## DYCD HUMAN SERVICES STANDARD CONTRACT (DISCRETIONARY FUNDS)

**THIS AGREEMENT**, effective July 1, 2021, between the City of New York (“City”) acting by and through its Department of Youth and Community Development (“Department”), having an office located at 2 Lafayette Street, New York, New York 10007, and (“Contractor”) a not-for-profit corporation having its principal office located at .

## RECITALS

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

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

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

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

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

## ARTICLE I — DEFINITIONS

### Section 1.01 Definitions

The following words and phrases, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

1. “Board of Directors” or “Board” means the board of directors, board of trustees, or a similar body vested with the duty and responsibility for management and oversight of Contractor’s affairs as they relate to its performance under this Agreement.
2. “Budget” means the line-item costs, performance based measures, or fee-for-service rate schedule attached hereto as Exhibit A-3.
3. “Commissioner” or “Agency Head” means the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.
4. “Comptroller” means the Comptroller of the City of New York.
5. “Fiscal Agent” means an entity (if any) retained by the Department, or retained by Contractor at the direction of the Department, to issue payments to third parties on behalf of Contractor or otherwise to assist Contractor in the administration of its financial affairs.
6. “Fiscal Manual” means a set of instructions provided by the Department to Contractor documenting the applicable policies and procedures of the Department for Contractor to use in such matters as record-keeping, bookkeeping, reporting, invoicing and claiming, budgeting, cost allocating, procurement, and payroll, as may be amended by the Department. The Fiscal Manual is incorporated by reference and may be found online at: [https://www1.nyc.gov/assets/dycd/downloads/pdf/FY21(CCMS)\_Program\_Expense\_Summary\_Report(P](https://www1.nyc.gov/assets/dycd/downloads/pdf/FY21%28CCMS%29_Program_Expense_Summary_Report%28PERS%29_Fiscal_%20Manual-02.26.2021.pdf) [ERS)\_Fiscal\_%20Manual-02.26.2021.pdf](https://www1.nyc.gov/assets/dycd/downloads/pdf/FY21%28CCMS%29_Program_Expense_Summary_Report%28PERS%29_Fiscal_%20Manual-02.26.2021.pdf). The Fiscal Manual is not intended to amend the material terms of this Agreement with respect to the Scope of Work, the terms and conditions of this document, and Appendix A.
7. “Improper Related Party Transaction” means a Related Party Transaction that violates Not- for-Profit Corporation Law Section 715 and is not fair, reasonable, and in Contractor’s best interest at the time Contractor’s Board approved the transaction.
8. “Law” or “Laws” means the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule, or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
9. **“**Related Party” means any person associated with Contractor who is covered by the definition of “related party” in Not-for-Profit Corporation Law Section 102. Related parties do not include City officials and employees acting within the scope of their official governmental duties.
10. “Related Party Transaction” means any transaction, agreement or any other arrangement in which Contractor or any affiliate of Contractor is a participant that is covered by the definition of “related party transaction” in Not-for-Profit Corporation Law Section 102.
11. “State” means the State of New York.

## ARTICLE II — TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2021 through June 30, 2022.

## ARTICLE III — SCOPE OF WORK AND BUDGET

### Section 3.01 Scope of work.

1. **Services and Activities.** Contractor shall provide services in the manner and at the levels set forth in the attached Exhibit A-1. If requested by the Department, Contractor shall submit to the Department, within thirty (30) days of completion of all services under this Agreement, a final report summarizing the services performed under this Agreement, including cumulative quantitative and qualitative data relative to the objectives and general operations of Contractor paid for through this Agreement.
2. **Healthy food environment.** The City aims to reduce the prevalence of chronic disease, such as obesity, diabetes, and cardiovascular disease, by improving dietary intake of its residents. Accordingly, in addition to the services set forth in Exhibit A-1, Contractor shall make best efforts to distribute to any staff

members providing services to program participants under the Agreement and to program participants funded in whole or in part by this Agreement, any healthy food promotional materials provided to Contractor by the Department.

1. **New York City Food Standards.** This paragraph applies only if this Agreement includes a requirement that Contractor supply food to program participants as a material part of the client services funded by the Department. Contractor shall provide a healthy food environment in connection with the client services provided under this Agreement by complying with the New York City Agency Food Standards with regard to the provision of food to program participants under this Agreement, including compliance with the New York City Food Standards for beverage vending and food vending machines for any vending machines to which program participants are granted access. Such Food Standards can be found at [https://www1.nyc.gov/site/doh/health/health-topics/healthy-workplaces.page.](https://www1.nyc.gov/site/doh/health/health-topics/healthy-workplaces.page)
2. **Fees.** Contractor further represents and warrants that no clients or participants shall be charged a fee or required to make any other payment or purchase or participate in any activity designed to raise funds as a condition of eligibility for or participation in the services funded through this Agreement, unless a waiver of this provision is approved in writing by the Department. Waivers may be considered under the following conditions: (i) Contractor’s total costs for the services set forth in the Scope of Work exceed the total value of the Agreement; (ii) Contractor’s fees for services and/or the arrangements made to include those participants unable to pay such fees are deemed reasonable and appropriate by the Department; and (iii) the fees are set at a level that does not discourage or impeded participation by members of the community to be served by the services.

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

**Section 3.03 Payment.** The Department shall pay Contractor an amount not to exceed $ for

all services provided under the Agreement on a cost reimbursement basis, in accordance with the Fiscal Manual and a line item budget approved by the Department and made a part hereof as Exhibit A-3 “Budget”. This Agreement shall not obligate the Department beyond the dollar amount designated as the maximum contract amount in the absence of a duly executed written contract amendment registered pursuant to Charter § 328.

### Section 3.04 Cost allocating and duplication.

1. **Duplication**. Contractor represents and warrants that the work to be performed under this Agreement shall in no way duplicate any work performed under other agreements between the City and Contractor, nor under any agreement with any other governmental funding source, except upon the express written permission of the Department. Costs attributable to the program and not paid for by the City are not duplication (e.g., program enhancements, unreimbursed portions of staff salaries) but are subject to the cost allocation provisions set forth below. Noncompliance with this Section 3.04 shall constitute a material breach of this Agreement.
2. **Cost allocation plan**. Contractor shall accurately and equitably allocate costs that are attributable to the operation of two (2) or more programs among such programs, or that are attributable to two (2) or more governmental funding sources, by a method which represents the benefit of such costs to each program or funding source. 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.
3. No cost allocation plan shall be approved by the Department unless such a plan:
	1. Relates to allowable costs as defined in Laws and policies of the federal, State and City governments;
	2. Relates to costs necessary for Contractor’s performance pursuant to this Agreement;
	3. Fairly and accurately reflects the actual allocable share of such cost with respect to this 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.
4. A cost allocation plan approved by the Department may be modified with the written approval of the Department.
5. Notwithstanding any provision in this Section 3.04 to the contrary, the Department further reserves the right to withhold payments to Contractor for allocated costs in accordance with the Fiscal Manual or if the Department determines that such allocated costs have been incorrectly determined, are not allowable, or are not properly allocable pursuant to this Agreement and/or approved cost allocation plan.

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

## ARTICLE IV — FISCAL PROCEDURES

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

### Section 4.02 Accounts.

1. Contractor shall establish and maintain one (1) or more separate accounts for the funds obtained from or through the City of New York related to this and all other agreements with the City, and shall maintain records for such account to track and clearly identify the funds obligated through this Agreement.
2. If requested by the Department and/or its agents, Contractor shall notify such requestor of the name, locations, and account numbers of all bank accounts in which any funds pursuant to this Agreement are maintained, and of any change in the name, location, or account numbers of such accounts.
3. If requested by the Department and/or its agents, Contractor shall notify such requestor of the names, titles, and business addresses of such persons authorized by Contractor to receive, handle, or disburse monies under this Agreement, including the company name and company address where such persons are not employees of Contractor.

**Section 4.03 Advance.** The amount of any advance to be paid to Contractor under this Agreement shall be determined solely by the Department in accordance with its Fiscal Manual and any applicable Comptroller directives. Advanced funds shall be used exclusively for the payment of expenditures and obligations authorized by and properly incurred in accordance with the Budget.

**Section 4.04 Financial reporting and invoicing.** Invoices shall be submitted no more frequently than once every thirty (30) days. The invoices shall be in a form established by the Commissioner and shall be accompanied by appropriate supporting documentation and any other information deemed necessary by the Department. Upon receipt and approval of an invoice, the Department shall remit to Contractor a payment of its approved charges in accord with the Budget contained in Exhibit A-3. The City may disallow for payment any expenses or charges which were not authorized or documented in accord with the terms of this Agreement or for failure to deliver any required service or work product to the satisfaction of the Department. Payment for the last month of the Agreement shall be contingent upon approval of the final report and bill by the Department. Contractor acknowledges that repeated failure to submit required financial reports within the time limits prescribed may result in termination of this Agreement.

