05 and 4.07, so that accounts (including the parties' respective interest in any property purchased under the contractual agreement and any other agreement between the parties) are settled within sixty (60) days from the termination date.

Upon notice of termination, the Provider shall be obligated to comply with the Department's closeout procedures, as communicated by the Department, including but not limited to procedures regarding information that must be provided to the Department and procedures regarding transition planning for the Provider's clients.

Section 6.06 Lack of Certification. Failure by the Provider to obtain, by the commencement of the term of the contractual agreement, any license, Operating Certificate, or other approval required by law to provide Contract Services, or the revocation or suspension of such a license, Operating Certificate, or other approval during the term of the contractual agreement, may be cause for termination of the contractual agreement, in whole or in part, forthwith. The revocation, or suspension of the license, Operating Certificate, or other approval shall not be considered to have occurred when an administrative appeal is made by the Provider with such agency as is responsible for revoking or suspending the license, Operating Certificate or other approval until the final determination of the appeal is made by the agency.

Section 6.07 Assignment. Except as provided in Section 8.10, no rights or obligations under the contractual agreement may be assigned by either party without the prior written consent of the other party. Any assignment, transfer or disposition of the contractual agreement without such written consent will be void. Failure of the Provider

to obtain any required consent to any assignment, shall be cause for termination for cause, at the option of the Department; and if so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Provider, its assignees or transferees, and all monies that may become due under the contractual agreement shall be forfeited to the City except so much thereof as may be necessary to pay the Provider's employees.

Section 6.08 Renewal. The Department, at its sole discretion, may renew the contractual agreement for an additional term, if any is indicated on the signature page, subject to the following conditions: continued need for the services, satisfactory performance by the Provider, and the availability of funds. The Department and the Provider will negotiate in good faith the terms of the renewal, which shall be substantially the same as in the original Agreement. In connection with those negotiations, the Department shall prepare and submit to the Provider proposed forms of Annexes A and B, in such form and on such date as shall be prescribed by the Department. The Provider shall cooperate with the Department in revising the proposed Annexes and shall provide all additional information as the Department may reasonably request. Failure by the Provider to provide additional information, by the date prescribed by the Department, may result in the withholding of payments due the Provider under the contractual agreement. When negotiations to renew the contractual agreement are completed, the Department shall make best efforts to expeditiously process the renewal to minimize cash flow problems of the Provider. The Department shall furnish or make available to the Provider copies of Annexes A and B relating to the Provider. It is understood that the Department is under no obligation to renew the contractual agreement or to continue this program in whole or in part, after the expiration date specified on the signature page of the contractual agreement.

Section 6.09 Extension of Time. Upon written application by the Provider, the Department may grant an extension of time for the performance of Contract Services. Said application must state, at a minimum, in detail, each cause for delay, the date the cause of the alleged delay occurred, and the total number of days of delay attributable to such cause. The Department, at its sole discretion, will determine whether to approve the extension and the number of days requested.

Section 6.10 Order of Priority. When applicable, in the event of a dispute or conflict in the interpretation of the contractual agreement, the terms of the contractual agreement, without the materials incorporated by reference, shall be first controlling. Thereafter, the order of priority shall be the Department's solicitation followed by the Provider's proposal. All the documents shall be read and construed as far as possible to be one harmonious whole.

ARTICLE VII. PROVIDER COVENANTS

Section 7.01 Bonding. As specified in the attached Schedule A, the Provider will obtain, and maintain at all times during the term of the contractual agreement, a fidelity bond covering the activities of each person who receives, handles or disburses the

monies granted under the contractual agreement, or who collects funds from recipients of Contract Services. This bond shall be issued by an insurer duly licensed by the Superintendent of Insurance of the State of New York to transact fidelity bond business in the State of New York and shall provide that any payment made thereunder for any loss sustained, either by the Provider or the City or both, through any fraudulent or dishonest act by one or more of the bonded persons shall be payable to the City.