### Section 4.05 Procurement requirements.

1. **Procurement records.** Contractor shall retain records that detail the method of procurement, the basis for selection or rejection of a contractor, consultant or supplier, and the basis for the contract price. Contractor shall retain proper and sufficient bills, vouchers, duplicate receipts, and documentation for any payments, expenditures, or refunds made to or received by Contractor in connection with this Agreement. Contractor may maintain a petty cash fund in accordance with the Fiscal Manual; 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.
2. **Extent of competition required.** Contractor shall comply with the following requirements concerning competition.
	1. Contractor must solicit and document at least three (3) written estimates for any payment made or obligation undertaken in connection with this Agreement for any purchase of goods, supplies, or services (including but not limited to consulting services) for amounts in excess of $25,000 or, if this Agreement is a federally funded subrecipient agreement, for amounts in excess of $3,500. 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.
	2. For any payment made or obligation undertaken in connection with this 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. Notwithstanding the dollar amounts in the previous sentence, if this Agreement is a federally funded, subrecipient agreement, Contractor shall comply with the procurement methods required in 2 CFR Section 200.320. 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.

* 1. 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 Contractor is directed by the Department to use the GPO or if Contractor becomes a member of and makes purchases through the GPO retained by the City with or without the City’s direction, Paragraph B shall not apply to those purchases and the procurement requirements will be satisfied through the use of the GPO.
1. **Compliance with State and Federal Law.** If this Agreement is funded by a State or federal grant, additional procurement requirements may apply. To the extent that State and/or federal procurement requirements conflict with the procurement requirements herein, Contractor shall comply with the stricter requirement.
2. **Equipment.** All equipment or other property acquired with funds through this Agreement shall be in the name of the New York City Department of Youth and Community Development and must be tagged “Property of DYCD”. At the end of the Agreement, all non-depreciated equipment that still has a useful life (as the phrase “useful life” is defined in Internal Revenue Code § 1.169-2) must be returned to the Department if requested. Contractor shall properly maintain and keep in good repair all equipment acquired with funds obtained through this Agreement. Contractor shall dispose of such equipment in the manner provided in the Fiscal Manual or as otherwise directed by the Department, and shall maintain detailed records concerning such dispositions. At the Department’s request, Contractor must execute a UCC-1 to evidence the Department’s interest in equipment purchased at a price in excess of $25,000 and to enable the Department to perfect that interest by filing or otherwise.
3. **M/WBE suppliers.** Contractor is encouraged to utilize businesses and individual proprietors listed on the NYC Online Directory of Certified M/WBE Businesses, available at [www.nyc.gov/sbs](http://www.nyc.gov/sbs), as sources for its purchases of goods, supplies, services, and equipment using funds obtained through this Agreement. Contractor is also encouraged to utilize businesses and individual proprietors owned/operated by people with disabilities as sources for its purchases of goods, supplies, services, and equipment using funds obtained through this Agreement.
4. **Disputes with suppliers.** Contractor, without recourse to the City or the Department, shall be responsible for the settlement and satisfaction of all contractual obligations and administrative issues arising out of any procurement or leasing contracts paid with funds obtained through this Agreement.

### Section 4.06 Limitation on use of funds.

1. **Proper purposes.** No funds obtained through this Agreement shall be spent for any expense not incurred in accordance with the terms of the Agreement. All such funds shall be administered in accordance with the Fiscal Manual.
2. **Real property.** No funds obtained through this Agreement 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.
3. **Disallowed costs.** Any cost found by the Department, the City or any auditing authority that examines the financial records of Contractor to be improperly incurred, including but not limited to Board member compensation and Improper Related Party Transactions, shall be subject to reimbursement to the City. Failure to make said reimbursement shall be grounds for termination of this Agreement.

**Section 4.07 Recoupment of disallowances, improperly incurred costs and overpayments.** The Department may, at its option, either require Contractor to reimburse the Department or withhold for the purposes of set-off any monies due to Contractor under this Agreement up to the amount of any disallowance or improperly incurred costs resulting from any audits of Contractor, the amount of any overpayment to Contractor with regard to this Agreement or to any other agreement between the parties hereto, including any agreement(s) that commenced prior to the commencement date of this Agreement, and/or amounts incurred on any Improper Related Party Transaction. Prior to the imposition of withholding for the purposes of set-off, the Department will provide Contractor with an opportunity to be heard upon at least ten (10) days’ prior written notice.

S**ection 4.08 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.

### Section 4.09 Provisions Applicable When Fiscal Agent Disburses Funds to Contractors

1. **Payment by Fiscal Agent.** Where the Department has retained a Fiscal Agent to make payments to third parties on behalf of Contractor, then Contractor is obligated to use the Fiscal Agent to make payment to third parties at the Department’s direction, including for the purchase of such goods, supplies, services, and/or equipment made by Contractor under this Agreement. Where the Department directs that Contractor utilize a Fiscal Agent, Contractor shall not pay any obligations on its own behalf except to the extent specifically allowed by this Agreement and the Fiscal Manual.
2. **Payroll processing by Fiscal Agent.** In the event that a Fiscal Agent is processing Contractor’s payroll, Contractor shall deliver to the Fiscal Agent signed and dated time and attendance records for each staff member and consultant to be paid under this Agreement, in the form required and delivered at the time required by the Fiscal Agent and the Fiscal Manual. Subject to the Department’s approval, the Fiscal Agent shall prepare the payroll checks and supporting materials based on the documents submitted.
3. **Fiscal Agent documentation.** Upon reasonable request and approval by the Department, Contractor shall have the right to inspect any fiscal documents relating to this Agreement as may be maintained by a Fiscal Agent, if applicable. Contractor may request from the Department copies of any or all the following documents relating to the funds to be provided hereunder, with said documents to be furnished by the Fiscal Agent, subject to the Department’s approval, within a reasonable time of the request: monthly budget and expenditure reports; budgets and budget modifications; and audit reports, where available.

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

### Section 5.01 Records to be maintained; inspection; observation.

1. **Records to be maintained.** In addition to any other records required to be maintained and/or provided for inspection pursuant to this Agreement, Contractor shall maintain and make available to the Department for inspection, upon reasonable request, the following documents: tax returns (not including Schedule B to IRS Form 990); audit reports; a continually updated list of those with access to any DYCD database requiring a login; all programmatic records and accounts maintained in connection with this Agreement, including, for the avoidance of doubt, all participant and attendance information collected pursuant to the workscope attached hereto as Exhibit A-1 or maintained in connection with the provision of services under this Agreement; publications, program research, and other reports prepared in connection with this Agreement; all financial books, records and accounts reflecting payments made by Contractor for petty cash expenditures in connection with this Agreement; all applicable licenses and permits; Board member lists and all minutes and attendance sheets (dated and signed) for meetings of the Board of Directors and any of its committees responsible for the oversight of the program(s) funded under this Agreement; governing documents (e.g., by-laws); all other contracts related to providing services under this Agreement, to which Contractor is a party and the contract terms coincide, in whole or in part, with the terms of this Agreement; and any other records or materials reasonably requested at such reasonable times and places and as often as may be reasonably requested. Upon request by the Department of a record that contains protected personally identifiable information as such phrase is defined in Admin. Code § 10-501 or a record that if disclosed would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession’s services in New York State, Contractor may redact such personally identifiable or privileged information or other information that if disclosed would violate the Law or such professional code. In addition, Contractor may, upon request to and written approval from the Department, which approval may not be unreasonably denied or delayed, withhold from disclosure to the Department certain categories of documents that are not protected by a legal privilege or other Law but where Contractor reasonably believes that disclosure of such documents would interfere with or impair the provision of services under this Agreement.
2. Records maintained in accordance with this Article V shall be subject to the retention period in Section 5.02 of Appendix A except that if this Agreement is a federally funded subrecipient agreement, the retention period shall be the maximum allowed under 2 CFR § 200.333.
3. Contractor shall permit the Department and its authorized representatives including the Department’s Inspector General, the Comptroller, the New York City Department of Investigation, or their designees, or other interested federal, State or City agency representatives, to attend all meetings of the Board of Directors and to be present at the program site(s) to observe the work and activities being performed in connection with this Agreement. If observation of particular work or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession’s services in New York State, Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

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

Department will evaluate the Contractor’s performance each year in the categories of timeliness, fiscal administration, and performance. Additional evaluation criteria or weighting of these subcategories may be specified in the Scope of Work.

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

**Section 5.04 Federal audit requirements.** If applicable, Contractor shall fulfill the audit requirements of 2 CFR Part 200, Subpart F, and shall provide such audit to the Department within thirty

1. days after its receipt of the final audit by Contractor from the preparing accountant.

**Section 5.05 State charities registration and audit requirements.** If Contractor is required by New York State law to register with and make annual filings to the Charities Bureau of the New York State Office of the Attorney General, timely compliance with such requirements shall be deemed a material term of this Agreement. Contractor shall make available to the Department, upon request by the Department, all such filings (except the filing required by Executive Law § 172-e), including any audit and/or financial report required to be submitted with such filings, within thirty (30) days of receiving such final audit or financial report from its preparer, and in no event later than ten (10) days following the filing of such audit or financial report with the Charities Bureau.