Section 7.02 Insurance. As specified in the attached Schedule A, the Provider shall carry paid up insurance to protect the Department and the City against any and all claims, loss or damage, including claims for injuries to, or death of persons or damage to property, to the extent that such injuries, death or damages are attributable to the negligence or any other acts of the Provider, or its employees, or agents or students. Such policy or policies of insurance shall be obtained from a company or companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least AA, unless prior written approval is obtained from the Mayor's Office of Operations, and shall name the Department and the City as additional insureds, and shall provide that in the event of cancellation thereof the Department shall be notified at least sixty (60) days in advance thereof. A certificate of insurance shall be delivered to the Department for approval as to form prior to the effective date of the contractual agreement. The liability of the Provider hereunder to the Department and the City is absolute and is not dependent upon any question of negligence on its part, except to the extent that injuries, death or damages are attributable to the negligence or any other act of the Department or the City or its employees or agents.

In the event that any claim is made or any action is brought against the City arising out of negligent or careless acts of an employee, an agent or a student of the Provider, within or without the scope of his employment or duties, or arising out of the Provider's negligent performance of the contractual agreement, or arising out of the willful misconduct of its employees, or its agents or its students performed in the course of their duties with the Provider, then the City shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said claim or action. The right and remedies of the City provided for in this clause shall not be exclusive and are in addition to any other right and remedies provided by law or the contractual agreement.

Section 7.03 Provider an Independent Entity. The Provider is an independent entity and is not, and shall not be deemed to be, an agent, employee, servant or representative of the Department or the City for any purpose whatsoever.

Section 7.04 Provider Personnel Deemed Employees of Provider. All personnel furnished by the Provider as required under the contractual agreement shall be employees of the Provider and not of the Department or the City, and the Provider alone is responsible for their work, personal conduct while performing work, labor or services under the contractual agreement, as well as for their direction and compensation. Nothing included in the contractual agreement shall impose any liability or duty upon the Commissioner or the City to persons, firms or corporations employed or engaged by the

Provider as coordinators, consultants, or independent contractors or in any other capacity, or as employees, servants or agents of the Provider, or make the Commissioner or the City liable to any person, corporations, associations or any government for any acts, omissions, liabilities, obligations and taxes of whatever nature, including but not limited to, Unemployment Insurance Benefits, Workmen's Compensation, or Social Security coverage, of the Provider or its coordinators, consultants or employees, servants, agents or independent contractors.

The Provider shall be solely responsible for and shall indemnify, keep, save, and hold the Department and the City harmless from any claim, loss, liability, expense, or damage, resulting from all mental or physical injuries or disabilities, including death, to employees or patients of the Provider or to any other person, or from any damage to any property sustained in connection with the Contract Services, which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants, students, or independent contractors, or from the Provider's failure to provide for the safety and protection of its employees, whether or not due to negligence, fault, or default of the Provider, except to the extent that such injuries, damages, disabilities or death are attributable to the acts of the Department or the City or its employees or agents. The Provider's liability under the contractual agreement shall continue after the termination of the contractual agreement with respect to any liability, loss, expense, or damage resulting from acts occurring prior to termination.

Section 7.05 Limitation on Actions. No action shall lie or be maintained against the City by the Provider upon any claims based upon the contractual agreement unless such action shall be commenced within one year after the date of filing in the Office of the Comptroller of the City of the certificate for the final payment hereunder, or within one year of the termination or conclusion of the contractual agreement, or within one year after the accrual of the cause of action, whichever first occurs.

Section 7.06 Conflict of Interest. The Provider 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 would or may conflict in any manner or degree with the performance of the services hereunder. The Provider further represents and warrants that in the performance of the contractual agreement no person having such interest or possible interest shall be employed by it.

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 the contractual agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in the contractual agreement or the proceeds thereof.

No person may hold a job or position over which a member of his immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise. A member of an immediate family

includes: husband, wife, 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, cousin and separated spouse unless such job or position is wholly voluntary and unpaid. For purpose of this section, a member of a Board of Directors of the Provider is deemed to exercise authority over all employees of the Provider.

Section 7.07 No Inducement. As an inducement for the execution of the contractual agreement by the City, the Provider warrants and represents that (a) it has not been asked to pay, nor offered to pay, nor has paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of the contractual agreement; and (b) it has not employed any person to solicit or procure the contractual agreement, and has not made, and shall not make, any payment in any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of the contractual agreement.

Section 7.08 Compliance with Laws, Rules, Regulations and Directives. The Provider shall furnish the Contract Services in compliance with all applicable Federal, State, and City (including the Department) laws, rules, regulations, and directives as are in effect when services are rendered. and shall comply to the extent applicable with the terms of Annex F of the contractual agreement.

Section 7.09 Duplication of Payments. Payments for the work to be performed under the contractual agreement shall in no manner duplicate payments for any work performed or to be performed under other agreements between the Provider and any other funding source.

Section 7.10 Subcontracting. The Provider agrees not to enter into any subcontract(s) for the performance of its obligations, in whole or in part, under the contractual agreement without the prior written approval of the Department. Two copies of any proposed subcontract(s) shall be submitted to the Department with the Provider's written request for approval. All such subcontract(s) shall contain provisions specifying: 1) that the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Department and the Provider; 2) that nothing contained in such agreement shall impair the rights of the Department; 3) that nothing contained herein, or under the Agreement between the Department and the Provider, shall create any contractual relation between the subcontractor(s) and the Department; and 4) that the subcontractor(s) specifically agree(s) to be bound by the confidentiality provision set forth in the Agreement between the Department and the Provider.

The Provider understands that it is fully responsible to the Department for the acts and omissions of the subcontractor(s) and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it. In addition, the Provider understands it shall not in any way be relieved of any responsibility under the contractual agreement by any subcontract(s).

Section 7.11 Special Provisions for Program Units with OASAS Funding. If the Provider is providing Contract Services that are funded in whole or in part by the New York State Office of Alcoholism and Substance Abuse Services ("OASAS") and subject to Annex E, the Provider agrees to indemnify, defend and save harmless the Department and the City, their officers, agents and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of Contract Services that are funded by OASAS and subject to Annex E, and from all claims and losses occurring or resulting to any person, firm or corporation who may be injured or damaged by the Provider in the performance of Contract Services that are funded by OASAS and subject to Annex E, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights or rights of privacy arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished in connection with the performance of Contract Services that are funded by OASAS and subject to Annex E, or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to the performance of such Contract Services.

Should any claim or demand be made, or any action brought against the Department or the City in any way relating to the performance of Contract Services funded by OASAS and subject to Annex E, the Provider agrees to render diligently to the Department and the City, without additional compensation, any and all cooperation which may be required of the Provider.

ARTICLE VIII. MISCELLANEOUS

Section 8.01 Nonliability. Except as specifically provided in the contractual agreement, neither the City nor the Provider shall be liable for the acts, omissions, liabilities, or obligations of the other party or of any person, firm or corporation.

Section 8.02 All Legal Provision Deemed Included. It is the intention and understanding of the parties hereto that each and every provision of law required to be inserted in the contractual agreement should be and is to be inserted herein and if, through mistake or otherwise, any such provision is not inserted herein, or is not inserted in correct form, then the contractual agreement shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

Section 8.03 Severability. If the contractual agreement contains any unlawful provisions not an essential part of the general structure of the Agreement, and which shall appear not to have been a controlling or material inducement to the making thereof, the same shall be deemed to be of no effect and shall, upon the application of either party, be stricken from the Agreement without affecting the binding force of the Agreement as it shall remain after omitting such provision.