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

* 1. If any Contractor is exempt from making annual filings to the Charities Bureau of the New York State Office of the Attorney General, Contractor will, at direction of City, provide the City with annual disclosure reports equivalent to those filings that Contractor would have filed with the State had it been required to file, except the filing that would have been required by Executive Law § 172-e. As of the effective date of this Agreement, the requirements are as follows:
		1. Contractors with gross revenues less than $250,000 in any fiscal year shall file a copy of the annual unaudited financial report that it is required to file pursuant to Not-for-Profit Corporation Law section 172-b(2-a) with the Department.
		2. Contractors with gross revenues between $250,000 and $1,000,000 in any fiscal year shall file an annual financial statement with the Department, which includes an independent certified public accountant’s review report in accordance with the “Statement on Standards for Accounting and Review Services” issued by the American Institute of Certified Public Accountants. The financial statement shall be prepared in conformance with generally accepted accounting principles (“GAAP”), including compliance with all pronouncements of the Financial Accounting Standards Board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for-profit organizations.
		3. Contractors with gross revenues in excess of $1,000,000 shall file with the Department an annual audit report by an independent certified public accountant. Said audit report shall contain an opinion, signed by such certified public accountant that the financial statements are presented fairly in all material respects and in conformity with GAAP, including compliance with all pronouncements of the Financial Accounting Standards Board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for-profit organizations, and that the financial sheet and balance sheet present fairly the financial operations and position of the organization. The financial report must be signed

by the president or other authorized officer and the chief fiscal officer under penalties of perjury that the statements are true and correct to the best of their knowledge.

* 1. Contractors receiving funds pursuant to this Agreement in excess of $1,000,000 will, at direction of City, provide to the Department an audit report from an independent certified public accountant containing an opinion that Contractor has appropriately allocated costs in accordance with the terms of the Agreement, including that the costs have not been improperly double-charged between multiple City and/or State contracts or between multiple governmental funding sources. Contractor may satisfy this requirement by including the appropriate analysis in any audits required pursuant to Section 5.04 or 5.05.
	2. Contractor must submit all required audit and financial reports under this Section to the Department within thirty (30) days after receipt of the final audit from its accountant and, if no audit is required, within thirty (30) days of filing with the Attorney General, but in any event no later than twelve

(12) months after close of the audit period, or such period as determined by the Department. The audit and financial reports shall comply with the applicable provisions in the Fiscal Manual throughout the term of this Agreement, including terms mandating the audit period and frequency of such audits and reports.

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

**Section 5.07 DYCD Systems.** Contractor agrees to report program information to DYCD as requested by DYCD, using such systems, platforms, programs, or databases (collectively, “DYCD Systems”) as DYCD directs. Contractor further agrees to participate in training on such DYCD Systems as necessary to use them correctly, and to maintain appropriate confidentiality measures, including by ensuring that access to those systems is made available only to individuals whose DYCD contracted related job function require such access. Further, Contractor agrees to periodically review and update who on its staff requires such access, and to timely inform DYCD of any changes in access and to cooperate with DYCD in updating any DYCD Systems access.

## ARTICLE VI — PERSONNEL PRACTICES AND RECORDS

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

### Section 6.02 Compensation of certain employees; vacancies; and Board compensation.

1. **Employee list.** Contractor shall submit to the Department within thirty (30) days of the execution of this Agreement and upon request a list of certain employees, which shall include the Executive Director, Chief Financial Officer, Chief Operating Officer, and/or the functional equivalent of such positions, and key employees (as the phrase “key employee” is defined in the Instructions to IRS Form 990). For each listed employee, Contractor shall, if requested by the Department, provide the current total compensation (including all benefits), all sources of the employee’s total compensation, whether from this Agreement or another City, State, Federal or private source, and the dollar amount of compensation from each such source.
2. **Vacancies.** Contractor shall notify the Department in writing within ten (10) days of their occurrence any appointments to or resignations from the positions of Executive Director, Chief Financial

Officer, Chief Operating Officer, and/or the functional equivalent of such positions and appointments or resignations of key employees (as the phrase “key employee” is defined in the Instructions to IRS Form 990).

1. **Board compensation.** Contractor shall submit to the Department upon execution of this Agreement a listing of all members of its Board of Directors and such related information as is listed in Exhibit A-3 herein. Within thirty (30) days of a request, Contractor shall further identify and provide a list to the Department of any of its members who receive compensation in any form, including but not limited to salary, stipend, per diem payments, and/or payments for services rendered, from Contractor or its affiliates, together with the amount of any such compensation, regardless of the source of its payment, and a description of its purpose.

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

### Section 6.04 Recruitment and hiring of staff.

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

### Background checks.

* 1. Recruitment; Screening; Fingerprinting: Contractor shall be responsible for the recruitment and screening of employees and volunteers performing work under the Agreement, including the verification of credentials, references, experience and skills necessary for working with clients and participants. Where consistent with State and federal law, if directed by the Department, Contractor will undertake the fingerprinting of employees and volunteers, including applicants, in accordance with instructions from the Department.
	2. Convictions, Non-Pending Arrests and Criminal Accusations, and Pending Arrests: Contractor shall comply with Subdivisions 15 and 16 of Section 296 the New York Executive Law, Article 23-A of the New York Correction Law, and Subdivisions 11 and 11-a of the Admin Code. Such laws pertain to unlawful discriminatory employment practices in connection with individuals with convictions, non- pending arrests or criminal accusations, and/or pending arrests.
	3. Review of Decision: Where practicable, Contractor shall provide for the review by a supervisor employed by Contractor of a decision not to hire based on convictions, non-pending arrests or criminal accusations, and/or pending arrests.
	4. Consultation with the Department: Contractor may consult with the Department regarding the application of this Section 6.04.

### Drug-free workplace.

* 1. Contractor shall conspicuously post at any facility at which activities funded in whole or in part through this Agreement occur or provide to employees performing services under this Agreement, a statement notifying employees performing services under this Agreement that the unauthorized use, possession, distribution, dispensing, and manufacture of controlled substances are prohibited
	2. Contractor shall require staff members who provide work under this Agreement to notify Contractor in writing of his/her arrest or conviction for violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such arrest or conviction. Contractor shall thereafter notify the Department within ten (10) calendar days of Contractor’s receipt of the above-described notice of conviction from a staff member or of the date Contractor otherwise received actual notice of such conviction.
	3. Contractor shall take one of the following actions within thirty (30) calendar days of receiving notice of such a conviction with respect to any staff member who performs work under this Agreement so convicted: (i) appropriate personnel action, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (ii) require such convicted staff member to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, State, or local health, law enforcement, or other appropriate agency, and to comply with the Contractor’s statement made in accordance with Section 6.04(C)(1).
	4. Nothing in this Section 6.04(C) shall limit Contractor from providing a more stringent drug- free workplace policy.

### Section 6.05 Board of Directors.

* + 1. Except as provided in Paragraph B of this Section 6.05, Contractor’s employees and members of their immediate families, as defined in Paragraph C of this Section 6.05, may not serve on the Board or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.
		2. If the Board has more than five (5) members, then Contractor’s employees and members of their immediate families may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor’s employees and members of their immediate families are prohibited from deliberating and/or voting and being present during deliberation and/or voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor’s employees and members of their immediate families may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.
		3. Without the prior written consent of the Commissioner, no person may hold a job or position with Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. For the purposes of this Section 6.05, a member of an immediate

family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person’s relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this paragraph, a member of the Board is deemed to exercise authority over all employees of Contractor.

* + 1. If Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars ($1,000,000) and such amount constitutes more than fifty percent (50%) of Contractor’s total revenues, then Contractor must have a minimum of five (5) persons on its Board.
		2. This Section 6.05 shall apply only if Contractor is a not-for-profit corporation.

### Section 6.06 Conflict of interest policy.

1. If required by Section 715-a(a) of the Not-for-Profit Corporation Law, Contractor shall maintain a Conflict of Interest Policy that includes, at a minimum, the following provisions:
	1. A definition of the circumstances that constitute a conflict of interest;
	2. Procedures for disclosing a conflict of interest;
	3. A requirement that the person with the conflict of interest not be present at or participate in Board or committee deliberation or vote on the matter giving rise to such conflict;
	4. A prohibition against any attempt by the person with the conflict to influence improperly the deliberation or voting on the matter giving rise to such conflict;
	5. A requirement that the existence and resolution of the conflict be documented in Contractor’s records, including in the minutes of any meeting at which the conflict was discussed or voted upon;
	6. Procedures for disclosing, addressing, and documenting Related Party Transactions in accordance with Section 715 of the Not-for-Profit Corporation Law; and
	7. A requirement that each director annually submit the statement required pursuant to Section 6.06(B), below.
2. The Conflict of Interest Policy shall require that prior to the initial election of any director, and annually thereafter, such director shall complete, sign and submit to the Board Secretary or a designated compliance officer a written statement identifying, to the best of the director’s knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which Contractor has a relationship, and any transaction in which Contractor is a participant and in which the director might have a conflicting interest. The Board Secretary or designated compliance officer shall provide a copy of all completed statements to the chair of the audit committee or, if there is no audit committee, to the Board Chairperson.