Section 8.04 Section 8.04 Equal Employment. The contractual agreement is subject to the requirements of Executive Order No. 50 (April 25, 1980) (E.O. 50) and the Rules and Regulation promulgated thereunder. By signing the contractual agreement, the Provider agrees that it: (a) will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment; (b) will not discriminate unlawfully in the selection of subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status; (c) will state in all solicitations of advertisement for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status and that it is an equal employment opportunity employer; (d) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitment under E.O. 50 and the Rules and Regulations promulgated thereunder; (e) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50, the Rules and Regulations promulgated thereunder, and orders of the Department of Small Business Services, Division of Labor Services ("DLS"). Copies of all required reports are available upon request from the Department; and (f) will permit DLS to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The Provider understands that in the event of its noncompliance with the nondiscrimination clauses of the contractual agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the Agreement and noncompliance with E.O. 50 and the Rules and Regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of the DLS may direct the imposition by the Department head of any or all of the following: (a) disapproval of the Provider; (b) suspension or termination of all or parts of the contract and/or of payments therefor; (c) declaring the Provider in default; or (d) in lieu of any of the foregoing, the Director of the DLS may impose an employment program.

Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder, in one or more instances may result in the Department declaring the Provider to be non-responsible.

The Provider agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$100,000 to which it becomes a party unless exempted by E.O. 50 and the Rules and Regulations promulgated thereunder, so that such

provisions will be binding upon each subcontractor or vendor. The Provider will take such actions with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. The Provider further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the Rules and Regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

Further, as required by New York State Labor Law § 220-e; the Provider agrees: (a) That in the hiring of employees for the performance of work under the contractual agreement or any subcontract hereunder, neither the Provider, Subcontractor, nor any person acting on behalf of such Provider or Subcontractor, shall by reason of race, creed, color, sex 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; (b) That neither the Provider, Subcontractor, nor any person on his behalf shall, in any manner discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin; (c) That there may be deducted from the amount payable to the Provider by the City under this contract a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this contract; and (d) That the contractual agreement may be canceled or terminated by the City and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Agreement.

The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

In addition, as required by New York City Administrative Code § 6-108: (a) It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person; (b) It shall be unlawful for any person or any servant, agent or employee of any person, described above, to 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. (c) Breach of the foregoing provisions shall be deemed a breach of a material provision of this contract; (d) Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment for not more than thirty days, or both.

Section 8.05 Labor Negotiations. The Provider shall notify the Department in

advance of any pending negotiations with any organization representing its employees when the results of such negotiations could significantly affect the rates for Contract Services under future agreements of this kind. Prior to a final settlement with any such organization, the Provider, wherever practicable, shall notify the Department of the terms and conditions thereof. The Provider, in addition, shall provide the Department with copies of all collective bargaining agreements covering employees providing Contract Services.

Section 8.06 Notices. All notices under the contractual agreement shall be in writing and shall be sent by mail, postage prepaid, to the Division of Mental Hygiene, 42-09 28th Street, 17 Floor, CN11, Queens, NY 11101-4132 in the case of the Department, and to the person and address specified in Annex A, in the case of the Provider, or to such other person or address either party shall designate to the other by written notice.

Section 8.07 Headings. The article and section headings in the contractual agreement are inserted for convenience and reference only and shall not be used in any way to interpret the contractual agreement.

Section 8.08 Political Activity. There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with the contractual agreement, nor shall any of the funds provided under the contractual agreement be used for such purposes.

Section 8.09 Entire Agreement. The contractual agreement, the Annexes hereto, and, where applicable, the documents incorporated by reference, contain all the terms and conditions agreed upon by the Provider and the Department, and no other agreement, oral or otherwise, regarding the subject matter of the contractual agreement shall be deemed to exist or to bind the Provider or the Department or to vary any of the terms contained herein.

Section 8.10 Assignment of Antitrust Claims. The Provider hereby assigns, sells and transfers to the City of New York all right, title and interest in and to any claims and causes of action arising under the antitrust laws of New York State or of the United States relating to the particular goods or services purchased or procured by the City under the contractual agreement.

Section 8.11 Act of God, etc. The Provider shall not be liable for any failure to perform Contract Services which is caused by an Act of God, insurrection, invasion, bombardment, rebellion, or military or usurped power.

Section 8.12 Public Communications. The Provider or any of its employees or agents, in any statement or release made to the public or the media, including any professional meeting or publication, relating to or based upon the work performed under the contractual agreement, shall conspicuously acknowledge that the Contract Services are supported by funds furnished by the City and the State.