## ARTICLE VII — PROGRAM FACILITY

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

**Section 7.02 Signage.** Upon request by the Department, and consistent with applicable Laws and applicable lease and license requirements, Contractor will prominently display signs inside and outside the facility(ies) used for the program indicating such information as the program name, its sponsorship by the Department, the program activity, and the days and hours of operation. In addition, Contractor shall prominently display inside the facility(ies) all signs, provided by the Department, if any, advising of any of Contractor’s obligations with regard to Equal Employment Opportunity Laws. If Contractor is concerned that signage would adversely impact Contractor’s services, it shall notify the Department of its concern and, if possible, recommend acceptable alternatives or modifications to the Department

### Section 7.03 Security and emergency plan.

1. Prior to the commencement of services under this Agreement, Contractor shall adopt, implement, and instruct staff regarding a written plan to provide for the safety and security of clients, participants, staff, and Contractor’s facility, including procedures to follow during emergencies. Contractor shall maintain a current file of emergency contacts for each client and participant, which shall include, to the extent available, the names, addresses, telephone numbers, and locations where such contacts can be reached. A security plan applying to all of Contractor’s operations rather than specifically to the City- funded operations shall be sufficient to comply with the terms of this requirement. Contractor shall cooperate with the City during any emergency affecting Contractor’s services and/or facilities.
2. In the event that a State of Emergency (“SOE”) is declared by the Mayor of the City, the City may suspend Contractor’s normal operations until further notice. No damages shall be assessed for suspension of normal services during this time. All other terms and conditions of this Agreement shall remain in effect, except as modified by a contract amendment registered pursuant to Charter § 328 or other appropriate contract action. 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 Contractor against all claims by third parties arising out of the actions of its employees during the SOE that are directed by the City and not otherwise required to be performed under this Agreement, except for those arising out of the employees’ gross negligence or intentional misconduct.

## ARTICLE VIII — CENTRAL INSURANCE PROGRAM

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

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

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

## ARTICLE IX — REPRESENTATIONS AND COVENANTS OF CONTRACTOR

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

### Section 9.02 Program services.

1. **Unlawful discrimination.** Except where expressly set forth in the Scope of Work and approved by the Department, Contractor represents and warrants that eligibility for admission to the services funded through this Agreement shall not be restricted on the basis of actual or perceived age, race, color, religion, creed, national origin, alienage or citizenship status, sex, gender, sexual preference or sexual orientation, disability (including presence of a service dog), marital status, partnership status, military status, or any other class protected from discrimination by law.
2. **Fee.** Contractor further represents and warrants that no clients or participants shall be charged a fee or required to make any other payment or purchase or participate in any activity designed to raise funds as a condition of eligibility for or participation in the services funded through this Agreement, except as required by Law or unless a waiver of this provision is approved in writing by the Department (waiver request form is attached as Exhibit A-2). Waivers may be considered under the following conditions: (i) Contractor’s total costs for the services set forth in the Scope of Work exceed the total value of the Agreement; (ii) Contractor’s fees for services and/or the arrangements made to include those participants unable to pay such fees are deemed reasonable and appropriate by the Department; and (iii) the fees are set at a level that does not discourage or impede participation by members of the community to be served by the services.
3. **Immigration status.** In connection with the services provided under this Agreement, Contractor shall not inquire about a client or potential client’s immigration status unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) Contractor is required by law to inquire about such person’s immigration status.

**Section 9.03 Allegations of abuse or maltreatment.** Contractor will notify the Department within twenty-four (24) hours of promptly determining that reasonable cause exists to suspect that any of Contractor’s administrators or staff, including both paid and volunteer, has abused, maltreated, neglected, assaulted or endangered the welfare of any program participant. In addition, if such reasonable cause is found, Contractor shall take appropriate action to remove the person from the proximity of program participants while the matter is being investigated by 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 twenty-four (24) hours of determining that reasonable cause exists, followed by a written report, to be delivered to the Department within three (3) business days. Compliance with this reporting requirement does not satisfy any other legally mandated reporting of abuse, such as to the New York State Central Registry (“SCR”).

## ARTICLE X — MISCELLANEOUS

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

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

* + Standard Human Services Agreement (this document) along with the attached riders (i.e., Continuity of Operations Plan Rider; Access to Non-Public Areas Rider; Identifying Information Rider; COVID-19 Rider, Sexual Harassment Rider);
	+ Appendix A, (General Provisions Governing [Discretionary Fund] Contracts for Consultants, Professional, Technical and Human Client Services), including the Whistleblower Protection Expansion Act Rider;
	+ Exhibit A-1, (Designated Program Services Workscope);
	+ Exhibit A-2, (Fee Waiver Request Form);
	+ Exhibit A-3, (Budget);
	+ Exhibit B, (Conflict of Interest Disclosure and Compliance Certification Form);
	+ Exhibit C, (Lobbying Certification Form); and
	+ Exhibit D, (Certification by Insurance Broker or Agent)

## ARTICLE XI— SUPPORTIVE SERVICES AND TECHNICAL ASSISTANCE

**Section 11.01 Availability of supportive services and technical assistance.** At its sole discretion, the City may provide, either directly or through its designee, technical assistance to Contractor in such areas as: (1) program planning, development, coordination, and dissemination of information; (2) preparation of reports and materials required by the City and/or other governmental entities with jurisdiction over

Contractor’s activities relating to the operation of services funded through this Agreement; (3) compliance with applicable Laws, guidelines, and administrative memoranda; and/or (4) issues or matters affecting Contractor’s performance under this Agreement.

**Section 11.02 Training.** At its sole discretion, the City may provide, either directly or through its designee, training/technical assistance to Contractor’s employees and Board members, relating to the management and operation of the program funded through this Agreement. If training and/or technical assistance is made available, Contractor must commit appropriate employees and Board members to attend/participate at training sessions, as instructed by the City or its designee.

**Section 11.03 Capacity Building and Oversight (CBO) Review for not-for-profit Contractors.** If requested by the Department, Contractor must complete the Mayor’s Office of Contract Services (“MOCS”) Capacity Building and Oversight (“CBO”) Review process. As part of that process, Contractor must submit specified documents to the CBO unit of MOCS, which then conducts an evaluation of 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, Contractor’s Internal Revenue Service (“IRS”) determination of tax exemption, the most recent IRS Form 990 filing (not including Schedule B to Form 990); 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, 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 Contractor, request Contractor to take certain remedial actions and/or to implement certain policy changes. Any such recommendations, and Contractor’s responses thereto, will be provided to the Department for its consideration and any appropriate actions under this Agreement.

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

## [NO FURTHER TEXT ON THIS PAGE]

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

Prior to the commencement of services under this Agreement that are considered essential under applicable law, 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.

Rider to Human Services Contracts Access to Non-Public Areas

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

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

1. such Enforcement Personnel are authorized to have access pursuant to an agreement, contract, or subcontract;
2. such Enforcement Personnel present a judicial warrant;
3. access is otherwise required by law;
4. such Enforcement Personnel are accessing such non-public areas as part of a cooperative arrangement involving city, state, or federal agencies;
5. access furthers the purpose or mission of a city agency; or
6. exigent circumstances exist.

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

**Identifying Information Rider**

(To supplement the City Standard Human Services Contract,

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

### Section 1.01 Background.

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

### Section 1.02 Definitions.

1. “Agency” means the City agency or office through which the City has entered into this Agreement.
2. “Agency Privacy Officer” means the person designated to exercise functions under Admin. Code Sections 23-1201 to -1205 by the Agency through which the City is a party to this Agreement.
3. “City Chief Privacy Officer” means the person designated by the Mayor pursuant to Charter Section 8 subdivision (h) as the City’s Chief Privacy Officer or such person’s designee.
4. “Exigent Circumstances” means circumstances where collection or disclosure is urgently necessary, such that procedures that would otherwise be required cannot be followed.
5. “Identifying Information” means any information provided by the City to Contractor or obtained by Contractor in connection with this Agreement that may be used on its own or with other information to identify or locate an individual. Identifying Information includes, but is not limited to: name, sexual orientation, gender identity, race, marital or partnership status, status as a victim of domestic violence or sexual assault, status as a crime victim or witness, citizenship or immigration status, eligibility for or receipt of public assistance or city services, all information obtained from an individual’s income tax records, an individual’s Social Security number, information obtained from any surveillance system operated by, for the benefit of, or at the direction of the New York City Police Department,

motor vehicle information or license plate number, biometrics such as fingerprints and photographs, languages spoken, religion, nationality, country of origin, place of birth, date of birth, arrest record or criminal conviction, employment status, employer information, current and previous home and work addresses, contact information such as phone number and email address, information concerning social media accounts, date and/or time of release from the custody of the Administration for Children’s Services, the Department of Correction, or the New York City Police Department, any scheduled court appearances, any scheduled appointments with the City, the Contractor or its subcontractor that provides human services or other services designated by the City Chief Privacy Officer, and any other category of information designated by the City Chief Privacy Officer.

### Section 1.03 Collection.

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

### Section 1.04 Disclosure.

* 1. Absent Exigent Circumstances, Contractor shall not disclose Identifying Information unless such disclosure (a) has been authorized in writing by the individual to whom such information pertains or, if such individual is a minor or is otherwise not legally competent, by such individual's parent, legal guardian, or other person with legal authority to consent on behalf of the individual; (b) has been approved by the Agency Privacy Officer or the City Chief Privacy Officer and the disclosure of such Identifying Information is in furtherance of Contractor’s obligations under this Agreement; (c) is required by law or treaty; (d) is required by the New York City Police Department in connection with a criminal investigation; or (e) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.
	2. If Contractor discloses an individual’s Identifying Information in violation of this Rider, Contractor shall notify the Agency Privacy Officer. In addition, if such disclosure requires notification to the affected individual(s) pursuant to the policies and protocols promulgated by the City Chief Privacy Officer under subdivision 6 of Section 23-1203, in the discretion of the Agency Privacy Officer Contractor shall either (i) make reasonable efforts to notify such individual(s) in writing of the Identifying Information disclosed and to whom it was disclosed as soon as practicable or (ii) cooperate with the Agency’s efforts to notify such individual(s) in writing. The City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any law, administrative or judicial order, or the City Chief Privacy Officer

to address the disclosure, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a disclosure by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Agency shall provide Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, Contractor shall pay directly for the costs, detailed above, if any.

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

### Section 1.05 Exigent Circumstances.

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

### Section 1.06 Retention.

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

### Section 1.07 Reporting.

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

related information that may be reasonably required by the Agency Privacy Officer or City Chief Privacy Officer.

### Section 1.08 Coordination with Agency Privacy Officer.

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

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

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

### Section 1.10 Subcontracts.

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

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

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

**COVID-19 Rider**

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

1. Contractor shall provide Program Services during FY22 either in-person (“In-Person Services”) at the site or sites identified in the applicable Appendix/Exhibit for Workscope Program Schedule (the “Site”) or remotely through the use of one or more videoconferencing platforms approved by DYCD (“Remote Services”). The schedule of In-Person Services and Remote Services during FY22 shall be described in the applicable Appendix/Exhibit for Workscope Program Schedule and approved by DYCD.
2. Contractor shall comply with the following requirements in providing In-Person Services during FY22 (the “COVID-19 Public Health Provisions”):
	1. Contractor shall review, comprehend, and follow the NY State Forward office guidance applicable to Contractor’s business activities.
	2. Contractor shall complete a “NY State Forward Safety Plan Template” for each Site prior to commencing Program Services for FY22. Each Site shall have a copy of such Safety Plan on file, which shall be made available for inspection upon request to DYCD and other City and State oversight authorities.
	3. Contractor shall comply with all Executive Orders issued by the Governor of the State of New York related to COVID-19 public health measures for as long as such orders are in effect.
3. Contractor shall comply with the following requirements in providing all Remote Services during FY22:
	1. Contractor shall utilize one or more secure videoconferencing platforms for the provision of Remote Services during FY22. Contractor shall obtain the necessary subscriptions, licenses, and approvals for the use of such platforms. Contractor shall not infringe upon any intellectual property rights in the use of such platforms. Contractor shall be responsible for installing any software and security updates for such platforms.
	2. Contractor shall have the capacity to conduct meetings, workshops, and trainings remotely using such platforms, and ensure that its staff are properly trained to use such platforms.
	3. Contractor shall keep track of attendance during Remote Services.
	4. Contractor shall ensure accessibility of Remote Services in compliance with the Americans with Disabilities Act.
	5. To the extent any services are provided remotely, Contractor shall review and make best efforts to comply with the recommendations in the “Frequently Asked Questions Regarding

Remote Program Services” issued by DYCD as of July 14, 2020 and attached hereto as Attachment 1 and made a part hereof in an effort to ensure appropriate staff and participant conduct during provision of Remote Services.

1. Contractor shall comply with any additional DYCD, City, State or federal guidance provided from time to time with respect to COVID-19 Public Health Provisions (including but not limited to New York City Executive Order 77 dated August 25, 2021) or with respect to Remote Services.
2. Contractor shall include this Rider in all subcontracts to provide services in connection with this Agreement. Contractor shall be fully responsible to the Agency for the compliance with this Rider by its subcontractors in connection with this Agreement.

**ATTACHMENT 1**

**FAQ Regarding Remote Program Services**



### Frequently Asked Questions Regarding Remote Program Services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**New York City Mayoral Executive Order No. 64 Rider Responsibility of Contracted Providers of Human Services**

**in Relation to Matters Involving Allegations of Sexual Harassment**

(To supplement the New York City Standard Human Services Contract)

### Section 1.01 Background.

New York City Mayoral Executive Order No. 64 (“EO 64”) entitled “Responsibility of Contracted Providers of Human Services in Relation to Matters Involving Allegations of Sexual Harassment” became effective on March 3, 2021. This Mayoral Executive Order applies to “human services” contracts, as that term is defined in section 6-129 of the New York City Administrative Code. EO 64 states that sexual harassment constitutes a form of unlawful discrimination under the New York City Human Rights Law that is prohibited in the workplace and in the provision of public accommodations, and is also illegal under New York State and Federal law. Pursuant to section 803 of the New York City Charter, the Mayor may direct the Commissioner of Investigation to undertake investigations, including investigations of alleged sexual harassment by personnel delivering services for or on behalf of the City of New York.

### Section 1.02 Definitions.

1. “Agency” means the City agency or office through which the City of New York has entered into this Agreement.
2. "Agreement” means the agreement between the Agency and the Contractor, to which this rider has been added.
3. “Certification Date” means 30 days after the date that the Agreement is registered pursuant to Section 328 of the New York City Charter, or if this rider is added by an amendment, the date said amendment is registered pursuant to Section 328 of the New York City Charter.
4. “DOI” means the New York City Department of Investigation.
5. “Human Services” means services provided to third parties, including social services such as day care, foster care, home care, homeless assistance, housing and shelter assistance, preventive services, youth services, and senior centers; health or medical services including those provided by health maintenance organizations; legal services; employment assistance services, vocational and educational programs; and recreation programs.
6. “PassPort” means New York City’s digital Procurement and Sourcing Solutions Portal;
7. “Contractor” means the entity providing Human Services under a contract with the City of New York.
8. “Rider” means this New York City Mayoral Executive Order No. 64 Rider.

### Section 1.03 Reporting.

Contractor shall provide information about sexual harassment complaints, whether made by an employee, client, or other person, by making the following available to DOI at <http://www.nyc.gov/HSProviderReport>:

* 1. A copy of the Contractor’s sexual harassment policies, including complaint procedures, which shall be uploaded to PassPort; and
	2. A copy of any complaint or allegation of sexual harassment or retaliation on the basis of a complaint of sexual harassment brought by any person against the Chief Executive Officer or equivalent principal of the organization in any venue, including through the Contractor’s internal Equal Opportunity process, subject to Section 2 herein. Such copy must be redacted as to the name and any identifying information of individuals except the accused and provided, by secure means that the DOI shall determine and publicize, within 30 days of receipt of the complaint or allegation; and
	3. A copy of the final determination or judgment with regard to any complaint covered in subdivision (b), redacted as to the name and any identifying information of individuals except the accused; and
	4. Any additional information the DOI requests in order to effectuate its review of any investigation and determination, including information that had been redacted pursuant to subdivisions (b) and (c).

### Section 1.04 Annual Certification.

On the Certification Date and on the anniversary of said date every year thereafter during the term of the Agreement, the Contractor’s Board of Directors or equivalent authority of Contractor shall upload to PassPort a certification substantially in the form annexed hereto as Annex 1 certifying that they have made all reports required pursuant to this rider or that they had no information to report.

### Section 1.05 Contractor’s Duty to Investigate.

The reporting obligations under Section 1.03 does not relieve the Contractor of its duty to investigate any complaint or allegation or of any other contractual obligations.

### Section 2.

Disclosure to and collection by DOI of any personally identifying information relating to allegations of sexual harassment – which constitutes “sensitive identifying information” under section 6.2 of the Citywide Privacy Protections and Protocols of the City’s Chief Privacy Officer and “restricted” information under the NYC Cyber Command Policies and Standards – has been authorized by the Chief Privacy Officer under section 23-1202 of the New York City Administrative Code as being in the best interests of the City.

### Section 3.

Contractor hereby acknowledges the provisions of Section 4 of EO 64, which provides that Agencies may consider any findings reported by DOI, as well as a provider's failure to furnish the information required by Section 1.03 above when determining whether to continue, modify, amend, or renew a contract.

## ANNEX 1 SAMPLE CERTIFICATION

I, (NAME), who is (CHAIRMAN OF THE BOARD OR EQUIVALENT PRINCIPAL)

of (CONTRACTOR) (the “Contractor”), have reviewed the requirements of Mayoral Executive Order 64 of 2021 and, in compliance therewith, hereby certify to the following:

1. A copy of the Contractor’s sexual harassment policy has been uploaded to the New York City’s PASSPort system on DATE. The policy uploaded is the most up-to-date version of the policy.
2. Allegations of Sexual Harassment. Please initial one (1) of the two (2) options below. For the year prior to the date of this certification, or since the Contractor’s last certification, whichever period is longer:

 Contractor has reviewed its records and internal communications and confirms that it has not received any complaints or allegations of sexual harassment, or retaliation on the basis of a complaint or allegations of sexual harassment, brought against the Chief Executive Officer or equivalent principal of the organization in any venue, including through the Contractor’s internal Equal Opportunity process.