Section 8.13 Confidentiality of Reports, Drafts, Information Data and Patient Records.

a) All of the reports, drafts, information or data, furnished to or prepared, assembled or used by the Provider or any of its employees or agents, under the contractual agreement are to be held confidential and the Provider agrees that the same shall not be published or made available to any individual or organization, for publication or otherwise, without the prior written approval of the Department. If the Provider is a college, university, or other teaching institution, the foregoing sentence shall not apply only to the extent otherwise provided in Section 8.14.

b) The Provider's client clinical records, including the identity of the clients, shall be kept confidential in accordance with applicable State and Federal law, including but not limited to, in the case of records related to alcoholism and substance abuse, 42 United States Code §290dd(2) and regulations promulgated thereunder, and in the case of records related to mental illness or mental retardation/developmental disabilities, New York State Mental Hygiene Law §33.13, and, where applicable, the Health Insurance Portability and Accountability Act of 1996, Privacy Regulations found at 45 Code of Federal Regulations Parts 160 and 164.

c) The Provider shall provide notice to the Department within three (3) working days of the discovery by the Provider of any security breach as defined herein. Upon the discovery of a security breach, the Provider shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. The requirement to provide notice of such steps shall not require the Provider to give notice to the Department of: (1) the names or other identifying information of individuals who caused or may have caused the breach; (2) any disciplinary actions that may have been taken against employees, volunteers, or subcontractors who might have been involved in the security breach; (3) routine security upgrades of computer systems; and (4) any information which the Provider in good faith believes would compromise the security, confidentiality, or integrity of confidential information held by the Provider by being made publicly available. The time frame for notifying the Department under this paragraph may be extended by the Provider if such notification could impede a criminal investigation of the security breach.

d) For the purposes of this section, a security breach means the unauthorized acquisition or acquisition without valid authorization of data maintained by the Provider that compromises the security, confidentiality, or integrity of clinical records or clinical information of clients, including their identity, for whose clinical benefit work is being or has been performed under the contractual agreement. Good faith acquisition of information by an employee or agent of the Provider for the purposes of the Provider is not a breach of the security of the system, provided that such information is not subject to unauthorized use or disclosure.

In determining whether information has been acquired, or is reasonably believed to have been acquired, by an unauthorized person or a person without valid authorization, the Provider may consider the following factors, among others:

(1) Indications that the information is in the physical possession and control of an unauthorized person, such as a lost or stolen computer, other device containing information, or a paper case file; or

(2) Indications that the information has been downloaded or copied; or

(3) Indications that the information was used by an unauthorized person, such as instances of theft reported.

Section 8.14 Copyrights. (a) Any manuals, reports, documents, data, drafts, computer programs, sound recordings, video recordings or other materials produced in whole or in part pursuant to the contractual agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101, and as between the City and Provider, the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire”, the Provider hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. All derivative products of the Copyrightable Materials (e.g. translations, arrangements, abridgements, condensations, and compilations) shall be deemed to be the exclusive intellectual property of the City. The Provider shall retain no copyright or intellectual property interest in the Copyrightable Materials, and the Provider shall use them for no other purpose without the prior written permission of the City; provided, however, that if the Provider is a college, university or other teaching institution, the Department hereby grants to the Provider a royalty-free, non-exclusive and irrevocable license to reproduce, publish, translate or otherwise use such materials for scholarly purposes. Any such use of this license shall not result in any payment to the Provider, as the right to financial benefit flows with the copyright ownership.

(b) In no event shall this section 8.14 apply to, or prevent the Provider or any of its employees or agents from asserting or protecting its right in, any report, document, draft or other data which existed prior to or was developed independently from the activities directly related to the contractual agreement.

(c) No report, document, draft or other data which the Department does not require to be developed pursuant to the contractual agreement, shall be prepared during the hours of work funded pursuant to the contractual agreement.

Section 8.15 Infringements. The Provider shall be liable to the Department and hereby agrees to indemnify and hold the Department harmless for any damage, loss or expense sustained by the Department from any infringement by the Provider of any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, and specifications or printed matter furnished or used by the Provider in the performance of the contractual agreement.