 Contractor has reviewed its records and internal communications and confirms that it has received complaints or allegations of sexual harassment, or retaliation on the basis of a complaint or allegations of sexual harassment, brought against the Chief Executive Officer or equivalent principal of the organization in any venue, including through the Contractor’s internal Equal Opportunity process. Contractor has provided redacted copies of documents regarding all such complaints or allegations to DOI.

1. Final Determinations and Judgments. Please initial one (1) of the two (2) options. For the year prior to the date of this certification, or since the Contractor’s last certification, whichever period is longer:

 Contractor has reviewed its records and internal communications and confirms that it has not made any final determinations, including settlement, or received any judgments relating to any complaints or allegations covered under Mayoral Executive 64 of 2021.

 Contractor has reviewed its records and internal communications and confirms that it has made final determinations, including settlement, or received judgments relating to complaints or allegations covered under Mayoral Executive 64 of 2021. Contractor has provided redacted copies of all such documents to DOI.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated

(NAME OF ENTITY) BY:

(NAME ) (TITLE)

Subscribed and sworn to before me this

 day of , 20 ,

Notary Public

**APPENDIX A**

**EXHIBIT A-1**

**DESIGNATED PROGRAM SERVICES WORKSCOPE**

Requirements for All Designated Program Services

* 1. If legal services to immigrants on matters of adjusting status are included in the Designated Program Services:
		1. Contractor must either:
			1. have a person licensed to practice law in the State of New York who, within the past five

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

* + - 1. have a status of official recognition from the Board of Immigration Appeals ("BIA") for the agency, as well as have staff who are BIA-accredited and oversee the completion of, and sign each application before filing.
		1. Any Attorney or BIA-accredited staff responsible for completing, reviewing and signing the applications must have the opportunity to meet with each applicant during the process to address any issue(s) which might adversely affect the application.
		2. Professional Liability Insurance shall be maintained by the Contractor or retained Attorney in the amount of at least one million dollars ($1,000,000) per claim. Contractor shall provide to the Department, at the time of the request for approval of this Agreement or any Attorney retainer agreement, evidence of such Professional Liability Insurance on forms acceptable to the Department.
	1. Designated Program Services reimbursed under this Agreement shall be of good quality, shall maximize the effectiveness of the Discretionary Funds awarded to them, and shall not be funded from any other public or private source.
	2. Designated Program Services and the facility(s) in which they are provided shall have received, and shall maintain for the Term, all applicable certifications, licenses, permits, and governmental approvals.
	3. Eligibility for or participation in Designated Program Services shall not be restricted on the basis of actual or perceived age, race, color, creed, national origin, alienage or citizenship status, sex, gender, sexual orientation, disability (including presence of a service dog), marital status, partnership status, military status, or any other class protected from discrimination by federal, state, or local law.
	4. Designated Program Services shall not be targeted to specialized populations based on actual or perceived age, race, color, creed, national origin, alienage or citizenship status, sex, gender, sexual orientation, disability (including presence of a service dog), marital status, partnership status, military status, or any other class protected from discrimination by federal, state, or local law without written authorization by the Department to do so.
	5. Designated Program Services delivered in public or private schools:
		1. shall not be restricted to students who attend the school or their families;
		2. shall be publicly advertised in a manner calculated to invite participation on a non- discriminatory basis by students and families in the community;
		3. shall be limited to out-of-school time activities or other proper public purposes; and
		4. shall be provided only at times other than the regularly scheduled school day.
	6. Incidents shall be reported as follows:
		1. Contractor will notify the Department of any injury to any participant, employee, volunteer, officer, visitor, or any other person which occurs in connection with the Designated Program Services and of any damage to the program site or any damage to or theft of equipment purchased with Discretionary Funds. Telephone notification must be given to the Department within twenty-four (24) hours of the incident, followed by a written report on the Department’s Incident Report Form delivered to the Department within three (3) working days.
		2. Contractor will notify the Department of any incident or allegation of abuse of a participant by any of Contractor’s staff, paid or volunteer. The term “abuse” here means any physical, sexual, emotional, or verbal abuse, or any other maltreatment of a program participant. This notification must be made by telephone to the Department immediately upon discovery, followed by a written report on the Department’s Incident Report Form within three (3) working days. Compliance with this reporting requirement does not satisfy any other legally mandated reporting of abuse, such as to the New York State Central Register of Child Abuse and Maltreatment.

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

|  |
| --- |
| *Board Chairperson Information* |
| **Name of Chairperson of the Board:** |
| **Address of the Chairperson:** |
| **Telephone Number of the Chairperson:** |
| **Email Address of Chairperson:** |

**APPENDIX A**

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN, AND CLIENT SERVICES**

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## ARTICLE 1 - DEFINITIONS

### Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

1. “Agency Chief Contracting Officer” or “ACCO” means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.
2. “Agreement” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.
3. “City” means the City of New York.
4. “City Chief Procurement Officer” or “CCPO” means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.
5. “Commissioner” or “Agency Head” means the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.
6. “Comptroller” means the Comptroller of the City of New York.
7. “Contractor” means the entity entering into this Agreement with the City.
8. “Days” means calendar days unless otherwise specifically noted to mean business

days.

1. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.
2. “Law” or “Laws” means the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
3. “Procurement Policy Board” or “PPB” means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.
4. “PPB Rules” means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 *et seq*.
5. “SBS” means the New York City Department of Small Business Services.
6. “State” means the State of New York.

## ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS AND DISCLOSURES

### Section 2.01 Procurement of Agreement

1. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq*.). The Contractor also represents that it is in compliance with the lobbying registration requirements of Admin. Code §§ 3-211 *et seq*. and that any individual or organization who conducted any lobbying on the Contractor’s behalf in order to solicit or secure this Agreement or the funding for this Agreement is disclosed on the attached Exhibit C. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.
2. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

### Section 2.02 Conflicts of Interest

1. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.
2. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have

any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

### Section 2.03 Certification Relating to Fair Practices

1. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:
	1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;
	2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy, or directive, the prices and other material terms set forth in this Agreement that have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and
	3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.
2. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

### Section 2.04 Disclosures Relating to Vendor Responsibility

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor’s Office of Contract Services. The Contractor acknowledges that the Department’s reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

### Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

If the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven days of filing.

### Section 2.06 Authority to Execute Agreement

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

## ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

### Section 3.01 Assignment

1. The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or the right to execute it, or the right, title, or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance, or other disposition without such written consent shall be void.
2. Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee’s disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Department shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.
3. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor’s employees.
4. The provisions of this Section 3.01 shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.
5. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

### Section 3.02 Subcontracting

1. In accordance with PPB Rule § 4-13, all subcontractors and consultants must be approved by the Department prior to commencing work under a subcontract or consultant contract.
	1. Prior to entering into any subcontract or consultant contract, the Contractor shall submit a written request for the approval of the proposed subcontractor or consultant to the Department giving the name and address of the proposed subcontractor or consultant, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract or consultant contract. The Contractor must supply a signed Disclosure and Compliance certification form for each subcontractor or consultant, in the form of Exhibit B of this Agreement. If the subcontractor or consultant is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor or consultant in the City’s Payee Information Portal ([www.nyc.gov/pip](http://www.nyc.gov/pip)) and provide the following information: maximum subcontract or consultant contract value, description of subcontractor or consultant work, start and end date of the subcontract or consultant contract, and the subcontractor’s or consultant’s industry.[1](#_bookmark12)
	2. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor or consultant.

1 Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

* 1. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor or consultant has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract or consultant agreement and/or any of the items listed in PPB Rule 4- 13(d)(3).
	2. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor or consultant is approved. If the proposed subcontractor consultant is not approved, the Contractor may submit another proposed subcontractor or consultant unless the Contractor decides to do the work. No subcontractor or consultant shall be permitted to perform work unless approved by the Department.
	3. For proposed subcontracts or consultant contracts that do not exceed

$25,000.00, the Department’s approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department’s receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department’s acknowledged receipt of fully completed disclosures for the subcontractor or consultant.

1. All subcontracts and consultant contracts must be in writing. All subcontracts and consultant agreements shall contain provisions specifying that:
	1. The work performed by the subcontractor or consultant must be in accordance with the terms of the Agreement between the City and the Contractor;
	2. Nothing contained in the agreement between the Contractor and the subcontractor or consultant shall impair the rights of the City;
	3. Nothing contained in the agreement between the Contractor and the subcontractor or consultant, or under the Agreement between the City and the Contractor, shall create any contractual relation between the subcontractor or consultant and the City; and
	4. The subcontractor or consultant specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor or consultant as if the City were a party to the subcontract.
2. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and consultants and of persons either directly or indirectly employed by such subcontractors and consultants as it is for the acts and omissions of any person directly employed by it.
3. For determining the value of a subcontract or consultant contract, all subcontracts or consultant contracts with the same subcontractor or consultant shall be aggregated.
4. The Department may revoke the approval of a subcontractor or consultant granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days’ notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor or consultant to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor or consultant pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor or consultant in accordance with this Agreement prior to the effective date of revocation.
5. The Department’s approval of a subcontractor or consultant shall not relieve the Contractor of any of its responsibilities, duties, and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract or consultant contract.
6. Individual employer-employee contracts are not subcontracts or consultant contracts subject to the requirements of this Section 3.02.
7. The Contractor shall report in the City’s Payee Information Portal payments made to each subcontractor or consultant within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor or consultant and/or to report subcontractor and consultant payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of $100 per day for each day that the Contractor fails to identify a subcontractor or consultant along with the required information about the subcontractor or consultant and/or fails to report payments to a subcontractor or consultant, beyond the time frames set forth herein or in the notice from the City.