Section 8.16 Investigations. 1. The parties to the contractual agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a 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.

2. 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,

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 with the City; then,

The Commissioner 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. If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 4 below without the City incurring any penalty or damages for delay or otherwise.

3. The penalties which may attach after a final determination by the Commissioner 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 City; and/or (b) the cancellation or termination of any or all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under the contractual 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.

4. The Commissioner 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: (a) 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. (b) 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. (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City. (d) 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 3 above, provided that the party or entity has given actual notice to the commissioner or agency head upon acquisition of the interest, or at the hearing called for in 2 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.

For purpose of this section, the following terms shall have the meaning set forth below: a) "license" or "permit" means a license, permit, franchise or concession not granted as a matter of right; b) "person" means natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee; c) "entity" means a 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; d) "member" means any person associated with another person or entity as a partner, director, officer, principal or employee.

In addition to and notwithstanding any other provision of the contractual agreement the Commissioner may in his or her sole discretion terminate the contractual agreement upon not less than three (3) days written notice in the event the Provider 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 the contractual agreement by the Provider, or affecting the performance of the contractual agreement.

Section 8.17 Participation in International Boycott. The Provider agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in any international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Provider or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render forfeit and void the contractual agreement.

The Provider shall comply in all respects with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

Section 8.18 Non-Discrimination Related to Persons with AIDS or HIV-related Medical Conditions. The Provider shall not discriminate in the admission, care, treatment, employment, and confidentiality of persons with AIDS or HIV-related medical conditions. Providers found to have discriminated or to have breached the confidentiality of AIDS-related medical records will be required to implement remedial plans, including staff education, to prevent future incidents. In cases of repeated violations or refusals to comply, funding to such Providers may be terminated and/or administrative fines may be imposed, pursuant to law.

Section 8.19 Disclosure of Bankruptcy or Reorganization. In the event that the Provider files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Provider shall disclose such action to the Department within five days of filing. In the event that the Provider files for reorganization under Chapter Eleven of the United States Bankruptcy Code, a copy of the Provider's reorganization plan shall be forwarded to the Department within five days of its submission to the court.

Section 8.20 Forum Provision-Choice of Law, Consent to Jurisdiction and Venue. The contractual agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Provider, and shall be governed by and construed in accordance with the laws of the State of New York.

The parties agree that any and all claims asserted by or against the City arising under the contractual agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect the contractual agreement and intent, the Provider agrees:

(a) If the City initiates any action against the Provider in Federal Court or in New York State Court, service of process may be made on the Provider either in person, wherever such Provider may be found, or by registered mail addressed to the Provider at its address as set forth in the contractual agreement, or to such other address as the Provider may provide to the City in writing; and

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

(c) With respect to any action between the City and the Provider in Federal Court located in New York City, the Provider expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

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

If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

Section 8.21 Consultant Report Information. A copy of each consultant report submitted by a consultant to any City official or to any officer, employee, agent or representative of a City department, agency, commission or body or to any corporation, association or entity whose expenses are paid in whole or in part from the City treasury shall be furnished to the Commissioner of the department to which such report was submitted or, if not a City department, then to the chief controlling officer or officers of such other office or entity. A copy of such report shall also be furnished to the Director of the Mayor's Office of Operations.

Section 8.22 Americans with Disabilities Act. The contractual agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Provider shall not discriminate against an individual with a disability, as defined in the ADA, including but not limited to individuals with vision, hearing, or mobility disabilities, in providing services, programs or activities pursuant to the contractual agreement. To ensure Provider's compliance with the ADA during the term of the contractual agreement the Provider shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail how it intends to make the services,

programs or activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s) listed. In the event the program site is not readily accessible and usable by individuals with disabilities, the Provider shall also include in the Compliance Plan a description of reasonable alternative means and methods that result in making the services, programs or activities set forth herein readily accessible to and usable by individuals with disabilities. The Provider shall submit the Compliance Plan to the Division of Mental Hygiene of the Department for review within ten (10) days after execution of the contractual agreement.