## ARTICLE 4 - LABOR PROVISIONS

### Section 4.01 Independent Contractor Status

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

### Section 4.02 Employees and Subcontractors

All persons who are employed by the Contractor and all the Contractor’s subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person’s performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor’s employees, agents, subcontractors, or subcontractor’s employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor’s employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers’ Compensation coverage, Employers’ Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

### Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five Days’ written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner’s determination.

### Section 4.04 Minimum Wage; Living Wage

1. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Agreement.
2. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 (“Section 6-109”), in accordance with Section 6-109, the Contractor agrees as follows:
	1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.
	2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.
	3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6- 109(2)(a)(iii).
	4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and

health benefits. In addition, if this Agreement is for an amount greater than

$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than

$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

* 1. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer’s covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.
	2. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.
	3. Each year throughout the term of the Agreement and whenever requesting the Department’s approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.
	4. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109,

including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor‘s account an amount equal to the cost of such investigation.

### Section 4.05 Non-Discrimination in Employment

1. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.
2. N.Y. Labor Law § 220-e. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by N.Y. Labor Law § 220-e, that:
	1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, 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;
	2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;
	3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of $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 Agreement; and
	4. This Agreement may be 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 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

1. Admin. Code § 6-108. If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by Admin. Code § 6-108, that:
	1. 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.
	2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) 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.

Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

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 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than $100.00 or by imprisonment for not more than 30 Days, or both.

1. E.O. 50 -- Equal Employment Opportunity
	1. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) (“E.O. 50”), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:
		1. 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;

* + 1. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners’, partners’ or shareholders’ race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;
		2. Will state in all solicitations or advertisements 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, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;
		3. 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 commitments under E.O. 50 and the rules and regulations promulgated thereunder;
		4. Will furnish before this Agreement 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 SBS, Division of Labor Services (“DLS”); and
		5. 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.
	1. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this 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 DLS may direct the Commissioner to impose any or all of the following sanctions:
		1. Disapproval of the Contractor; and/or
		2. Suspension or termination of the Agreement; and/or
		3. Declaring the Contractor in default; and/or
		4. In lieu of any of the foregoing sanctions, imposition of an employment program.
	2. 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 Contractor to be non-responsible.
	3. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of $100,000.00 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 Contractor will take such action 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. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).
	4. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof 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. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).
	5. Nothing contained in this Section 4.05(D) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

### Section 4.06 Paid Sick Leave Law

1. *Introduction and General Provisions.*
	1. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.[2](#_bookmark20) Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

2 Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

* 1. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City’s Department of Consumer Affairs (“DCA”). DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).
	2. The Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.
	3. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.
	4. The PSLL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLL. The Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.
1. *Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use.*
	1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.
	2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.
	3. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:
		1. such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
		2. such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
		3. closure of such employee’s place of business by order of a public official due to a public health emergency; or
		4. such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.
	4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSLL must be treated by the employer as confidential.
	5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.
	6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.
2. *Exemptions and Exceptions*. Notwithstanding the above, the PSLL does not apply to any of the following:
	1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);
	2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;
	3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
	4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
	5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
	6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
	7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
	8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.
3. *Retaliation Prohibited.* An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.
4. *Notice of Rights.*
	1. An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA’s website at [http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml.](http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml)
	2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed $50.00 for each employee who was not given appropriate notice.
5. *Records*. An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.
6. *Enforcement and Penalties.*
	1. Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.
	2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed $500.00 for a first violation, $750.00 for a second violation within two years of the first violation, and $1,000.00 for each succeeding violation within two years of the previous violation.
7. *More Generous Polices and Other Legal Requirements.* Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

### Section 4.07 Whistleblower Protection Expansion Act

1. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6- 132 and 12-113, respectively,
	1. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of

the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

* 1. If any of Contractor’s officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney’s fees.
	2. Contractor shall post a notice provided by the City (attached hereto as Exhibit A) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:
		1. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and
		2. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.
	3. For the purposes of this Section 4.07, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.
	4. This Section 4.07 is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of $100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of $100,000.00.
1. Section 4.07 is not applicable to this Agreement if it is valued at $100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

## ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

### Section 5.01 Books and Records

The Contractor agrees to maintain separate and accurate books, records, documents, and other evidence, and to utilize appropriate accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

### Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

### Section 5.03 Inspection

1. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.
2. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. If

observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession’s services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

1. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

### Section 5.04 Audit

1. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department’s Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources, or otherwise.
2. Audits by the City, including the Comptroller, the Department, and the Department’s Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.
3. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.
4. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

### Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department’s designated official. Upon the request by the Department at any time during the Agreement or after the

Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

### Section 5.06 Electronic Records

As used in this Appendix A, the terms “books,” “records,” “documents,” and “other evidence” refer to electronic versions as well as hard copy versions.

### Section 5.07 Investigations Clause

1. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B.

* 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or 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, or;
	2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C.

1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
2. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.
3. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:
	1. The disqualification for a period not to exceed five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
	2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
4. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:
	1. The party’s good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
	2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
	3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
	4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
5. Definitions
	1. The term “license” or “permit” as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.
	2. The term “person” as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
	3. The term “entity” as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.
	4. The term “member” as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.
6. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

### Section 5.08 Confidentiality

1. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure

demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

1. The Contractor shall provide notice to the Department within three days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.
2. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.
3. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.
4. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.
5. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

## ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

### Section 6.01 Copyrights and Ownership of Work Product

1. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.
2. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this 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 the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor 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. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.
3. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
4. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.
5. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.
6. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non- exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

### Section 6.02 Patents and Inventions

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

### Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

### Section 6.04 Antitrust

The Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

## ARTICLE 7 - INSURANCE

### Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

### Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance

1. The Contractor shall maintain workers’ compensation insurance, employers’ liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement
2. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers’ Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:
	1. Form C-105.2, *Certificate of Workers’ Compensation Insurance*;
	2. Form U-26.3, *State Insurance Fund Certificate of Workers’ Compensation Insurance*;
	3. Form SI-12, *Certificate of Workers’ Compensation Self-Insurance*;
	4. Form GSI-105.2, *Certificate of Participation in Worker’s Compensation Group Self-Insurance*;
	5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;
	6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
	7. Form CE-200 – *Affidavit of Exemption*;
	8. Other forms approved by the New York State Workers’ Compensation Board; or
	9. Other proof of insurance in a form acceptable to the City.

### Section 7.03 Other Insurance

1. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and “occurrence” based rather than “claims-made.” Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.
2. *Commercial Automobile Liability Insurance.* If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.
3. *Professional Liability Insurance.*
	1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.
	2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.
	3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.
4. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.
5. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor’s cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.
6. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

### Section 7.04 General Requirements for Insurance Coverage and Policies

1. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement

must:

* 1. be provided by companies that may lawfully issue such policies;
	2. have an A.M. Best rating of at least A- / VII, a Standard & Poor’s rating of at least A, a Moody’s Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
	3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.
1. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.
2. There shall be no self-insurance program, including a self-insurance retention, exceeding $10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.
3. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

### Section 7.05 Proof of Insurance

1. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:
	1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or
	2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.
2. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).
3. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.
4. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.
5. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office

of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

### Section 7.06 Miscellaneous

1. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor’s employees was injured). Such notice shall expressly specify that “this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured” (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys’ fees, arising from an insurer’s disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.
2. The Contractor’s failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.
3. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.
4. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.
5. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such

entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

## ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

### Section 8.01 Reasonable Precautions

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss resulting from the Contractor’s and/or its subcontractors’ operations under this Agreement.

### Section 8.02 Protection of City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by negligence, any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

### Section 8.03 Indemnification

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

### Section 8.04 Infringement Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade

secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement’s scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

### Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The Contractor’s obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor’s obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

### Section 8.06 Actions By or Against Third Parties

1. If any claim is made or any action brought in any way relating to Agreement other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance that the City may reasonably require of the Contractor.
2. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

### Section 8.07 Withholding of Payments

1. If any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.
2. If any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.
3. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City’s tender of the claim or action without a reservation of rights.
4. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.
5. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

### Section 8.08 No Third Party Rights

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officials and employees.

## ARTICLE 9 - CONTRACT CHANGES

### Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. The Contractor deviates from the requirements of this Agreement without a duly approved and executed change order document or written contract modification or amendment at its own risk.