Upon approval by the Department of the Compliance Plan, the Provider shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs or activities accessible and usable by the disabled. Implementation of the Compliance Plan shall be in accordance with the schedule for Compliance agreed upon by the Provider and the Department.

Provider's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of the contractual agreement and result in the termination of the contractual agreement.

Section 8.23 Job Postings. To the extent authorized under current law, and to the extent not inconsistent with any collective bargaining agreements that the Provider may have, the Provider shall post any entry-level job openings at the HRA "Business Link" of the City of New York Human Resources Administration. An entry-level job is a job: (a) for which the educational qualifications required are no greater than a high school diploma or equivalent, and (b) for which individuals other than current employees of the Provider may be hired.

Section 8.24 Procurement Policy Board Rules. The contractual agreement is subject to the Rules of the Procurement Policy Board of the City of New York. In the event of a conflict between said Rules and a provision of the contractual agreement, the Rules shall take precedence.

ARTICLE IX. Emergency Contraception

This Article is applicable if the Provider is a facility operating pursuant to Article 28 of the New York Public Health Law which provides emergency medical care. Pursuant to Section 6-125 of the New York City Administrative Code, the Provider agrees as follows:

A. The Provider agrees to inform rape victims presenting to its emergency department of the availability of emergency contraception and, if requested, to administer, if medically appropriate, such contraception in a timely manner. "Rape victim" means any female person who alleges or is alleged to have been raped and presents to a hospital. "Emergency contraception" shall mean one or more prescription drugs, used separately or in combination, to be administered to or self-administered by a patient in a dosage and manner intended to prevent pregnancy when used within a medically recommended amount of time following sexual intercourse and dispensed for

that purpose in accordance with professional standards of practice, and which has been found safe and effective for such use by the United State Food and Drug Administration.

B. The Provider agrees to provide the New York City Department of Health and Mental Hygiene, on an annual basis, a report indicating the following information with respect to each reporting period: (i) the number of rape victims treated in such hospital's emergency department; (ii) the number of rape victims treated in such hospital's emergency department which were offered emergency contraception; (iii) the number of rape victims treated in such hospital's emergency department for whom the administration of emergency contraception was not medically indicated and a brief explanation of the contraindication; and (iv) the number of times emergency contraception was accepted or declined by a rape victim treated in such hospital's emergency department.

C. The Provider agrees to provide the New York City Department of Health and Mental Hygiene a copy of its protocol for treatment of victims of sexual assault, which hospitals are required to establish pursuant to section 405.19 of title 10 of the codes, rules and regulations of the State of New York.

ARTICLE X. APPLICABILITY OF LIQUIDATED DAMAGES SYSTEM

The contractual agreement shall be subject to the provisions of Annex D.

ARTICLE XI. RESOLUTION OF DISPUTES

1. Except as provided in 1(a) and 1(b) below, all disputes between the City and the vendor that arise under, or by virtue of, this contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board ("PPB Rules"). This procedure shall be the exclusive means of resolving any such disputes.

- (a) This section 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.
- (b) For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the vendor's work to the contract, and the acceptability and quality of the vendor's work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the vendor disagrees.

2. All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.

3. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the vendor shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer (“ACCO”) or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of any and all claims being presented pursuant to this section and a material breach of contract.

4. Presentation of Dispute to Agency Head.

(a) Notice of Dispute and Agency Response. The vendor shall present its dispute in writing (“Notice of Dispute”) to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the vendor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the vendor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the vendor to produce any requested material whose relevancy the vendor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the vendor of its claim.

(b) Agency Head Inquiry. The Agency Head shall examine the

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material and may, in his or her discretion, convene an informal conference with the vendor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other vendor with a contract related to the work of this contract and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the vendor initiating the dispute.

- (c) Agency Head Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the vendor and ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, together with a statement concerning how the decision may be appealed.
- (d) Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this section. The City may not take a petition to the CDRB. However, should the vendor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the vendor and more favorable to the City than the decision of the Agency Head.

5. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the vendor to the CDRB, the vendor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

- (a) Time, Form, and Content of Notice. Within thirty (30) days of receipt of a decision by the Agency Head, the vendor shall submit to the Comptroller and to the Agency Head a Notice of Claim

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regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the vendor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head, and (iii) a copy of all materials submitted by the vendor to the Agency, including the Notice of Dispute. The vendor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

- (b) **Agency Response.** Within thirty (30) days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
- (c) **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the vendor. Willful failure of the vendor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the vendor of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, Agency representatives, and any other personnel desired by the Comptroller.
- (d) **Opportunity of Comptroller to Compromise or Adjust Claim.** The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the vendor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The vendor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

6. **Contract Dispute Resolution Board.** There shall be a Contract Dispute Resolution Board composed of:

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- (a) the chief administrative law judge of the Office of Administrative Trials and Hearings (“OATH”) or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB’s functions, including, but not limited to, granting extensions of time to present or respond to submissions;
- (b) the City Chief Procurement Officer (“CCPO”) or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated , and
- (c) a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

7. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the vendor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

- (a) Form and Content of Petition by Vendor. The vendor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the vendor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the vendor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the vendor to, the Comptroller’s Office. The vendor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH’s offices, with proof of service on the Corporation Counsel. In addition, the vendor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

- (b) **Agency Response.** Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the Agency shall respond to the statement of the vendor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the vendor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.
- (c) **Further Proceedings.** The Board shall permit the vendor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the Agency to present its case in response to the vendor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the vendor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
- (d) **CDRB Determination.** Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.
- (e) **Notification of CDRB Decision.** The CDRB shall send a copy of its decision to the vendor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the vendor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.

- (f) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with Section 4-09 of the PPB Rules.

8. Any termination, cancellation, or alleged breach of the contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this section.

Chapter 9: Appendices

APPENDIX A: Contract Analyst Assignments

9.1 Public Assistance Hiring Commitment Rider for HRA, DHS, and ACS

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

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

C. Within thirty (30) days of the commencement date of contractual agreement ("commencement date") or fifteen (15) days following notice from the

Department that a request for an exemption from the provisions of this Rider has been denied, Contractor shall submit, on forms specified by the Department, information and specifications for the position(s) available.

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

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

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

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

9.2 LANGUAGE ASSISTANCE RIDER FOR HRA

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

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

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

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

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

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

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

**9.4 EMERGENCY CONTRACEPTION
RIDER**

Pursuant to Section 6-125 of the New York City Administrative Code, the Funding Recipient, a facility operating pursuant to Article 28 of the New York Public Health law which provides emergency medical care, agrees as follows:

- A. The Contractor agrees to inform rape victims presenting to its emergency department of the availability of emergency contraception and, if requested, to administer, if medically appropriate, such contraception in a timely manner. “Rape victim” means any female person who alleges or is alleged to have been raped and presents to a hospital. “Emergency contraception” shall mean one or more prescription drugs, used separately or in combination, to be administered to or self-administered by a patient in a dosage and manner intended to prevent pregnancy when used within a medically recommended amount of time following sexual intercourse and dispensed for that purpose in accordance with professional standards of practice, and which has been found safe and effective for such use by the United States Food and Drug Administration.
- B. The Contractor agrees to provide the New York City Department of Health and Mental Hygiene, on an annual basis, a report indicating the following information with respect to each reporting period: (i) the number of rape victims treated in such hospital’s emergency department; (ii) the number of rape victims treated in such hospital’s emergency department which were offered emergency contraception; (iii) the number of rape victims treated in such hospital’s emergency department for whom the administration of emergency contraception not medically indicated and a brief explanation of the contraindication; and (iv) the number of times emergency contraception was accepted or declined by a rape victim treated in such hospital’s emergency department.
- C. The Contractor agrees to provide the New York City Department of Health and Mental Hygiene a copy of its protocol for treatment of victims of sexual assault, which hospitals are required to establish pursuant to Section 405.19 of Title 10 of the Codes, Rules and Regulations of the State of New York.