### Section 9.02 Changes Through Fault of Contractor

If any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

## ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES

### Section 10.01 Termination by the City Without Cause

1. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.
2. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.
3. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

### Section 10.02 Reductions in Federal, State, and/or City Funding

1. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.
2. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor’s suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.
3. If the City reduces funding pursuant to this Section 10.02, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.
4. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of

the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

### Section 10.03 Contractor Default

1. The City shall have the right to declare the Contractor in default:
	1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;
	2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;
	3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;
	4. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:
		1. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
		2. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
		3. a criminal violation of any state or federal antitrust law;
		4. violation of the Racketeer Influence and Corrupt Organization Act, 18

U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

* + 1. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
		2. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.
	1. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or
	2. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.
1. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.
2. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five business days’ notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.
3. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.
4. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

### Section 10.04 Force Majeure

1. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.
2. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.
3. If the City terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

### Section 10.05 Procedures for Termination

1. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.
2. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:
	1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
	2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
	3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
	4. Submitting to the Department, within 45 days, the most recent certified independent agency-wide audit report; and
	5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

### Section 10.06 Miscellaneous Provisions

1. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section 10.06, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.
2. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor’s breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.
3. The rights and remedies of the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

### Section 10.07 Liquidated Damages

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

## ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

### Section 11.01 Prompt Payment

1. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, the provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.
2. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.
3. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

### Section 11.02 Electronic Funds Transfer

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

11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 for

payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

1. This Section 11.02 is applicable to contracts valued at $25,000.00 and above.

## ARTICLE 12 - CLAIMS

### Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

### Section 12.02 Jurisdiction and Venue

Subject to Section 12.03, the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys’ fees incurred by the City in removing the action to a proper court consistent with this Section 12.02.

### Section 12.03 Resolution of Disputes

1. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.
	1. This Section 12.03 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, or to termination other than for cause.
	2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor’s work to the Agreement, and the acceptability and quality of the Contractor’s work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit

Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

1. All determinations required by this Section 12.03 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 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.
2. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.
3. Presentation of Dispute to Agency Head.
	1. Notice of Dispute and Agency Response. The Contractor 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 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 Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, 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 Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.
	2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City

Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, 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 contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.

* 1. Agency Head Determination. Within 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 Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.
	2. 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 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.
1. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.
	1. Time, Form, and Content of Notice. Within 30 Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim 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 Contractor 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 Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
	2. Agency Response. Within 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.

* 1. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. 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 Contractor. Willful failure of the Contractor to produce within 15 Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.
	2. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have 45 Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 90 Days from the Comptroller’s receipt of all the materials. The Contractor 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 Agreement.
1. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:
	1. the chief administrative law judge of the Office of Administrative Trials and Hearings (“OATH”) or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 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;
	2. the City Chief Procurement Officer (“CCPO”) or his or 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
	3. 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.
2. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.
	1. Form and Content of Petition by the Contractor. The Contractor 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 Contractor 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 Contractor 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 Contractor to, the Comptroller’s Office. The Contractor 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 Contractor 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.
	2. Agency Response. Within 30 Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor 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 Contractor. 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 30 Days.
	3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor 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 Contractor 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 it 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.
	4. CDRB Determination. Within 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 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 this Agreement.

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.

* 1. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 Days after the date the parties are formally notified of the CDRB’s decision.
	2. 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 PPB Rules § 4-09.
1. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

### Section 12.04 Claims and Actions

1. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.
2. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

### Section 12.05 No Claim Against Officials, Agents, or Employees

No claim shall be made by the Contractor against any official, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

### Section 12.06 General Release

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

### Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

## ARTICLE 13 - APPLICABLE LAWS

### Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. If there is a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

### Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

### Section 13.03 Severability / Unlawful Provisions Deemed Stricken

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

### Section 13.04 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

### Section 13.05 Unlawful Discrimination in the Provision of Services

1. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.
2. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.
3. *Admin. Code § 6-123*. In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of

$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

1. *Immigration status*. In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person’s immigration status.

### Section 13.06 Americans with Disabilities Act (ADA)

1. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the

Contractor’s compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan (“Compliance Plan”) which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). If the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten Days after being directed to do so and 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.

1. The Contractor’s failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

### Section 13.07 Voter Registration

1. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children’s Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.
2. *Distribution of Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:
	1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.
	2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of

supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department’s request.

* 1. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.
	2. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.
	3. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.
	4. For the purposes of Paragraph A of this Section 13.06, the word “Contractor” shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.
	5. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.
1. *Assistance in Completing Voter Registration Forms*. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:
	1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.
	2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.
	3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.
	4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.
2. *Required Statements*. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:
	1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor’s or government services are not conditioned on being registered to vote.
	2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.
	3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.
	4. The Contractor and the Contractor’s employees shall not:
		1. seek to influence an applicant’s political preference or party designation;
		2. display any political preference or party allegiance;
		3. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
		4. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.
3. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.
4. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

### Section 13.08 Political Activity

The Contractor’s provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

### Section 13.09 Religious Activity

There shall be no religious worship, instruction, or proselytizing as part of or in connection with the Contractor’s provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

### Section 13.10 Participation in an International Boycott

1. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 *et seq*., or the regulations of the United States Department of Commerce promulgated thereunder.
2. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of 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 or her option, render forfeit and void this Agreement.
3. The Contractor shall comply in all respects, with the provisions of Admin. Code

§ 6-114 and the rules issued by the Comptroller thereunder.

### Section 13.11 MacBride Principles

1. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.
2. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.
3. This Section does not apply if the Contractor is a not-for-profit corporation.

### Section 13.12 Access to Public Health Insurance Coverage Information

1. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children’s Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.
2. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of $250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. “Contractors” to whom this Section

13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor’s contractual obligation.

1. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter “pamphlet”), the Contractor hereby agrees as follows:
	1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.
	2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.
	3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such

pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

* 1. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.
	2. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter § 1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.
1. Non-applicability to Certain Services. The provisions of this Section 13.11 shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

### Section 13.13 Distribution of Personal Identification Materials

1. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.12. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.
2. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.
3. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency’s plans developed pursuant to E.O. 150.

## ARTICLE 14 - MISCELLANEOUS PROVISIONS

### Section 14.01 Conditions Precedent

1. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.
2. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

### Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

### Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

### Section 14.04 Notice

1. The Contractor and the Department hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.
2. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by email and, unless receipt of the e-mail is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.
3. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

## SCHEDULE A

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| --- |
| **Article 7 -- Insurance** |
| **Types of Insurance****(per Article 7 in its entirety, including listed paragraph)** | **Minimum Limits and Special Conditions** |
| * Workers’ Compensation
* Disability Benefits Insurance
* Employers’ Liability
 | §7.02§7.02§7.02 | Statutory amounts. |
| * Commercial General Liability
 | §7.03(A) | $1,000,000.00 per occurrence$1,000,000.00 personal & advertising injury (unless waived in writing by the Department)$2,000,000.00 aggregate$ products/completed operationsAdditional Insureds:1. City of New York, including its officials and employees, and2. 3.  |
| **□** Commercial Auto Liability | §7.03(B) | $1,000,000.00 per accident combined single limitIf vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90 |
| **□** Professional Liability/Errors & Omissions§7.03(C) | $1,000,000.00 per claim |
| **□** Crime Insurance | §7.03(D) | $ Employee Theft/Dishonesty |

|  |  |
| --- | --- |
|  | $ Computer Fraud$ Funds Transfer Fraud$ Client Coverage$ Forgery or Alteration$ Inside the Premises (theft of money and securities)$ Inside the Premises (robbery or safe burglary of other property)$ Outside the Premises$ Money Orders and Counterfeit MoneyCity of New York is a loss payee as its interests may appear |
| **□** Cyber Liability Insurance §7.03(E) | *[If there is a significant cyber risk, please consult with the Law Department about specific insurance requirements.]* |
| **□** [OTHER] | *[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and**Additional Insured(s).]* |
| **□** [OTHER] | *[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]* |
| **Section 10.07 – Liquidated Damages** |
| * Violation of Section 3.02(H), reporting subcontractors in the City’s Payee Information Portal

 | **$100 per day****$**  |
| **Section 14.04 – Notice** |

|  |  |
| --- | --- |
| Department’s Mailing Address and Email Address for Notices |  |
| Contractor’s Mailing Address and Email Address for Notices |  |

**CERTIFICATES OF INSURANCE**

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers’ Compensation Insurance, Employer’s Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

* 1. the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

* 1. copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

**EXHIBIT A**

**WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER**


# REPORT

***CORRUPTION, FRAUD, UNETHICAL CONDUCT***

**RELATING TO A NYC-FUNDED CONTRACT OR PROJECT**

**CALL THE NYC DEPARTMENT OF INVESTIGATION**

# 212-825-5959

|  |  |
| --- | --- |
| **DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT:****New York City Department of Investigation (DOI)****80 Maiden Lane, 17th floor New York, New York 10038****Attention: COMPLAINT BUREAU****OR FILE A COMPLAINT ON-LINE AT:**[**www.nyc.gov/doi**](http://www.nyc.gov/doi)**All communications are confidential** | **Or scan the QR Code above to make a complaint** |

## THE LAW PROTECTS EMPLOYEES OF

**CITY CONTRACTORS WHO REPORT CORRUPTION**

* Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than $100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
* **To be protected by this law,** an employee must report to DOI − or to certain other specified government officials − information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than $100,000.
* Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages