

CORPORATION COUNSEL CONTRACT APPROVAL

Agency HRA

E-PIN 09612P0001002

Contractor FEDERATION EMPLOYMENT AND GUIDANCE SERVICES, INC.

Approved as to form

Certified as to legal authority

Electronically Signed By STEVEN CUSHMAN

Date 06/15/2012 17:21

Acting Corporation Counsel

AGREEMENT dated July 20, 2011 between the CITY OF NEW YORK ("CITY") acting by and through its Department of Social Services, Human Resources Administration ("Department"), having an office located at 180 Water Street, New York, New York 10038, and Federation Employment and Guidance Services, Inc. d/b/a FECS ("Contractor") a not-for-profit corporation having its principal office located at 315 Hudson Street, New York, New York 10013.

WHEREAS, the Department, as the local social services district ("District"), administers a variety of public assistance programs and services in New York City, including Temporary Assistance for Needy Families ("TANF"); and

WHEREAS, the applicable Federal and New York State laws and regulations impose time limits on cash assistance and require that recipients participate in transitional work activities; and

WHEREAS, many potentially self-sufficient public assistance recipients face multiple barriers to employment and self-sufficiency, including those imposed by medical and/or mental health problems; and

WHEREAS, the Department's Wellness, Comprehensive Assessment, Rehabilitation and Employment ("WeCARE") Program is designed to assist individuals with conditions that significantly reduce their functional capacity ("the Participants") in attaining maximal levels of function and self-sufficiency, through assessment, diagnosis, treatment linkages, case planning, case management, vocational rehabilitation, skills training and education, job placement and retention, and disability benefits assistance and advocacy ("the Services"); and

WHEREAS, the Department, as of September 8, 2010, issued a Request for Proposals ("RFP") pursuant to Section 3-03 of the Rules of the Procurement Policy Board of the City of New York ("PPB Rules"), soliciting proposals from vendors capable of providing the Services required herein, to which the Contractor has responded; and

WHEREAS, the Contractor represents that it is a not-for-profit corporation, duly-registered under the laws of the State of New York, authorized by its corporate charter to provide the Services required herein, with the necessary ability and expertise to do so; and

WHEREAS, the Department seeks to enter into an agreement ("Agreement") with the Contractor to provide the Services required herein, and the Contractor is ready, willing, and able to provide the required Services, as set forth below;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, the Parties hereby agree as follows:

ARTICLE I — 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:

A. "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.

B. "Budget" shall mean the line-item costs and/or the performance based measures or fee-for-service rate schedule attached hereto as Appendix C.

C. "City" shall mean The City of New York.

D. "Commissioner" or "Agency Head" shall mean 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.

E. "Comptroller" shall mean the Comptroller of the City of New York.

F. "Contractor" shall mean the entity entering into this Agreement with the Department.

G. "Department" shall mean the City agency that has entered into this Agreement.

H. "Fiscal Agent" shall mean an entity (if any) retained by the Department, or retained by the Contractor at the direction of the Department, to issue payments to third parties on behalf of the Contractor or otherwise to assist the Contractor in the administration of its financial affairs.

I. "Fiscal Manual" shall mean a set of instructions provided by the Department to the 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 <http://www.nyc.gov/hra>. The Fiscal Manual is not intended to amend the material terms of this agreement with respect to either the Scope of Work, or the terms and conditions of this document or Appendix A.

J. "Law" or "Laws" shall mean 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.

K. "State" shall mean the State of New York.

ARTICLE II — TERM OF AGREEMENT

Section 2.01 Term. The term of this Agreement begins on August 1, 2012 for a period of three (3) years through July 31, 2015, unless sooner terminated pursuant to the applicable provisions set forth herein.

Section 2.02 Renewal. The Department, in its sole discretion, may renew this Agreement once for a period of three (3) years. The Department, in its sole discretion, reserves the right to modify the length of the renewal term listed above, provided that the total term of this Agreement after the exercise of all of the options to renew shall not exceed six (6) years. All renewals shall be on substantially the same terms and conditions contained in the Agreement. However, as part of the option to renew, the Department has the right to increase or decrease the number of Participants to be placed, the unit prices, the milestones, and the activities leading up to the milestones. Any increase in unit prices will be based solely upon enhanced or additional services provided by the Contractor. Any renewal will not be effective unless and until the renewal is registered pursuant to New York City Charter §328. The Department shall renew this Agreement by giving written notice to the Contractor prior to the expiration date of this Agreement and prior to the expiration date of any renewal option. The Department will endeavor to give the Contractor notice ninety (90) days prior to renewal. Failure to give notice at least 90 days prior to renewal shall not impair the Department's right to exercise its option to renew and shall not invalidate an option exercised by the Department.

Section 2.03 Future funding. Since the period of performance contemplated by this Agreement involves performance by the Contractor in a subsequent City fiscal year(s), funding for this Agreement is subject to the appropriation of funds for such subsequent City fiscal year(s). Contractor also understands that the Department is under no obligation to continue its funding after the expiration of the term of this Agreement.

ARTICLE III — SCOPE OF WORK AND BUDGET

Section 3.01 Scope of work.

- A. **Services and Activities.** Contractor shall provide the services and activities in program areas or programs listed and described in the Scope of Work attached hereto as Appendix B.
- B. **Healthy Food Environment.** The City aims to reduce the prevalence of chronic disease, such as obesity, diabetes and cardiovascular disease, by improving the dietary intake of its citizens. Accordingly, in addition to the services set forth in Appendix B, the Contractor shall make best efforts to distribute to any staff members providing services to program participants under the Agreement and to program participants funded in whole or in part by this Contract, any healthy food promotional materials provided to the Contractor by the Department.
- C. **New York City Food Standards.** This paragraph applies only if this Agreement includes a requirement that the Contractor supply food to program participants as a material part of the client services funded by the Department. The City aims to reduce the prevalence of chronic disease, such as obesity, diabetes and cardiovascular disease, by improving dietary intake of its citizens. Accordingly, the Contractor shall provide a healthy food environment in connection with the client services provided under this Agreement by complying with the attached New York City Agency Food Standards with regard to the provision of food to program participants under this Agreement, including compliance with the New York City Food Standards for beverage vending and food vending machines (<http://www.nyc.gov/html/doh/html/cardio/cardio-vend-nutrition-standard.shtml>) for any vending machines to which program participants are granted access.

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 the Contractor an amount not to exceed \$99,093,089.00 (ninety-nine million ninety-three thousand eighty-nine dollars) for all services provided under the Agreement. Payment shall be made in accordance with the Budget and the Fiscal Manual. Payment shall be a combination of line item (cost) reimbursement and unit payments tied to outcomes. Performance milestones shall represent at least 55% of the contract budget. Costs associated with support staff providing direct services to clients shall be reimbursed on a cost basis not exceeding 45% of the Budget, Appendix C. Such costs include the salaries of immediate supervisors of the support staff providing direct client services. 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 section 328 of the New York City Charter.

Section 3.04 Cost allocating and duplication.

A. **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 shall constitute a material breach of this Agreement.

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

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

1. Relates to allowable costs as defined in applicable laws, regulations and policies of the federal, State and City governments;
2. Relates to costs necessary for the Contractor's performance pursuant to 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.

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

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

Section 3.05 Cost Of living increases. Where the 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 the Contractor provides the same or substantially similar services, then the Department shall reimburse the 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 contract is registered pursuant to New York City 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

A. Contractor shall establish and maintain one 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(s) to track and clearly identify the funds obligated through this Agreement.

B. Contractor shall notify the Department 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 within five (5) days of such establishment or change. Such bank shall have a branch located in New York City unless otherwise approved by the Department.

C. Contractor shall notify the Department of the names, titles, and business addresses of such persons authorized by the Contractor to receive, handle or disburse monies under this Agreement, including the company name and company address where such persons are not employees of the Contractor. Such notification must be in writing and furnished to the Department within five (5) days from the execution of this Agreement, and within five (5) days from any subsequent change or substitution of authorized signatories.

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. The funds shall be used exclusively for the payment of expenditures and obligations authorized by and properly incurred pursuant to the Budget.

Section 4.04 Financial records, reporting and invoicing. Contractor shall submit financial reports and invoices to the Department in accordance with the terms of the Fiscal Manual. Any supporting documents required to be maintained by this Agreement or the Fiscal Manual shall be made available for inspection and reproduction by the Department, the City Comptroller, and such other persons as authorized by the Department, including the Inspector General for the Department and the Department of Investigation. Contractor acknowledges that repeated failure to submit required financial reports within the time limits prescribed may result in termination of this Agreement.

Section 4.05 Procurement requirements.

A. Procurement records. 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.

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

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. 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. The Department will reasonably review any additional payments or obligations in the event such are required within the one (1) year period.
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. The monetary thresholds apply to payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity. Payments made or obligations undertaken will not be artificially divided in order to avoid the requirements of this paragraph. The Department will reasonably review any additional payments or obligations in the event such are required within the one (1) year period.
3. The City may retain the services of a Group Purchasing Organization (GPO) to facilitate the purchase of supplies or other items. If the City retains such a GPO, the Department may direct Contractor to utilize the services of such GPO. If the Contractor is directed by the Department to use the GPO or if the Contractor becomes a member of or makes purchases through the GPO retained by the City with or without

the City's direction, Paragraph B shall not apply and the procurement requirements will be satisfied met through the use of the GPO.

C. Equipment. If so directed by the Department, title to all equipment or other property purchased at a price in excess of \$5,000 with funds obtained through this Agreement shall be in the name of the City of New York. 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.

D. M/WBE suppliers. Contractor is encouraged to utilize businesses and individual proprietors listed on the NYC Online Directory of Certified MWBE Businesses, available at www.nyc.gov/sbs, as sources for its purchases of goods, supplies, services and equipment using funds obtained through 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.

E. 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.

A. 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.

B. 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.

C. Disallowed costs. Any cost found by the Department, the City or any auditing authority that examines the financial records of the Contractor to be improperly incurred 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 the 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, and/or 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. Prior to the imposition of withholding for the purposes of set-off, the Department will provide the Contractor with an opportunity to be heard upon at least ten (10) days prior written notice.

Section 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. If Contractor fails to spend funds in the budget, the Department reserves the discretion to reduce the budget going forward to account for the expected future level of expenditures. The Department will allow expenditures for all services performed and obligations properly incurred within the budget term but not yet paid.

Section 4.09 Provisions Applicable When Fiscal Agent Disburses Funds To Contractors

A. Payment by Fiscal Agent. Where the Department has retained a Fiscal Agent to make payments to third parties on behalf of Contractor, then the Contractor is obligated to use the Fiscal Agent to make payment to third parties at the Department's direction, including for the purchase of such goods, supplies, services and/or equipment made by Contractor under 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 Department's Fiscal Manual.

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

C. 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. 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; audit reports; all programmatic records and accounts maintained in connection with this Agreement, including program, research and other reports and publications 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 pertaining to this Agreement (Department shall not be entitled to minutes for other Contractor business or Board actions so long as this does not conflict with the Investigations Clause in Section 5.07 of Appendix A herein); certificate of incorporation and by-laws; all other contracts related to providing services under this Agreement, to which Contractor is a party and the contract terms coincide, in whole or in part, with the term of this Agreement; and any other records or materials reasonably requested at such

reasonable times and places and as often as may be reasonably requested. Contractor shall permit the Department and its authorized representatives including the Department's Inspector General, the Comptroller of the City of New York, the New York City Department of Investigation, or their designees, or other interested federal, State or City agency representatives, to attend all meetings of the Board of Directors and to be present at the program site(s) to observe the work and activities being performed in connection with 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 as may be directed by the Department.

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, the Contractor shall fulfill the audit requirements of the Federal Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Organizations," and shall provide such audit to the Department within thirty (30) days after its receipt of the final audit by the Contractor from the preparing accountant.

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

Section 5.06 Additional audit and financial reporting requirements.

A. If any Contractor is exempt from making annual filings to the Charities Bureau of the New York State Department of Law, the 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 they been required to file. As of the effective date of this Agreement, the requirements are as follows:

1. Contractors with gross revenues between \$100,000 and \$250,000 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.

2. Contractors with gross revenues in excess of \$250,000 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.

B. 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 the 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. The Contractor may satisfy this requirement by including the appropriate analysis in any audits required pursuant to Section 5.04 or 5.05.

C. The 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, but in any event no later than twelve (12) months after close of the audit period, or such longer 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.

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

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 the Contractor to provide specified services nor participants in the program who are being paid as trainees.

Section 6.02 Compensation of key employees and Board of Directors.

A. **Key employee list.** Contractor shall submit to the Department within thirty (30) days of the execution of this Agreement and at the beginning of each new fiscal year a list of its key employees, which shall include the Executive Director, Chief Financial Officer, Chief Operating Officer, or the functional equivalent of such positions, and the senior financial and programmatic supervisory personnel involved directly or indirectly in the performance of this Agreement. For each listed employee, Contractor shall provide the current total compensation (including all benefits), all sources of the employee's total compensation, whether from this contract or another City, State, Federal or private source, and the dollar amount of compensation from each such source.

B. **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 and/or Chief Operating Officer, and/or the senior programmatic supervisory personnel or the functional equivalent of such positions.

C. Board compensation. Contractor shall submit to the Department within thirty (30) days of the execution of this Agreement and at the beginning of each new fiscal year a listing of all members of its Board of Directors and identify 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 the 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 representatives 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.

A. 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.

B. Background checks.

1. The Contractor shall be responsible for the recruitment and screening of employees and volunteers performing work under the Agreement, including the verification of credentials, references, and suitability for working with clients and participants. Where consistent with State and federal law, if directed by the Department, the Contractor will undertake the fingerprinting of employees and volunteers, including applicants, in accordance with instructions from the Department.

2. The Contractor shall comply with Article 23-A of the New York State Correction Law and Section 296(15) and (16) of the New York State Executive Law when considering an applicant's prior criminal convictions in determining their suitability for employment. In accordance with Article 23-A, nothing in this Agreement shall be construed to limit a Contractor's authority to withdraw conditional offers of employment for any lawful reason, including the determination that the candidate has a conviction that bears a direct relationship to the duties and responsibilities of the position sought, or their hiring would pose an unreasonable risk to property or to the safety of individuals or the general public.

3. With respect to any employment governed by Article 23-A of the Correction Law or Section 296 of the New York State Executive Law, except where the Contractor obtains prior written approval from the Department, the Contractor shall not ask questions regarding an applicant's prior criminal convictions, juvenile delinquency adjudications, or youthful offender adjudications on any preliminary employment application documents or ask questions about an applicant's prior criminal convictions, juvenile delinquency adjudications, or youthful offender adjudications before or during the first interview with the applicant.

4. Consistent with the requirements of Executive Law §296(15) and (16), following the first interview, the Contractor may ask applicants to disclose their prior criminal convictions and any

arrests or criminal accusations that are pending and have not been terminated in favor of the applicant. Agencies shall limit their review and consideration of an applicant's criminal convictions to (i) an individual's felony convictions in the state of New York or in any other jurisdiction; (ii) an individual's unsealed misdemeanor convictions in the state of New York or in any other jurisdiction; and (iii) any pending charges against the applicant. Consistent with State law, past arrests not leading to a criminal conviction shall not be considered. (Please note that, pursuant to Section 380.1 of the Family Court Act, juvenile delinquency adjudications are not criminal convictions. Also, pursuant to Section 720.35(1) of the Criminal Procedure Law, a youthful offender adjudication is not a criminal conviction.) In addition, the Contractor may request a waiver from the Department of any provision of this Section and be permitted to ask relevant questions pertaining to the qualifications to hold a specific position, upon demonstrating the need for such waiver.

5. Notwithstanding any other provision of this Section, if the Contractor is hiring for positions requiring licensure, including positions such as interns and apprentices for such licensed positions (e.g. prospective attorneys), the Contractor may ask applicants the same questions asked by the licensing body, in accordance with New York State law. In addition, if the Contractor is hiring for positions where certain convictions or violations are a bar to employment in that position under Law, the Contractor may ask questions about those convictions or violations.

6. Where practicable, the Contractor shall provide for the review by a supervisor of a decision not to hire based on prior criminal convictions.

C. Drug-free workplace.

1. Contractor shall conspicuously post at any facility at which activities funded in whole or in part through this Agreement occur, a statement notifying all staff that the manufacture, distribution, dispensing, unauthorized possession, and unauthorized use of controlled substances are prohibited and specifying the actions that will be taken against employees for violation of such prohibition (the "Drug-Free Workplace Policy"). Contractor shall provide a copy of the Drug-Free Workplace Policy to each staff member as part of his or her initial employment orientation with Contractor, and shall inform such staff member that compliance with the terms of the Drug-Free Workplace Policy is a mandatory condition of employment or retention of employment. Contractor shall provide the Department with a written certification that its Facility complies with the Drug-Free Workplace Policy prior to commencement of services funded through this Agreement.

2. Contractor shall provide an on-going drug-free awareness program to inform all staff about the dangers of drug abuse in the workplace; the Contractor's enforcement of its Drug-Free Workplace Policy; the availability of drug counseling, rehabilitation and employee assistance programs; and the penalties that may be imposed upon staff and clients or participants for violating the Drug-Free Workplace Policy.

3. Contractor shall require staff members 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.

4. 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 so convicted: (a) appropriate personnel action, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (b) requiring such convicted staff member both 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 make a good faith effort to continue to abide by the Drug-Free Workplace Policy.

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 the Contractor's obligations with regard to Equal Employment Opportunity laws.

Section 7.03 Security and emergency plan.

A. 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 the Contractor's facility, including procedures to follow during emergencies. Contractor shall maintain a file of emergency contacts for each client and participant, which shall include the names, addresses, telephone numbers, and locations where such contacts can be reached. A security plan applying to all of Contractor's operations rather than specifically to the City-funded operations shall be sufficient to comply with the terms of this requirement. The Contractor shall cooperate with the City during any emergency affecting the Contractor's services and/or facilities.

B. 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. The Contractor may, at the request of and in a manner determined by the Department, assist the Department in carrying out emergency procedures during a State of Emergency. Emergency procedures shall remain in effect until the Mayor has determined that the SOE has expired. In consideration thereof, the City agrees to indemnify the Contractor against all claims by third parties arising out of the actions of its employees during the SOE that are directed by the City and not otherwise required to be performed under 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 the 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.

A. 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 race, color, creed, national origin, alienage or citizenship status, gender, gender identity, sexual orientation, disability, marital status, arrest or conviction record, status as a victim of domestic violence, lawful occupation, and family status.

B. 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. 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.

Section 9.03 Allegations of abuse or maltreatment. Contractor will notify the Department within twenty-four (24) hours of determining that reasonable cause exists to suspect that any of Contractor's administrators or staff, including both paid and volunteer, has abused, maltreated, neglected, assaulted or endangered the welfare of any program participant. In addition, if such reasonable cause is found, the Contractor shall take appropriate action to remove the person from the proximity of program participants while the matter is being investigated by the Contractor. The term abuse shall mean the infliction of physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ. The term maltreatment shall mean (i) treatment that results in serious physical injury other than by accidental means, or (ii) neglect or failure to exercise a minimum degree of care that impairs, or places in imminent danger of being impaired, the physical, mental or emotional condition of a program participant. Contractor shall provide telephone notice to the Department within 24 hours of 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 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);
- Appendix A (General Provisions Governing Contracts for Consultants, Professional, Technical and Human Client Services);
- Appendix B (Scope of Work);
- Appendix C (Budget); and
- Fiscal Manual.

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. Failure to do so may negatively affect Contractor's performance rating, which could in turn lead to termination of this Agreement.

Section 11.03 Capacity Building and Oversight (CBO) Review for not-for-profit Contractors. If requested by the Department, the Contractor must complete the Mayor's Office of Contract Services (MOCS) Capacity Building and Oversight (CBO) Review process. As part of that process, the Contractor must submit specified documents to the CBO unit of MOCS, which then conducts an evaluation of the Contractor and its operations for compliance with the terms of its contracts, its own by-laws, internal fiscal controls, applicable laws and regulations, and best practices in not-for-profit organization administration. The specified documents may include, but are not limited to, the Contractor's Internal Revenue Service ("IRS") determination of tax exemption, the most recent IRS Form 990 filing; the most recent audited financial statement (including the auditor's letter to the management), the functional budget for the current fiscal year in the format approved by the Board of Directors, an organizational chart identifying key staff by title, a copy of the most recently-approved Board Minutes, the by-laws of the corporation, a roster of the membership of the Board of Directors and a list of Board committees, the Contractor's current policies and procedures as adopted, and any other organizational documents, whether or not they are specifically required to be maintained pursuant to this contract or applicable laws and regulations. In the course of the CBO review process, MOCS may make recommendations to the Contractor, request the Contractor to take certain remedial actions and/or to implement certain policy changes. Any such recommendations, and the Contractor's responses thereto, will be provided to the Department for its consideration and any appropriate actions under this contract.

Section 11.04 Disclaimer. The technical assistance and training that the Department, 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.

ARTICLE XII – APPENDICES AND RIDERS

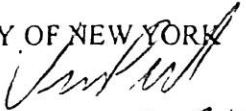
The following attached documents are incorporated and made a part of this Agreement:

- Appendix A, “General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services”
- Appendix B “Scope of Services”
- Appendix C “Budget”
- Public Assistance Hiring Commitment Rider for HRA, DHS, and ACS
- Language Assistance Rider for HRA
- Continuity of Operations Plan Rider
- Iran Divestment Act Compliance Rider for New York City Contractors

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

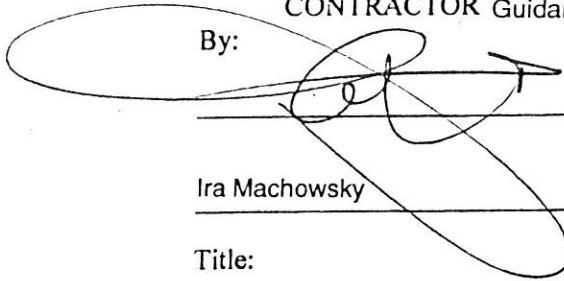
CITY OF NEW YORK

By:


Vincent P. Albano

CONTRACTOR Federation Employment and
Guidance Service, Inc.

By:



Ira Machowsky

Title:

Executive Vice President

Fed. Employer I.D. No. or Soc. Sec. No.

Redacted

Approved as to Form and
Certified as to Legal Authority

Acting Corporation Counsel

ACKNOWLEDGEMENT BY CITY

STATE OF NEW YORK)

:SS:

COUNTY OF NEW YORK)

On this 20 day of July, 20 12, before me personally came Vincent Pullo to me known and known to me to be Acco of the NEW YORK CITY DEPARTMENT OF [INSERT NAME], the person described in and who is duly authorized to execute the foregoing instrument on behalf of the Commissioner, and he/she acknowledged to me that he/she executed the same for the purpose therein mentioned.

Sharon C James

Notary Public or Commissioner of Deeds.

SHARON C. JAMES
Commissioner of Deeds
City of New York No. 2-13026
Commission Expires April 1, 2014

ACKNOWLEDGMENT OF CONTRACTOR IF A CORPORATION

State of NY County of NY ss:

On this 19th day of July, 20 12, before me personally came Ora Machowicz to me known, who, being by me duly sworn did depose and say that he/she resides at Redacted; that he/she is the Executive Vice President of the corporation described in and which executed the foregoing instrument; and that he signed his name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

Winnie Au
Notary Public or Commissioner of Deeds.

WINNIE AU
Notary Public, State of New York
No. 01AU6098891
Qualified in Queens County
Commission Expires October 6, 2013

ACKNOWLEDGMENT OF CONTRACTOR IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____ 20 _____ before me personally came _____
to me known, who, being by me duly sworn did depose and say that he/she resides at _____
_____ ; that he/she is _____ partner of
_____, a limited/general partnership existing under the laws of the State of
_____, the partnership described in and which executed the foregoing instrument; and
that he/she signed his/her name to the foregoing instrument as the duly authorized and binding act of said
partnership.

Notary Public or Commissioner of Deeds.

ACKNOWLEDGMENT OF CONTRACTOR IF AN INDIVIDUAL

State of _____ County of _____ ss:

On this _____ day of _____ 20 _____ before me personally came _____
to me known, who, being by me duly sworn did depose and say that he/she resides at _____
_____, and that he/she is the individual whose name is
subscribed to the within instrument and acknowledged to me that by his/her signature on the instrument,
said individual executed the instrument.

Notary Public or Commissioner of Deeds.

Commission Expires October 6, 2012
Qualified in Queens County
Notary Public State of New York
WILLIE AN
NOT. 01AUC003821

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

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

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

C. Within thirty (30) days of the commencement date of this Agreement ("commencement date") or fifteen (15) days following notice from the Department that a request for an exemption from the provisions of this Rider has been denied, Contractor shall submit, on forms specified by the Department, information and specifications for the position(s) available.

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

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

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

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

LANGUAGE ASSISTANCE RIDER FOR HRA

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

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

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

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

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

**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, 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.

**IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR
NEW YORK CITY CONTRACTORS**

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law ("SFL") §165-a and General Municipal Law ("GML") §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder's certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section

165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

APPENDIX A

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

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:

A. "Agency Chief Contracting Officer" or "ACCO" shall mean 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.

B. "Agreement" shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. "City" shall mean The City of New York.

D. "City Chief Procurement Officer" or "CCPO" shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. "Commissioner" or "Agency Head" shall mean 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.

F. "Comptroller" shall mean the Comptroller of the City of New York.

G. "Contractor" shall mean the entity entering into this Agreement with the Department.

H. "Days" shall mean calendar days unless otherwise specifically noted to mean business days.

I. "Department" or "Agency" shall mean the City agency that has entered into this Agreement.

J. "Law" or "Laws" shall mean 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.

K. "Procurement Policy Board" or "PPB" shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. "PPB Rules" shall mean 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.

M. "State" shall mean the State of New York.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. 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.

B. 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 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

A. 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.

B. 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 Paragraph 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.

C. 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.

[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees and members of their immediate families may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees and members of their immediate families are prohibited from voting 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.

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

G. If the 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 the Contractor's total revenues, then the Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

Section 2.03 Fair Practices

A. 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 which 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.

B. 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.

Section 2.04 VENDEX

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 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 2.06 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 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123

As required by 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 City Administrative 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 Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

Section 2.08 Bankruptcy and Reorganization

In the event that 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 (7) days of filing.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. 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.

B. 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 VENDEX questionnaire must be submitted within thirty (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 Agency

shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. 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.

D. The provisions of this Section 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.

E. 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

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor 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 Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor 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 shall impair the rights of the City;
 3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and
 4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.
- D. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.
- E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.
- F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.
- G. The Department's approval of a subcontractor 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.
- H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the

City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under 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 engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

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 (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative 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 shall be deemed a material breach of this Agreement.

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e

A. 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 New York State 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 Fifty Dollars (\$50) 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.

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

Section 4.06 Non-Discrimination: 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 New York City Administrative Code § 6-108, that:

A. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly

or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity

A. 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;

2. 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;

3. 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;

4. 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;

5. 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 City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. 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.

B. 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.

C. 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.

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The 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 Paragraph.

E. 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 Paragraph.

F. Nothing contained in this Section 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.

**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, which 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, and other documents 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 records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York 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 or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

A. 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, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents 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 and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. 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.

C. 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.

Section 5.04 Audit

A. 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.

B. 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.

C. 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.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section.

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 data (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 data refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

A. 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.

D. 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 (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

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

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (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.

F. 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.

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event 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

A. 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 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 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. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law ("FOIL"), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) 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.

C. 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.

D. 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 twenty-four (24) hours prior to any statement to the press or at least five (5) 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.

E. 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.

F. A breach of this Section 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

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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, including any software, material or other technology which is owned or controlled by a third party, including the SendTrac/AllTrac system.

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

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the

Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

Section 7.03 Professional Liability Insurance

A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this 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.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) 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.

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

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

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

Section 7.07 General Requirements for Insurance Coverage and Policies

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

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

C. 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.

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

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

Section 7.08 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;

2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. 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 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall

provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the 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 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.

B. The Contractor's failure to maintain any of the insurance required by this Article 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.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

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

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

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 damage, loss or injury 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 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

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

Section 8.04 Infringement Indemnification

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City 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 indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

A. In the event 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 which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

Section 8.07 Withholding of Payments

A. In the event that 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.

B. In the event that 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 further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

D. 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.

E. The rights and remedies of the City provided for in this Section shall not be 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 officers 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. Contractors deviating from the requirements of this Agreement without a duly

approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

In the event that 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, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

A. 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.

B. If the City terminates this Agreement pursuant to this Section, 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

A. 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 shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph 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 thirty (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 (7) 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.

C. If the City reduces funding pursuant to this Section, 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.

D. 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 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

A. 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 (5%) 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:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

- c. a criminal violation of any state or federal antitrust law;
- d. 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;
- e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
- f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) 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

6. If the Contractor or any of its officers, directors, partners, five percent (5%) 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.

B. 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 (10) 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.

C. 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. 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 (5) 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.

D. 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, in accordance with the provisions of Section 10.05.

E. 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

A. 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.

B. 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.

C. If the City terminates the Agreement pursuant to this Section, 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

A. 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. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a

post office box regularly maintained by the United States Postal Service in a 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.

B. 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 forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within forty-five (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 ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and
5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. 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, 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.

B. 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.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. 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.

B. 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.

C. 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

A. 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.

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

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

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, 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.

Section 12.03 Resolution of Disputes

A. 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 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 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 shall not apply to termination of the Agreement for cause or other than for cause.

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

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, 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 and a material breach of contract.

D. 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 thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the 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 thirty (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 as the Contractor initiating the dispute.

3. **Agency Head Determination.** Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the 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.

4. **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section. The City may not take a petition to the CDRB. However, should the 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.

E. **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 thirty (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 thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. **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 fifteen (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.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in 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 ninety (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.

F. 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 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.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the 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 thirty (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 thirty (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 its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of 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.

5. 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 thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. 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.

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

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, 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.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Contractor against any officer, 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. In the event of 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 Americans with Disabilities Act (ADA)

A. 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). In the event that 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 (10) 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.

B. 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 13.06 Voter Registration

A. Participating Agencies. Pursuant to Charter § 1057-a, 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. 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; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor, if 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.

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

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

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

6. For the purposes of Paragraph A of this Section, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section 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.

C. 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.

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

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

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

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

4. The Contractor and the Contractor's employees shall not:

a. seek to influence an applicant's political preference or party designation;

b. display any political preference or party allegiance;

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

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

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.

F. The provisions of this Section 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 13.07 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the 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.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, 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.

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

Section 13.08 MacBride Principles

A. 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.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

Section 13.09 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. 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.

B. Applicability to Certain Contractors. This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 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 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.

C. 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.

4. 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.

5. 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.

D. Non-applicability to Certain Services. The provisions of this Section 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 13.10 Distribution of Personal Identification Materials

A. 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. 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.

B. 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.

C. 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

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section 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 vary 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

A. The Contractor and the Department hereby designate the business addresses 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.

B. 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 fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section 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.

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except None.

Full name of Proposer or Bidder *[below]*

Federation Employment and Guidance Service, Inc.

Address 315 Hudson Street

City New York State New York Zip Code 10013

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorships

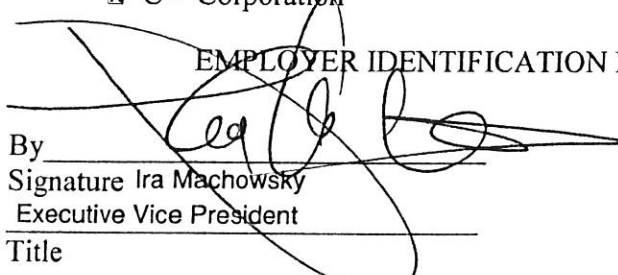
SOCIAL SECURITY NUMBER _____

☐ B - Partnership, Joint Venture or other unincorporated organization

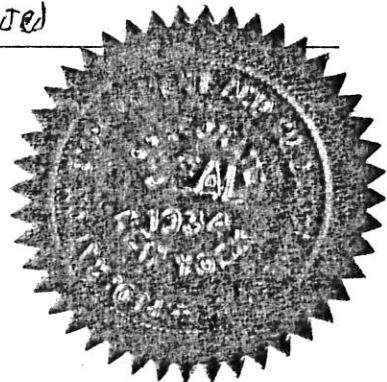
EMPLOYER IDENTIFICATION NUMBER _____

☒ C - Corporation

EMPLOYER IDENTIFICATION NUMBER Redacted

By 
Signature Ira Machowsky
Executive Vice President
Title _____

If a corporation place seal here



Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

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

RISK MANAGEMENT PLANNING GROUP
[Name of broker (typewritten)]

211 STATION ROAD, MINEOLA, NY 11501
[Address of broker (typewritten)]

[Signature]
[Signature of authorized officer of broker]

BART SIMON
[Name of authorized officer (typewritten)]

DIRECTOR OF UNDERWRITING
[Title of authorized officer (typewritten)]

516-535-4930
[Contact Phone Number for Broker (typewritten)]

BART.SIMON@RMPG.COM
[Email Address of Broker (typewritten)]

Sworn to before me this

7th day of JUNE, 2011

[Signature]
NOTARY PUBLIC

JERRY EDELSTEIN
Notary Public, State of New York
No. 01ED4696097
Qualified in Suffolk County
Certificate Filed in Nassau County
Commission Expires April 30, 2014

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

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

FRANK CRYSTAL & CO., INC.

[Name of broker (typewritten)]

FINANCIAL SQUARE 32 OLD SLIP NEW YORK, NY 10005

[Address of broker (typewritten)]

[Signature]
[Signature of authorized officer of broker]

SANDY CRYSTAL

[Name of authorized officer (typewritten)]

EXECUTIVE VICE PRESIDENT

[Title of authorized officer (typewritten)]

212-504-5919

[Contact Phone Number for Broker (typewritten)]

CRYSTALS@FCRYSTAL.COM

[Email Address of Broker (typewritten)]

Sworn to before me this

31st day of May, 2012

Erica G. Hintze
NOTARY PUBLIC

ERICA G. HINTZE
Notary Public, State of New York
No. 01HI6079438

Qualified in Queens County
Commission Expires August 26, 2006

APPENDIX B

SCOPE OF SERVICES

I. Overview

The Contractor, as further detailed in this Agreement, the Department's RFP, and the Contractor's Proposal, all of which are incorporated herein by reference, shall operate the WeCARE Program ("the Program"), providing a continuum of assessment and rehabilitative services to individuals referred by the Department ("Participants"), including, if the Department requires, transfers from other vendors under contract with the Department, in which service fragmentation is minimized, professional standards are consistently met, and Participants are actively assisted in attaining maximal levels of function and self-sufficiency. In instances of transfers from other vendors, the Department shall provide all relevant and necessary paperwork and documentation.

II. Objectives

The goal of the Department is to provide a continuum of integrated services, directly or through subcontracts that will evaluate cash assistance applicants and recipients, and other recipients of HRA services who may have disabling medical and/or mental health conditions to determine their functional capacity, assess their abilities, and to:

- A) Assist eligible individuals in obtaining federal benefits;
- B) Help individuals who are not eligible for federal disability benefits whose medical or mental health conditions reduce their functional capacity to attain maximum levels of function and self-sufficiency and, whenever possible, employment;
- C) Engage all program participants in obtaining necessary medical and/or mental health services and encourage compliance with treatment;
- D) Encourage and assist all program participants to comply with WeCARE and HRA program requirements.

III. Overall Program Requirements

The Contractor will:

- A) Serve all Participants referred by the Agency.
- B) Discharge Participants only in accordance with HRA procedures.
- C) Respond quickly to fluctuations in the demand for WeCARE services.
- D) Conform to all legal, regulatory and administrative requirements in the performance of the WeCARE services.
- E) Obtain all consents required by federal or state law and regulation and by the Department.
- F) Comply with the Department's Policies and Procedures that may be periodically revised and updated.

- G) Identify and address each Participant's needs for language services, travel, and other relevant accommodations.
- H) Make adjustments to program components as required by the Department.
- I) Cooperate with all Department programs concurrently providing services to WeCARE participants.
- J) With the exception of services provided by WeCARE, the Contractor will allow Participants to select a service provider from a reasonable number of choices offered by the Contractor. The Contractor will not steer Participants to providers of its choosing.
- K) Upon request from the Department, submit for review and approval the content, formatting and required elements of all Contractor prepared WeCARE documents.

IV. WeCARE Program Process

- A) Individuals who may have a medical and/or mental health condition(s) that may be disabling or may affect their functional capacity and ability to participate in work activities ("Participants") are referred by the Department to WeCARE for a Biopsychosocial (BPS) Assessment.
- B) The BPS Assessment includes a Psychosocial Assessment (see Attachment 1), a Phase I Medical Examination, Lab Tests, and if necessary, one or more Phase II Medical Examinations (see Attachment 2).
- C) The BPS Assessment results in one of five Functional Capacity Outcomes (FCOs) that describes the individual's level of disability, ability to participate in work activities and determines the next step in the WeCARE continuum of services.
- D) The FCOs are:
 - 1) *Unemployable for at least 12 months (potentially eligible for federal disability benefits).* Participant may require treatment for identified stable medical and/or mental health condition. WeCARE helps the Participant apply for Federal Disability Benefits. The first federal disability application assistance appointment will take place within seven (7) calendar days of the FCO determination, unless outreach is necessary.
 - 2) *Unemployable for at least 12 months (potentially eligible for federal disability benefits) requiring treatment of an untreated or unstable medical and/or mental health condition that significantly interferes with employability.* WeCARE helps the Participant apply for Federal Disability benefits and develops a Wellness Plan for the Participant. The first federal disability application assistance appointment will be initiated within twelve (12) calendar days of the FCO determination, unless outreach is necessary.
 - 3) *Temporarily unemployable requiring treatment of an unrelated or unstable medical and/or mental health condition that is a barrier that significantly interferes with employability and participation in Department work activities.* WeCARE develops a Wellness Plan for the Participant. The Wellness Plan will be initiated within seven (7) calendar days of the FCO determination, unless outreach is necessary.
 - 4) *Employable with limitations requiring accommodation and/or vocational rehabilitation; Participant may require treatment for identified medical and/or*

mental health condition. WeCARE provides Vocational Rehabilitation services including vocational evaluation, work activities and employment and retention services. The vocational evaluation will begin within seven (7) calendar days of the FCO determination and be completed within twenty-one (21) calendar days of the FCO determination, unless outreach is necessary.

- 5) *Fully Employable.* WeCARE refers the individual referred back to their Job Center to be engaged in activities from the traditional menu of employment and training programs.

V. WeCARE Components

- A) **BPS Assessment** – The Contractor will administer a comprehensive BPS Assessment to all individuals referred by HRA. The BPS Assessment will assess the health, mental health, vocational, family, community, social, and educational factors affecting the individual's functional capacity and eligibility for disability benefits.

- 1) **Components:** The BPS Assessment will consist of two (2) components, a *psychosocial assessment* and a *medical evaluation* that will determine eligibility for disability benefits, identify treatment needs, and result in a functional capacity outcome determination. The total time, including waiting time, for completing a Psychosocial Assessment and a Phase I standard medical Evaluation will not exceed four (4) hours.

- a) *Psychosocial Assessment:* The Contractor will complete a Psychosocial Assessment which would elicit the required information detailed in Attachment 1.
- b) *Medical Evaluation:* The Contractor will complete a Medical Evaluation which will identify and assess the individual's level of functional capacity. The elements of the evaluation are described in Attachment 2. All referred individuals will receive a Phase I standard medical evaluation. A Phase II specialty evaluation will be provided when clinically necessary.

- 2) **Report:** The Contractor will prepare a comprehensive report, as described in Attachment 3 herein, of the BPS Assessment presenting the Functional Capacity Outcome (FCO) of that individual.

- 3) **Deadline for Completion:** All required components of the BPS Assessment will be completed within seventeen (17) calendar days of the initial assessment appointment unless outreach is necessary for the Phase II medical examination.

B. Comprehensive Service Plan (CSP)

- 1) **Purpose:** The CSP will define goals and activities, including treatment for the Participant. The CSP will:

- a) Identify the Participant's medical, mental health, vocational, social, familial, and community barriers to employment.
- b) Identify and address all treatment needs.

- c) Develop goals and objectives that enable the Participant to achieve his or her highest possible levels of functioning and self-sufficiency.
 - d) Identify the specific WeCARE activities the Participant is expected to engage in and complete.
- 2) Timeframe: The Contractor will initiate the CSP within seven (7) calendar days (unless outreach is necessary) of an initial Federal Disability appointment, Wellness appointment, Wellness and Federal Disability Appointment or completion of the Diagnostic Vocational Evaluation and Individualized Plan for Employment process.
- 3) Update of CSP: The Contractor will update the CSP within seven (7) calendar days of any of the following, unless outreach is necessary:
 - a) A changed or affirmed Functional Capacity Outcome
 - b) Extension of a Wellness Plan.
 - c) If none of the above occurs, at least ninety (90) days for Participants receiving vocational services and others as needed.
- 4) Participant Discussion: The Contractor will discuss the CSP with the Participant, explain the Participant's FCO determination, consider the Participant's comments, revise the CSP as clinically appropriate, ask the Participant to sign the CSP, and incorporate relevant portions of the CSP into the Participant's HRA employment plan.
- 5) Contact with non-WeCARE Services: The Contractor will maintain on-going and appropriate contact with providers of non-WeCARE services that are germane to the Participant's achieving the goals of the CSP.

C. Federal Disability Benefits Assistance (FDBA)

- 1) General - The Contractor will:
 - a) Assist Participants who are presumed eligible for disability benefits to apply for federal disability benefits.
 - b) Determine if the Participant has an application pending with SSA.
 - c) Ask the Participant to provide any available, relevant medical documentation.
 - d) Assist the Participant in obtaining relevant medical documentation from hospitals, community based treatment providers, and other sources.
 - e) Assist Participants in accessing and complying with treatment.
 - f) Explain the role of the authorized representative and give the Participant the option of designating the Contractor as the authorized representative.
 - g) Facilitate cooperation with consultative examinations scheduled by the Social Security Administration (SSA) and/or other SSA appointments.
- 2) Timeframe: Contractor will schedule the first Federal Disability application assistance appointment within seven (7) calendar days of the FCO determination, unless outreach is necessary.
- 3) Initial Application: If there is no application for federal disability benefits pending at the SSA office, then the Contractor will:

- a) Initiate an electronic application at the first federal disability application assistance appointment and submit required paper documents within the SSA guidelines.
 - b) Submit additional relevant medical documentation to the SSA as obtained.
- 4) Existing Application: If there is an application for federal disability benefits pending at the SSA office, then the Contractor will:
- a) Supplement an existing application with all relevant medical documentation including the latest BPS Assessments, lab and/or the Wellness Plan Treating Physicians Report, Clinical Review Team outcome reports, and any additional medical and/or mental health documentation provided by the client or treating health/mental health care providers.
- 5) Appeals -The Contractor will:
- a) Explain the role of the HRA Disability Services Program if the initial application is denied to the Participant.
 - b) Work collaboratively with the HRA Disability Services Program assisting Participants to appeal the denial of Federal Disability Benefits applications within SSA-defined time frames.

D. Wellness Plan (WP)

- 1) Initiation: In the event that the BPS Assessment identifies one or more unstable and/or untreated medical or mental health conditions that indicate a Participant may be eligible for federal disability benefits, or that temporarily prevents the Participant from participating in vocational activities, the Contractor will initiate a WP addressing the findings of the Medical Evaluation within seven (7) calendar days of the FCO determination, unless outreach is necessary.
- 2) Elements - The WP will include at a minimum:
 - a) Diagnosis of all current medical and/or mental health conditions.
 - b) Description of the untreated and/or unstable medical or mental health conditions that will be the focus of the Wellness Plan,
 - c) Estimate of the time required to resolve the untreated and/or unstable medical or mental health conditions that will be the focus of the Wellness Plan.
- 3) Term of WP: The initial term of a WP cannot exceed ninety (90) days, and may be extended by the contractor if clinically necessary. The maximum length of a WP cannot exceed one hundred eighty (180) days unless a longer plan is approved by the Agency. The total period of WP participation may not exceed two hundred seventy (270).
- 4) Clinical Documentation: At the conclusion of the term of a WP, the Contractor will request clinical documentation from the Participant's treating health/mental health care provider on the Participant's medical and/or mental health status and potential FCO. Based on that information, the Report of the BPS, other WeCARE documentation, documentation provided by the Participant, and other available documents, the Contractor, through a physician, will update the FCO determination or extend the WP if clinically indicated. If, for any reason, there is no report from

the treating health/mental health care provider, the Contractor will review the Participant's condition and update the FCO determination.

- 5) Completion: Upon completion of the WP, the Contractor will refer the Participant to services appropriate to the updated FCO determination.

E. Vocational Services

- 1) Eligibility: The Contractor will provide Vocational Services for Participants identified through the BPS Assessment as Employable with Limitations Requiring Accommodation and/or Vocational Rehabilitation.

- 2) Elements:

- a) **Diagnostic Vocational Evaluation (DVE) and Individualized Plan for Employment (IPE)**

- i) Diagnostic Vocational Evaluation (DVE)

- i.i) The Contractor will conduct a DVE for each Participant receiving Vocational Services. The DVE will be initiated not more than seven (7) calendar days after the FCO determination identifying the Participant's need for Vocational Services, unless the Department authorizes a clinically justified extension or outreach is necessary.

- i.ii) Minimum Evaluation Components - The DVE will include at a minimum:

- Work history
- Educational history
- Academic achievement testing for reading and math
- Aptitude testing
- Skills Assessments
- Behavioral observations of the participant
- Interest exploration and/or testing
- Results of participant interview, including observations if relevant and/or significant
- Participant interview

- i.iii) Additional Assessments – Participants will complete and the Contractor will evaluate one or more of the following additional assessments as determined by a Certified Rehabilitation Counselor to be clinically appropriate:

- Writing Samples
- Higher level aptitude tests, including oral directions
- Higher level vocational interest exploration, including at least two interest inventories

- Work samples in the occupational clusters correlative with the participant's interests, aptitudes or work history
- Simulated work
- Situational Assessments
- Personality testing
- Work Motivation Assessments
- Career counseling and/or vocational counseling
- Other relevant testing or vocational assessment

i.iv) Report of the DVE – The Contractor will do the following:

- Prepare a report summarizing and interpreting all components of the findings of the DVE and identifying the Participant's employment related assets and limitations.
- Discuss the DVE with the Participant, and revise the DVE to reflect the Participant's feedback, as clinically appropriate.
- Engage the Participant, during the DVE period, in HRA approved activities for the time legally required, as determined by the Department, *except* where reduced hours are clinically justified.

ii) Individualized Plan for Employment (IPE)

ii.i) The Contractor will develop an IPE based on the results of the DVE for each Participant receiving Vocational Services. The IPE will be prepared by a Certified Rehabilitation Counselor (CRC).

ii.ii) The IPE will be completed not more than fourteen (14) calendar days after the initiation of the DVE, unless the Department authorizes a clinically justified extension or outreach is necessary.

ii.iii) Elements: Each IPE will contain at a minimum the following required elements and will be signed by the Participant and the CRC.

- Participant's employment goals.
- Measurable objectives within each employment goal, and the designated timeframe for achievement of each such objective.
- A description of the activities related to the achievement of each objective.
- Recommendations for work related activities (Job Search, WEP, Education, Training).
- Recommendations for reasonable accommodations as defined by the Americans with Disabilities Act.
- Designation of the respective responsibilities of the Contractor, the Participant, the service providers, and of any other partners in the IPE.

ii.iv) Contractor Responsibilities:

- Discuss the IPE with the Participant and revise the IPE to reflect the Participant's feedback, as clinically appropriate and request the Participant to sign the IPE.
- Link the Participant to the services identified in the IPE.

b) Work Activities

- i) Participants will be assigned to appropriate work, training and educational activities within two (2) calendar days, excluding weekends and holidays, of the completion of the DVE/IPE process. When clinically appropriate, the activities would conform to the requirements of applicable law and regulation (N.Y. Soc. Serv. Law §330 et. seq.; 18 N.Y.C.R.R. §385.1 et. seq.) and the New York City Temporary Assistance/Food Stamp Employment Plan for Welfare to Work, as amended. The Agency would pre-approve exceptions to the required number of hours of work engagement when clinically justified.
- ii) The Contractor will develop and maintain a sufficient number of Work Experience Program (WEP) Placements for Participants receiving Vocational Services. Those placements will provide appropriate reasonable accommodations for identified limitations and meet the requirements of applicable law and regulation (N.Y. Soc. Serv. Law §§336; 336-a; 336-c; 18 N.Y.C.R.R. §385.9).
- iii) The Contractor will provide Workers' Compensation insurance coverage for all WEP site participants.
- iv) When the Participant's IPE indicates that formal instruction in basic educational competencies or skills training is required, the Contractor will identify and assist the Participant in obtaining such services by providers approved by the Department.

c) Employment and Retention Services

- i) The Contractor will provide the following employment preparation services as case-appropriate:
 - Resume development
 - Interviewing skills
 - Developing reasonable accommodation plans
 - Job search activities
 - Job development
 - Work skills training
 - Life skills training (e.g. Budgeting, time management)
 - Individual and/or group vocational counseling
 - Orientation to the legal rights of people with disabilities
 - Assistance in obtaining appropriate rehabilitative devices or technology.

- ii) The Contractor will provide the following retention services to employed Participants for a minimum period of one hundred and eighty (180) days after the date the Participant is placed in employment as case-appropriate:
- Assist the Participant in obtaining, and the employer in providing, necessary reasonable accommodations.
 - Help the Participant obtain work supports including, but not limited to, earned income tax credit, food stamps, childcare and transitional Medicaid.
 - Maintain contact with the Participant to identify issues that may negatively affect retention, and to identify and reinforce positive factors that support retention.
 - If the Participant consents, when appropriate, contact the Participant's employer to identify any issues that negatively impact on retention, and assist the employer in fairly and reasonably resolving them.
 - Assist the Participant with career enhancement by providing information about strategies and opportunities to upgrade employment including providing placement services for Participants who lose employment.

F. Case Management Services

- 1) Types of Services – The Contractor will provide case management services that:
- a) Encourage each Participant's compliance with WeCARE and HRA requirements
 - b) Develop and implement the Comprehensive Services Plan.
 - c) Identify and address barriers to compliance, participation, attendance and progress.
 - d) When authorized by the Participant, act as the Participant's authorized representative with the Social Security Administration.
 - e) Assist Participants in obtaining necessary reasonable accommodations as defined by the Americans with Disabilities Act.
 - f) Assist Participants in obtaining other necessary services and childcare.
 - g) Advocate on the Participant's behalf with service providers, as needed.
 - h) Provide escalating outreach to Participants who are non-compliant with WeCARE Services or HRA requirements to re-engage them.
 - i) There are three levels of outreach, which are letter and/or e-mail; phone call and/or e-mail; or outreach. The duration of outreach will be determined by the Department.
 - j) Provide crisis intervention services with 24/7 telephone availability to assist participants in obtaining emergency services, when necessary.
 - k) Monitor and report each compliance with program and treatment requirements to the Agency through NYCWAY (New York City Work, Accountability and You; HRA's primary database), other HRA systems, or as the Agency requires.
 - l) Provide other Case Management Services required for Participants to attain maximal degrees of function and self-sufficiency.

G. Clinical Review Team (CRT)

The Contractor will provide a CRT Team to serve clients who require a review of the clinical appropriateness of their most recent FCO. (See Attachment 4 for a description of the CRT process.)

VI. STAFFING REQUIREMENTS

- A. All staff providing WeCARE services will meet the training and/or experience criteria established by the Department. (See Attachment 5 for staffing requirements.)
- B. The Department reserves the right to interview and to approve the hiring of all executive and managerial WeCARE staff, whether employed by the proposer or by subcontractors.
- C. The Department reserves the right to approve the hiring of all physicians whether employed by the proposer or by subcontractors. Such approval shall not be unreasonably withheld.
- D. The Contractor will promptly notify the Department of all proposed changes that affect managerial or supervisory responsibilities or staffing patterns, caseload ratio, or the qualifications of the staff performing WeCARE Services and receive the Department's approval prior to implementation.
- E. The Contractor will provide regular training to its staff on all aspects of the WeCARE program including training on HRA policies, procedures and systems. The Contractor will insure that all staff providing WeCARE Program Services receives appropriate training on an ongoing basis, including any training that the Department provides or recommends.
- F. The Contractor will maintain adequate staffing levels at all times and adjust staffing levels to respond to fluctuations in demand for WeCARE services.

VII. SERVICE FACILITIES

- A) The Contractor will:
 - 1) For Region I :Offer services in the Bronx at a minimum of one medical evaluation site that has a valid operating permit issued pursuant to Article 28 of the New York State Public Health Law and a minimum of one service delivery site. Offer services in Manhattan at a minimum of one medical evaluation site that has valid operating permit issued pursuant to Article 28 of the New York State Public Health Law and a minimum of one service delivery site. Staten Island medical evaluation and/or service delivery sites are desirable but not required.
 - 2) For Region II: Offer services in Brooklyn at a minimum of one medical evaluation site that has valid operating permit issued pursuant to Article 28 of the New York State Public Health Law and a minimum of one service delivery site. Offer services in Queens at a minimum of one medical evaluation site that has valid operating permit issued pursuant to Article 28 of the New York State Public Health Law and a minimum of one service delivery site.
 - 3) Offer services at sites that are easily accessible to public transportation within the catchment area served. (See http://nyc.gov/html/hra/downloads/pdf/nvc_percent_2000.pdf for information on cash assistance population densities.)
 - 4) Offer services at facilities that meet Americans with Disabilities Act requirements.
 - 5) Have facilities in the proposed region suitable for the provision of services to clients by the program start date.

- 6) Have a plan for serving at least one-third of the capacity of a site that is, for any reason, unavailable for the delivery of WeCARE services for two or more weeks at one or more alternate locations.
- B) The Contractor will provide the facilities and equipment necessary to adequately support program Participants, the Contractor's staff, and any staff out-stationed by HRA, at each service delivery site including, but not limited to, providing sufficient space, furnishings, computer hardware and software, telecommunications equipment and access.
- C) General Facilities Requirements
- 1) Possession of a valid Certificate of Occupancy.
 - 2) Be open for operation during normal working hours, consistent with the Department approved operational plan, on City business days or obtain prior approval for closures.
 - 3) Compliance with all applicable New York City and State Sanitary Codes.
 - 4) Provision of adequate heat, ventilation and air conditioning, as seasonally appropriate.
 - 5) Provision of sufficient daily seating capacity in all areas.
 - 6) Adequate space and equipment for Participants engaged in program activities.
 - 7) Provision of an appropriately equipped children's corner.
 - 8) Provision of sufficient space for all staff out-stationed by HRA,
 - 9) Provision of adequate privacy protections for client counseling and consultation sessions.
 - 10) Provision of an appropriately equipped break-lunchroom for participants receiving vocational services.
 - 11) Provision of adequate security in all areas where clients will be serviced.
- D) Medical Service Facilities additional minimum requirements:
- 1) Possession of a valid operating permit issued pursuant to Article 28 of the New York State Public Health Law.
 - 2) Possession of all other licensing and inspection certificates required, including a Certificate of Incorporation, to operate a medical facility.
 - 3) Full compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations thereunder, and with all other applicable laws and regulations.
- E) Each service facility will:
- 1) Conform to all applicable federal, state and local laws and regulations regarding the operation of such facilities, and will provide all of the equipment, amenities, and ancillary services necessary to facilitate the participants' compliance with WeCARE Program requirements and provide reasonable accommodations necessary for clients requiring them.
 - 2) Be acceptable to HRA pursuant to the requirements in the RFP and the contract.
 - 3) Be fully operational within 120 days of the contract start date and/or other agreed upon timeframe.

VIII. MANAGEMENT INFORMATION SYSTEMS (MIS)

- A) The Contractor will utilize an automated MIS to record, track, monitor, and report on WeCARE clients and staff.

- B) The system(s) will isolate all WeCARE client and program data from all other client and program data.
- C) System(s), utilized by the Contractor and subcontractors will be approved by the Department prior to implementation. Such approval shall not be unreasonably withheld.
- D) The system(s) will be operational by the program start date and fully operational within 120 days of the contract start date.
- E) The systems will be available to individuals designated by the Department.
- F) Data and images will be the property of and would be provided electronically to the Department upon request.
- G) The Contractor will make modifications to the system(s) reasonably requested by the Department in a timely manner and obtain the Department's approval prior to implementation.
- H) The Contractor's system(s) will:
- 1) Be scalable permitting expansion of the database, hardware devices, the number of users and its network(s).
 - 2) Be an enterprise-wide information system(s) that permits the tracking of all WeCARE related activities.
 - 3) Permit the entry and storage of client-specific demographics (both current and history), case-tracking activities, and services provided related to each component of the WeCARE program in a relational database.
 - 4) Provide a database model of all data tables, including code tables, and a data dictionary, which includes but is not limited to the table and field name, field type, field length, and associated front-end system display form and control.
 - 5) Provide functional and technical specifications related to all WeCARE-related automated processes including forms, reports and interfaces.
 - 6) Permit the acceptance and loading of client-specific data and images from the Department and the transmission of data and images back to the Department.
 - 7) Permit the transfer of client data and images from one WeCARE vendor's system(s) to another when authorized by the Department.
 - 8) Include functionality that assures the entry of all data required by the Department in all forms.
 - 9) Discretely store each episode of client service as defined by the Department.
 - 10) Collect and view electronic signatures in the system and on reports and images.
 - 11) Lock forms upon completion of services.
 - 12) Lock records so that only one authorized user may update at one time.
 - 13) Permit full access by all Department designees (previously made known in writing to Contractor) to all WeCARE-related data forms, images and reports. Data access is to include direct access to the database to read and extract a copy of data.
- I) Adhere to citywide policies, standards, and best practices for information security, application and system network architecture, disaster recovery, the secure storage and transmission of data and data retention. (See http://www.nyc.gov/html/doitt/html/business/business_it_security.shtml)
- J) Meet all applicable information systems requirements stipulated in HIPAA statute and regulations.

IX. IMAGING SERVICES

- A) Contractor will image, index and electronically transmit client documents, staff documents, and physical plant documents (described below) to a Department designated File Transfer Protocol (FTP) as follows: i) documents submitted to the Contractor must be imaged, indexed and electronically transmitted to an FTP within seven (7) calendar days of submission; and ii) paper documents created by the Contractor must be imaged, indexed, and electronically transmitted to an FTP within seven (7) calendar days of completion.
- B) Electronic indexing will follow a Department specified classification system that includes client-identifying data for client-specific documents and document type and date information.
- C) The Contractor will maintain a repository of all scanned documents transmitted to the Department and other specified documents.
- D) All imaged documents will be in strict compliance with HIPAA and regulations promulgated there under including all other applicable federal, state and local laws and regulations and all applicable Department imaging policies and procedures provided to the Contractor.
- E) The Contractor's MIS will include a document viewing capability form that provides ready access to the client documents for authorized users.
- F) Imaging methods:
- 1) The Contractor's MIS will generate electronic images of all required system-generated documents.
 - 2) Documents that are not system generated (e.g., medical documentation) will be manually scanned.
 - 3) All manually and electronically scanned documents will be electronically indexed and transmitted to the Department.
 - 4) Vendors would maintain in their system(s) a repository of each manually scanned client document
- I) Categories of documents to be imaged include:
- 1) ***Client Documents***: all client-related documents, whether system generated or manually scanned, will be imaged. These include but are not limited to documents related to the BPS medical examinations, Comprehensive Service Plan, Vocational Rehabilitation Services, Wellness Plan, Federal Disability Benefits Application Process and Clinical Review Team.
 - 2) ***Staff Documents*** to be imaged will include but are not limited to physicians' board certifications, state licenses and resumes and other health professionals' current professional licenses and certifications.
 - 3) ***Physical Plant Documents*** to be imaged would include but are not limited to certificates of occupancy, Article 28 operation permits, licenses, and inspection certificates.

X. REPORTS

A) The Contractor will provide client-specific, operational, management, and statistical reports in compliance with Department requirements that include but are not limited to:

- 1) The Contractor will enter information required by the Department on the activities, status and progress of each Participant into its MIS and Department's data system(s) within established time frames.
- 2) The Contractor's MIS will be the primary source of reported data.
- 3) The Contractor will prepare monthly reports for the Department that will include monthly and year-to-date information on all major operational components of the WeCARE program (Medical, VRS, Wellness, SSI and Clinical Review Team).
- 4) These reports and any additional reports requested by the Department will be provided in a timely manner.
- 5) Monthly management reports will delineate by activity the number of activities performed, timeliness of performance and outcomes achieved.
- 6) Data will be available in aggregated and disaggregated format.
- 7) Trend and cohort analyses will be provided.
- 8) The Contractor will provide monthly staffing and personnel reports.

XI. USAGE AND INTERFACE REQUIREMENTS

A) The Contractor will utilize and electronically interface with the Department's automated system(s) that support the WeCARE program, including WeCARE Web, NYCWAY, PaCS (Payment and Claiming System), ACCIS (Automated Child Care Information System), WISARD (Workforce Information System Automated Reporting Database), and other system(s) designated by HRA. This includes:

- 1) Manually entering data into the Department systems.
- 2) Electronically interfacing (bi-directionally) with the Department's systems which will require the Contractor to store the Department's unique client identifiers in its system(s). This may include electronic file transfers, imaging utilization of web services and direct, real-time calls to databases.
- 3) To meet interface requirements, the Contractor will work with Department staff to define, design, program, test, train and implement these automated interfaces as required by the Department.

B) The Department systems utilized for this Program include:

1) **WeCARE Web** modules include Client Tracking, Timekeeping and the Viewer.

- a) The Client Tracking Module maintains client identifying and data on case management activity.
 - i) All data for this module will be received electronically via file transfers and open calls to the system from the Contractor's management information systems) and other Department systems.
 - ii) The Contractor's MIS will electronically receive and process data files from Department's Client Tracking system.

- b) The Timekeeping module keeps track of clients' time and compliance with the program requirements of Vocational Rehabilitation Services. The vendors will manually enter or electronically transmit the number of hours clients participate in these activities, as well as any absences the clients have in a timely manner.
 - c) The Viewer module allows the Department and Contractor to view the documents imaged by the Contractor and submitted to the Department.
- 2) **NYCWAY** (New York City Work, Accountability and You) is the Department's primary database for tracking the work and employment activities of Cash Assistance clients.
 - a) The Contractor's MIS will be able to electronically receive, process and return files to NYCWAY system(s).
 - b) All client records (including demographic data and initial referral information) in NYCWAY will be electronically passed to the Contractor's systems).
 - i) The Contractor's system(s) will electronically transfer data back to NYCWAY and WeCARE web when pre-specified actions occur and within timeframes specified by the Department
 - ii) Manual data entry into NYCWAY and/or WeCARE Web may also be necessary.
- 3) **PaCS** (Payment and Claiming System) is a system used by the Department to process milestone payments to Department contractors for client services. The Contractor will utilize the Department's PaCS system to review and attest to client milestone payments within prescribed timeframes determined by the Department.
- 4) **ACCIS** (Automated Child Care Information Systems) is an ACD/ACS system that is used by the Department's FIA and WeCARE vendors to process all childcare payments/enrollments for Child Care eligible participants. The Contractor will utilize ACCIS to enroll eligible children of the WeCARE participants before engaging them in the work-related activities.
- 5) **WISARD** (Workforce Information System Automated Reporting Database) is a computer system that enables WeCARE vendors to set up Individual Training Accounts. Staff review and approve or reject both full-time and part-time applications for training vouchers submitted by WeCARE vendors on behalf of their clients. The Contractor will utilize the Department's WISARD system to request and set up full-time and part-time Individual Training Accounts for eligible WeCARE participants.
- 6) Contractor may be required to utilize other systems that support the major systems above specified.

XII. PAYMENT

- A) The Department agrees to pay and the Contractor agrees to accept as payment-in-full for all Services performed hereunder an amount not-to-exceed \$99,093,089.00, pursuant to the approved budget annexed as Appendix C, which is made a part of the Agreement by this reference.
- B) As the period of performance contemplated by this Agreement involves performance by the Contractor in one or more subsequent City fiscal years ("City Fiscal

Years”), funding for each such subsequent City Fiscal Year is subject to the annual appropriation and availability of funds therefor.

C) The Parties hereto will jointly review, at such time(s) as the Department, in its sole discretion, deems necessary, but no less than once each fiscal year, the total amount of payments made pursuant to this Agreement, to determine the appropriateness of the Agreement budget in light of any program increases/reductions and/or operating cost increases/decreases. The Department, in its sole discretion, may modify the Agreement in accordance with its determination pursuant to this subsection C, subject to all required approvals, and subject to the Rules of the Procurement Policy Board of the City of New York (“PPB Rules”), as amended.

D) Payment of all contract funds herein shall be made pursuant to invoices submitted by the Contractor at such times and in such a manner and form as the Department deems acceptable.

E) No travel expenses will be paid, including expenses for travel outside New York City and to and from professional conferences, *except* travel expenses that are allowable under Directive No. 6 of the Comptroller of the City of New York and related federal government directives governing travel by New York City employees

F) Reduction in Federal, State or City Funding

- 1) Termination and Reduction Options. Any termination or reduction of funding under this Agreement from the federal, State, and/or City governments shall be in accordance with Article 10, Section 10.02 of Appendix A.
- 2) The Department’s termination and reduction options, set forth in this section, are separate and independent rights, in addition to any other rights of termination or modification provided for by this Agreement, by law, or by applicable regulation, and supercede any and all contrary rights or actions the Contractor may have under any other provision of this Agreement.

G) No Duplicate Reimbursement.

The Contractor hereby certifies, as to the Participants served under this Agreement, that it has not and will not submit to any other agencies any invoices for the same or similar services delivered to the Participants within the same time period. Claims for Medicaid reimbursement submitted to the New York State Department of Health (“NYSDOH”) pursuant to Article XXVI of this Agreement are excluded from this Article.

XIII. MONITORING AND QUALITY ASSURANCE

The Contractor’s performance of the WeCARE Services herein is subject to the Department’s quality assurance, quality review and monitoring requirements, as follows:

A) Contractor’s Quality Assurance Program

- 1) Standardization. The Contractor will adhere to a program of continuous quality improvement that assures standardized performance and quality care, including insuring that all staff continually implement all New York City and State recommendations relevant to the performance of the Services herein.
- 2) Staff. The Contractor will make quality assurance a responsibility and a priority for all staff at all times. In recruiting for staff and consultant positions during the term of this Agreement, the Contractor shall consistently select those persons with a superior level of knowledge, expertise and experience who meet the standards established by the Department and made known to the Contractor.
- 3) Quality Assurance Program. Within three (3) months after the effective date of this Agreement, the Contractor will provide the Department with a detailed description of its Quality Assurance Program, which description must be annexed as Attachment 6 to the Agreement, of which it is hereby made a part by this reference.
- 4) Reporting. The Contractor, as requested by the Department will report to the Department on any and all aspects of its Quality Assurance Program.

B) Independent Quality Review

- 1) Independent Outside Organization. The Department will contract with at least one independent outside organization to monitor and review the Contractor's performance of the Services herein, to assure the quality, effectiveness and integrity of the Services delivered by the Contractor ("Quality Review").
- 2) Frequency. The independent Quality Review will be performed on a regular basis during the term of this Agreement.
- 3) Scope. The independent Quality Review will include, without limitation, on and off-site review of facilities, review of programmatic and client records, review of BPS Assessments and Reports thereof, review of functional capacity determinations, review of CSPs, DVEs, IPEs, review of client authorization forms, review of staff licenses and certifications, and review of all other aspects of the Contractor's performance of this Agreement.
- 4) Standards and Practices. The independent reviewer will determine if the Contractor conforms to the accepted professional standards and practices applicable to the delivery of the service program herein, including, without limitation, data validation, quality control, continuous quality improvement, and utilization review.
- 5) Penalties. Negative or unacceptable findings by the independent reviewer may result in the Department assessing liquidated damages against the Contractor, or in the Department reducing or withholding payment of the Contractor's invoices. Contractor shall be given ten (10) calendar days to cure any negative findings before any liquidated damages may be assessed.

C) Monitoring by the Department

The Department will monitor all aspects of the Contractor's performance on a regular basis, and the resulting findings will be used, together with those of the independent Quality Review, to complete annual evaluations filed with the Mayor's Office of Contracts ("MOC").

D) Access

The Contractor will cooperate fully, and will insure that any subcontractors cooperate fully, with all requests for records and site visits by the independent reviewer(s) and by the Department.

XIV. CONTRACT MODIFICATION

A) Unforeseen Circumstances. Either the Department or the Contractor may request that the terms of the Agreement be re-negotiated when circumstances which were not foreseen or were not reasonably foreseeable by the Parties at the time of contracting arise during the performance period of the Agreement.

B) Form of Modification. Contract modifications pursuant to this Article must be in writing, and will become effective only when signed by both Parties.

C) Unilateral Modification by Department. The Department reserves the right to unilaterally modify this Agreement, effective upon the Contractor's receipt of a copy of the modification signed by the Department, when such modification is necessitated by any of the following:

- 1) to incorporate new or revised Federal, State or City regulations, or policies of the Department;
- 2) to correct program deficiencies;
- 3) to de-obligate program funds due to under-expenditures, funding reductions or identified program income; or
- 4) to comply with a court order or judgment.

XV. TERM OF SERVICES

The Department, in its sole discretion, shall determine the commencement and termination dates for the WeCARE Services provided to each Participant. The Contractor shall work with each Participant, including any who are homebound, during and within the time limits set by the Department.

XVI. TERMINATION OF SERVICES

The Department reserves the right, upon written notice to the Contractor, to terminate WeCARE services as to any Participant at any time following the completion of the Biopsychosocial Assessment herein.

XVII. PROGRAM ADJUSTMENTS

The Contractor shall make adjustments to the WeCARE Program from time-to-time, as the Department requires. The Contractor shall otherwise obtain the Department's prior written approval for any adjustments to Program.

XVIII. PARTICIPANT CHOICE

The Contractor, when referring any WeCARE Participant to a third-party provider of services not provided by the WeCARE program, shall allow the Participant to select a service provider from a reasonable number of choices offered by the Contractor and allow the Participant freedom of choice in selecting a service provider.

XIX. PARTICIPANT MEDICAL RECORDS

- A) Ownership. All medical records, examination and test results, logs of laboratory tests and statistical information resulting from the performance of the WeCARE Services herein are the property of the Department, and may not be reproduced or transmitted by the Contractor, in any form or by any means, to any organization (government or private), without the required patient authorizations, and without the prior written permission of the Department, *except* as may be otherwise required by law or court order in a proceeding to which the Department is a party.
- B) Reproduction. If a Participant requests a copy of medical records herein, the Contractor shall timely reproduce such records and provide copies to the Participant. No original medical reports or test results may be given to a Participant, *except* that any abnormal medical reports or results, as determined by the Contractor in its sound medical discretion, must be reported forthwith to the Participant, and the Participant, as case-appropriate, must be provided with a referral letter and a recommendation for follow-up treatment.
- C) Transmission. All records required by the Department herein, including, without limitation, all medical records, results of laboratory tests and x-rays, must be transmitted in the document format designated by the Department.
- D) Compliance with Medical Records Retention Requirements. Neither the Contractor nor any subcontractors are prohibited from complying with the medical records retention requirements mandated by New York State law, subject to all applicable client confidentiality laws, and further subject to all applicable provisions of this Agreement.

XX. TRANSFERS

- A. In the event a Participant is transferred to the Contractor from another HRA vendor, including, without limitation, another WeCARE vendor, the Contractor shall accept, without limitation, the following products of the former vendor, if available at the time of transfer:

- 1) Biopsychosocial (BPS I and/or II) Assessment;
- 2) Comprehensive Services Plan ("CSP");
- 3) Diagnostic Vocational Evaluation ("DVE");
- 4) Individual Plan for Employment ("IPE");
- 5) Clinical Review Team (CRT) Assessment;

6) Completed Wellness Plan Assessment.

- B. The Contractor may not claim any milestone payments herein based solely upon the transfer of any of the products listed in the above subsection (A), paragraphs (1) through (4).

XXI. DELIVERABLES AND PERFORMANCE MILESTONES

The Contractor shall timely complete the Schedule of Deliverables and Performance Milestones annexed hereto in Appendix C and made a part of this Agreement by this reference. The Department may revise the Schedule of Deliverables accordingly, in the event of a contract modification.

XXII. MILESTONE DOCUMENTATION

- A. Payment of the Contractor's invoices is subject to receipt and verification by the Department of all required supporting documentation applicable thereto demonstrating the achievement of the payment milestones set forth herein as Exhibit 1.
- B. In order to receive timely payment of its invoices, the Contractor must submit all such required supporting documentation not later than seventy-five (75) days after milestone achievement. Submissions made more than 75 days after milestone achievement will be deemed late. No invoice submitted without the required documentation, and no invoice for which the required documentation is submitted late, will be paid.
- C. Unless the Department has authorized an alternative form of documentation, the Contractor shall provide the Department, as applicable and as individually-defined for each Participant, with the following supporting documentation of milestone achievement:
- 1) Pay stub that contains the client name; covers the week in which the milestone was achieved; shows a date that is thirty (30), ninety (90) or one-hundred and eighty (180) days from the initial job start date recorded in the FIA 3A; pay period; and number of hours worked. Client must be working 20 hours (40) hours for a bi-weekly pay stub) on the week the milestone is achieved; or
 - 2) Documentation obtained from Employment Clearinghouse, i.e. TALX. Documentation must include number of hours worked and wages earned; or
 - 3) Completed Employment Verification Form (EVF).
- D. In addition to updates of the documentation submitted by the Contractor pursuant to the above section C paragraphs (1) through (3), the Department reserves the right to consider the following information, obtained through NYCWAY, in determining the amount of milestone payments:
- 1) as to each Participant whose case with the Department has been closed as a result of employment, the fact that the case has not been subsequently re-opened; and

2) as to each Participant whose case remains open following the commencement of employment, the fact that the Participant's budget has not been increased, *except as* the consequence of a new pregnancy.

E. The Department, in its sole discretion, will, as it deems necessary and appropriate, verify all job placements and retention or other milestones.

F. If the Contractor is shown to be out of compliance, based on a statistically valid sample drawn by the Department each quarter, the Department will allow the Contractor up to three (3) additional weeks to submit supplemental documentation of compliance. The Contractor's failure to timely submit such supplemental documentation of compliance will result in the deduction by the Department from the Contractor's next payment of a percentage amount based upon the gap in compliance.

XXIII. LIQUIDATED DAMAGES

- A. In the event the Contractor fails to deliver any required report or deliverable within the time frame mandated herein or within any extended delivery period provided for by the Department, the Contractor will be allotted ten (10) calendar days to cure this deficiency. If the reports or deliverables have not been received at the end of the ten day period, the Department may assess as liquidated damages the amount of twenty-five dollars (\$25.00) per day for each calendar day that the report or deliverable is overdue.
- B. The Department, in its sole discretion, may require the Contractor to pay to the Department directly, or the Department may deduct from any payment due or to become due to the Contractor, any amounts assessed as liquidated damages herein.
- C. The Department may not hold the Contractor liable for any delays in delivering any report herein due to the Department's failure to perform the Agreement. In such case, the delivery date will be adjusted to reflect any delay caused by the Department.

XXIV. MEDICAID CLAIMING

A. Prerequisite

In the event, during the term of this Agreement, the Department, in its discretion, determines that Medicaid reimbursement is appropriate, the Department may require the Contractor to submit Medicaid reimbursement claims to the New York State Department of Health ("NYSDOH") in accordance with this Article XXVI, *provided, however*, that such Medicaid claiming requirement is agreed to in a separate writing signed by both Parties hereto.

- B. The Parties understand and agree, subject to section A, above, that, for purposes of this Article XXIV:

- 1) the BPS Assessment herein includes both Medicaid-reimbursable components and components that are not Medicaid-reimbursable;
- 2) the milestone payments for the Phase I and Phase II Medical Evaluations of Participants eligible for fee-for-service Medicaid reimbursement coverage differ from the milestone payments for

Participants ineligible for Medicaid or enrolled in Medicaid Managed Care Plans; and

- 3) the milestone payments for Phase I and Phase II Medical Evaluations for Participants eligible for fee-for-service Medicaid are lower than for Participants ineligible for Medicaid or enrolled in Medicaid Managed Care Plans.

D. Claiming Procedure

- 1) Subject to section 1, above, the Contractor, as to any Participant eligible for fee-for-service Medicaid Coverage:
 - a) shall submit a Medicaid reimbursement claim to the New York State Department of Health ("NYSDOH"), at the appropriate rate, for all covered tests and procedures administered in Phase I or Phase II of the Medical Evaluation; and
 - b) shall accept any Medicaid reimbursement received from NYSDOH as payment-in-full for all such covered tests and procedures.
- 2) If the Contractor submits a Medicaid reimbursement claim to NYSDOH pursuant to the above subsection D(1), it shall not request reimbursement from the Department, *except* as set forth in subsection D(3), below.
- 3) As to any Medicaid reimbursement claim submitted pursuant to the above subsection D (1) *denied* by NYSDOH, *except* claims NYSDOH has previously acted upon:
 - a) The Contractor is entitled to submit a request for reimbursement to the Department in an amount determined pursuant to subsection D (3)(b), below;
 - b) The Department will pay any reimbursement requests submitted pursuant to the above subsection D(3)(a) in an amount representing the difference between the milestone payment amounts for Phase I and II Medical Evaluations for fee-for-service Medicaid-eligible Participants and the milestone payment amounts for Participants ineligible for Medicaid or enrolled in Medicaid Managed Care Plans.
- 4) The Contractor will submit reimbursement requests to the Department at the approved rates herein for all *non*-Medicaid-reimbursable Phase I or II Medical Evaluation components not subject to Medicaid claiming.
- 5) The Department will verify, at least annually, that the Contractor has not both submitted Medicaid reimbursement claims to NYSDOH and reimbursement requests to the Department during the same time period for the same medical procedures, except as provided in subsection D(3), above. Any duplicative amounts so verified will be recouped by the Department pursuant to the applicable provisions of this Agreement.

XXV.

SALARY AND WAGE LIMITATIONS

- A. If, during the term of this Agreement, the City determines that additional salaries or wages are appropriate for the Services performed under this Agreement, including, as to

all employees, fringe benefits and adjustments and cost of living adjustments (collectively, "Wages"), and if funds are available, the Department may increase or otherwise amend the contract amount payable to the Contractor, *provided, however*, that any such increase in Wages must be paid in accordance with the Policy and Approval Procedure for Contract Employee Pay Increases and Adjustments, promulgated by the City of New York, as amended. No such increase in Wages will become effective unless and until approved in writing by the Department and any other governmental entity the approval of which is then required.

B. Notwithstanding any contrary provision in this Agreement, the City may determine that payments or retroactive wage increases resulting from determinations made in accordance with section A, above, or an approved collective bargaining agreement covering the Contractor's employees, are allowable and reimbursable expenses of the Contractor, and the Department may increase or amend the total contract amount (or provide for the payment thereof in a future contract if this Agreement has then expired) for such expenses, consistent with the Policy and Approval Procedure for Contract Employee Pay Increases and Adjustments, promulgated by the City of New York, and in accordance with all other applicable City and Department policies and guidelines.

APPENDIX C

F•E•G•S Annual Budget
Wellness, Comprehensive Assessment, Rehabilitation and Employment Program II

# of FTEs	Personal Services -- Job Title	Average Annual Salary	Cost to Contract	Proposed # FTEs Allocated to Line Item	Proposed Line Item Allocation
1	Senior Vice President	\$188,725	\$188,725	0	\$0
1	Executive Assistant	\$42,845	\$42,845	0	\$0
1	Associate Vice President	\$153,020	\$153,020	0	\$0
3	Assistant Vice President	\$115,000	\$345,000	0	\$0
1	Medical Director	\$199,000	\$199,000	0	\$0
1	Associate Medical Director	\$180,000	\$180,000	0	\$0
2	Clinical Practitioner	\$71,409	\$142,819	0	\$0
7	Senior Director, Director	\$92,832	\$649,825	1	\$92,832
14	Associate Director, Assistant Director	\$69,515	\$973,215	4	\$278,062
11	Coordinator	\$56,108	\$617,185	5	\$280,538
4	CRC Supervisor	\$51,007	\$204,027	4	\$204,027
26	Supervisor	\$49,492	\$1,286,782	19	\$940,341
31	Assessment Case Manager	\$40,805	\$1,264,966	31	\$1,264,966
14	Entitlement Specialist	\$36,725	\$514,151	14	\$514,151
39	Career Case Manager	\$40,805	\$1,591,409	39	\$1,591,409
15	Social Worker	\$40,805	\$612,080	15	\$612,080
7	Clinical Services Specialist	\$40,805	\$285,637	7	\$285,637
6	CRT Intake Specialist	\$48,967	\$293,799	6	\$293,799
14	Career Coach	\$42,335	\$592,696	14	\$592,696
11	Evaluator	\$35,705	\$392,755	11	\$392,755
17	Account Manager	\$40,805	\$693,691	0	\$0
11	Employment Counselor	\$36,725	\$403,976	11	\$403,976
2	Verification Specialist	\$30,604	\$61,208	0	\$0
6	Engagement Specialist	\$36,215	\$217,290	6	\$217,290
12	Customer Service Liaison	\$35,704	\$428,444	12	\$428,444
9	Case Manager Assistant, Project Assistant	\$33,503	\$301,527	7	\$234,521
2	Evaluator Assistant	\$30,604	\$61,208	2	\$61,208
5	Data Analyst, Records Analyst, Billing Analyst	\$33,860	\$169,301	0	\$0
2	Help Desk Support Specialist	\$41,825	\$83,651	0	\$0
2	Program Development and Operations Support Specialist	\$62,228	\$124,456	0	\$0
1	Business Manager	\$58,148	\$58,148	0	\$0
3	Attendance Specialists	\$38,108	\$114,325	0	\$0
1	Senior Program Facilitator	\$62,227	\$62,227	0	\$0
Sub-Total			\$13,309,389		\$8,688,732
Fringe (33.50%)			\$4,458,645		\$2,910,960
Total Personnel Services (PS) Budget Request			\$17,768,035		\$11,599,692

Other Than Personal Services Expenses	
Cleaning	
Computer	
Equipment Purchase	
Equipment Rental	
Furniture	
Insurance	
Maintenance	
Postage	
Printing	
Renovations	
Rent	
Repairs	
Supplies	
Telephone	
Travel	
Utilities	
Participant Resources	
Worker's Compensation for Participants	
Phase 2 Specialists	
Subcontractors	
Indirect Cost	
Total Other Than Personnel Services Budget Request	

Cost to Contract	Proposed Percent Allocation to Line Item	Proposed Line Item Allocation
\$423,183	65%	\$275,069
\$333,330	0%	\$0
\$50,000	0%	\$0
\$110,000	0%	\$0
\$0	0%	\$0
\$91,970	0%	\$0
\$10,000	65%	\$6,500
\$10,000	65%	\$26,000
\$75,000	65%	\$48,750
\$0	0%	\$0
\$3,520,455	65%	\$2,288,296
\$0	0%	\$0
\$81,730	66%	\$54,028
\$243,900	65%	\$158,535
\$100,000	20%	\$20,000
\$298,616	65%	\$194,100
\$100,000	53%	\$53,000
\$140,000	100%	\$140,000
\$541,505	0%	\$0
\$5,717,513	0%	\$0
\$3,385,792	0%	\$0
\$15,262,994		\$3,264,278

TOTAL ANNUAL BUDGET

\$33,031,029

\$14,863,970

TOTAL CONTRACT BUDGET

\$99,093,089

F·E·G·S Annual Milestone Budget
Wellness, Comprehensive Assessment, Rehabilitation and Employment Program II

	F·E·G·S Goals	Proposed Rates	Milestone Income
BPS 1	24,400	\$237	\$5,782,800
BPS 2	6,100	\$180	\$1,098,000
DVE/IPE	7,250	\$210	\$1,522,500
Supplemental DVE/IPE	1,450	\$42	\$60,900
30-Day Unsubsidized Employment	1,510	\$1,000	\$1,510,000
90-Day Unsubsidized Employment	1,207	\$1,150	\$1,388,050
180-Day Unsubsidized Employment	923	\$1,401	\$1,293,123
30-Day Subsidized Employment	130	\$202	\$26,260
90-Day Subsidized Employment	90	\$263	\$23,670
Wellness Plan	6,750	\$515	\$3,476,250
SSI			
Without Wellness	1,230	\$815	\$1,002,450
Parallel Wellness	300	\$558	\$167,400
Post Wellness	360	\$429	\$154,440
Supplemented Application	704	\$611	\$430,144
Supplemented Application, parallel Wellness	80	\$354	\$28,320
Supplemented Application, post Wellness	96	\$225	\$21,600
On Appeal	423	\$408	\$172,584
On Appeal, parallel Wellness	49	\$150	\$7,350
On Appeal post Wellness	58	\$21	\$1,218
Total			\$18,167,059

EXHIBIT 1

Milestones

I. Assessment

- Completion of Phase I Medical Examination within established time frames.
- Completion of Phase II Medical Examination with established time frames
- Completion of DVE and IPE for Participants receiving vocational rehabilitation and employment preparation services within established time frames.
- *Completion of Supplemental Diagnostic Vocational Evaluation (DVE) and Individualized Plan for Employment (IPE) for participants receiving vocational rehabilitation and employment preparation services. Additional assessments provided if the core evaluation fails to yield an adequate understanding of a participant's vocational service needs, if a participant's IPE goals and recommendations can not be fully determined following completion of the core DVE, or if the participant's level of functioning changes to such a degree that the DVE data and IPE goals, do not accurately represent the participant's vocational needs.*

Please note:

- The agency assumes the value of the Supplemental DVE-IPE milestone will not exceed twenty percent (20%) of the value of the DVE-IPE milestone.

II. Wellness Treatment

- Completion of Wellness plan i.e. resolution of the condition (s) that were focus of the Plan.

III. Subsidized Employment (minimum 20 hours per week)

- Retention in subsidized employment for 30 days after initial placement.
- Retention in subsidized employment for 90 days after initial placement.
- Retention in unsubsidized employment at 180 days after initial placement in subsidized employment.

IV. Unsubsidized Employment

- Retention in unsubsidized employment for 30 days (minimum 20 hours per week).
- Retention in unsubsidized employment for 90 days after initial placement.
- Retention in unsubsidized employment for 180 days after initial placement.

Note:

- The Department assumes that the unit value of the 90-day employment retention milestones will be higher than the value of the 30-day employment retention milestones and unit-value of the 180-day employment retention milestone will be higher than the value of the 90-day employment retention milestone.
- The Department assumes that the unit value of the 30 and 90 day subsidized employment retention milestone will be lower than the value of the 30 and 90 day unsubsidized employment retention milestone.
- There is no milestone for 180 day retention in subsidized employment, to earn the 180 day milestone, participants placed in subsidized employment must transition to unsubsidized employment by the 180th day.

V. SSI/SSDI Award

- *SSI/SSDI without Wellness:* The payment for federal disability awards to participants who did not require a Wellness Plan.
- *SSI/SSDI parallel Wellness:* The payment for federal disability awards for participants who were determined to be “potentially eligible for federal disability benefits requiring treatment of an untreated or unstable medical and/or mental health condition that significantly interferes with employability (a Wellness Plan)” will be the SSI/SSDI without Wellness payment reduced by half (50%) of the Wellness Plan completed milestone.
- *SSI/SSDI post Wellness:* The payment for federal disability awards for participants who were determined to be potentially eligible for federal disability benefits after completing a Wellness Plan will be the SSI/SSDI without Wellness payment reduced by three quarters (75%) of the Wellness Plan completed milestone.
- *SSI/SSDI supplementation of participant application:* The payment for federal disability awards when the contractor supplemented an initial application filed by the participant will be three quarters (75%) of the SSI/SSDI without Wellness milestone.
- *SSI/SSDI supplementation Parallel Wellness:* The payment for federal disability awards when the contractor supplemented an initial applications for individual federal disability benefits for participants who were determined to be “potentially eligible for federal disability benefits requiring treatment of an untreated or unstable medical and/or mental health condition that significantly interferes with employability (a Wellness Plan)” by the participant will three quarters (75%) of the *SSI/SSDI without Wellness* milestone reduced by half (50%) of the Wellness Milestone.

- *SSI/SSDI supplementation Post Wellness:* The payment for federal disability awards when the contractor supplemented an initial applications for individual federal disability benefits for participants who completed a Wellness Plan will be three quarters (75%) of the *SSI/SSDI without Wellness* milestone reduced by three quarters (75%) of the Wellness Milestone.
- *SSI/SSDI on appeal:* The payment for federal disability awards on appeal will be half (50%) of the *SSI/SSDI without Wellness* milestone.
- *SSI/SSDI on appeal Parallel Wellness:* The payment for federal disability awards on appeal for individual federal disability benefits for participants who were determined to be "potentially eligible for federal disability benefits requiring treatment of an untreated or unstable medical and/or mental health condition that significantly interferes with employability (a Wellness Plan)" will be half (50%) of the *SSI/SSDI without Wellness* milestone reduced by half (50%) of the Wellness Milestone.
- *SSI/SSDI on appeal Post Wellness:* The payment for federal disability awards on appeal for individual federal disability benefits for participants who completed a Wellness Plan" will be half (50%) of the *SSI/SSDI without Wellness* milestone reduced by three quarters (75%) of the Wellness Milestone.

ATTACHMENTS 1-6

ATTACHMENT 1

REQUIRED PSYCHOSOCIAL INFORMATION

1. Identifying data, including:
 - a. full name,
 - b. age,
 - c. gender,
 - d. race/ethnicity,
 - e. citizenship/immigration status.
2. Physical description, including:
 - a. dress,
 - b. physical appearance.
3. Barriers to employability;
 - a. Whether at risk of homelessness (if yes, refer for homelessness prevention services)
 - b. responsibility for the care of any adult(s).
 - c. reported by participant,
 - d. observed,
 - e. from available documentation.
4. Marriage - Relationships - Family:
 - a. current status,
 - b. child welfare issue,
 - c. childcare need,
5. Federal Disability Benefits:
 - a. active applications,
 - b. denied applications.
6. Educational history, including:
 - a. highest grade level completed,
 - b. GED,
 - c. special education history and, if so, the disability classification.
7. Work history, including for each job:
 - a. type of employment"
 - b. length of employment,
 - c. reasons for job loss or change.
8. Medical/Mental Health history, including:
 - a. diagnoses,
 - b. treatment history;
 - c. current treating treatment provider(s),
 - d. the date of last medical visit;

- e. current medications.
 - f. HIV status.
 - g. history of compliance with treatment, including taking prescribed medications.
9. Substance abuse history, including:
- a. substances abuse,
 - b. current treatment provider(s) and length of treatment,
 - c. past treatment provider(s) and length of treatment..
10. History of physical abuse, sexual abuse, and/or domestic violence noting and following up on any current indicators.

ATTACHMENT 2

A full-time (at least 35 hours per week, five days a week) Medical Director employed by the proposer would oversee the provision of medical services. Each provider would ensure there is a senior supervising physician at each location and that there is adequate staffing at all times. The senior supervising physicians would devote full time to WeCARE and would secondarily report to the Contractor's medical director regarding all clinical issues and daily operations.

All WeCARE participants would receive a Phase I Standard Medical Evaluation (SME).

The Phase I Medical Evaluation would be performed by a physician board certified in family practice internal medicine or emergency medicine or psychiatry, or a specialty approved by HRA. The examination would be conducted in conformity with all applicable professional standards and practice guidelines, identify all physical or mental health conditions affecting the participant. The examining clinician would devote at least forty-five (45) minutes to the Phase I medical examination including review of documentation, the examination, and preparation of a report.

The Phase I SME would include the following clinical components:

- a. Obtaining a complete medical history from the participant and other sources as may be clinically indicated.
- b. A standard review of systems (ROS).
- c. Review and consideration of all relevant medical documentation presented by or on behalf of the participant.
- d. A complete physical examination.
- e. The results of core testing, including the following required tests, and any others that are clinically indicated: CBC with differential; SMA-20 (OR CHEM-20) including albumin, alp, alr, ast, bilirubin, bun, co2, creatinine, ggt, glucose, ldh, potassium, calcium, chloride, magnesium, phosphorus, sodium, total protein, uric acid, lipid profile, including total cholesterol triglycerides, hdl and ldl, body mass index and urinalysis.
- f. The results of other relevant laboratory or diagnostic tests, as clinically appropriate, including EKG, chest or other x-rays, or other tests as clinically indicated.

A Phase II SME would be conducted if a psychosocial assessment and Phase I medical evaluation has been completed and:

- a. There are signs and/or symptoms of a medical disorder which may currently affect employability and for which a functional capacity outcome cannot be determined by the Phase I clinician without a specialty medical evaluation, and
- b. The Phase I clinician has documented why an FCO cannot be determined without a phase II evaluation, or
- c. If a Phase II specialty medical evaluation is otherwise deemed necessary based on clinical criteria reviewed and approved by the Agency,

A Phase II psychiatric evaluation would be conducted if:

- a. A psychosocial assessment and Phase I medical evaluation has been completed and
- b. There are signs and/or symptoms of a psychiatric disorder which the Phase I clinician suspects may currently affect employability, and
- c. The Phase I clinician has documented the signs and/or symptoms of a psychiatric disorder that may currently affect employability, or
- d. If a Phase II psychiatric evaluation is otherwise deemed necessary based on clinical criteria reviewed and approved by the Department.

The psychiatrist would devote at least forty-five (45) minutes to the evaluation including review of documentation, the examination, and preparation of a report.

There may be potential psychiatric situations in which a Phase II psychiatric evaluation can be completed prior to a psychosocial or phase I medical exam, when clinically indicated and documented by professionally qualified staff.

The Agency reserves the right to request prior approval for some or all Phase II specialty evaluations, either via HRA clinical staff or WeCARE supervisory medical staff, as determined by the agency.

The Phase II Specialty Medical or Psychiatric Evaluation would be conducted by a physician who is board-certified in the appropriate specialty, in conformity with appropriate professional standards and practice guidelines and include the following clinical elements:

- a. Review of all the Phase I medical documentation.
- b. Review and consideration of any available psychosocial information.
- c. Review and consideration of all relevant medical documentation presented by or on behalf of the participant.
- d. Additional relevant medical and mental health history and ROS from the participant and other sources, as applicable.
- e. Specialty physical or mental status examination conducted in conformity with the appropriate professional standards and practice guidelines.
- f. The results of all relevant laboratory and/or diagnostic tests as clinically indicated.

The proposer would have a sufficient number of full time board certified psychiatrists for each medical facility to assure that Phase II psychiatric evaluations are conducted without delay. The Phase II psychiatric evaluation would take, on average, one hour.

The proposers would, insofar as practicable, conduct all components of the medical examination at the same location, and consolidate all components of the examination into as few visits as possible.

An individual of the participant's choice may be present throughout all appointments.

ATTACHMENT 3

REPORT OF THE BIOPSYCHOSOCIAL ASSESSMENT

The proposer would prepare written reports of the Biopsychosocial Assessment in standardized formats approved by the Agency.

- A. The report of the Biopsychosocial Assessment would integrate the findings of the psychosocial assessment, Phase I Standard Medical Evaluation, and any Phase II specialty evaluations and contain the following elements:
- a. The results of each component of the Phase I medical examination as described above in Appendix B
 - b. Current medical and/or mental health diagnoses.
 - c. Treatment and service recommendations, if applicable.
 - d. Referral for assessment by a Credentialed Alcoholism and Substance Abuse Counselor designated by the Agency for any participant who has or may have a substance abuse disorder.
 - e. Summary of the findings/recommendations of any Phase II specialty examinations completed.
 - f. Assessment of the participant's functional strengths and deficits.
 - g. Review and consideration of all relevant medical documentation presented by or on behalf of the participant.
 - h. Any accommodations the participant requires, including those needed in order to fulfill work requirements for those clients not determined to be disabled or temporarily unemployable.
 - i. Documentation of any residual functional impairments that have prevented the participant from working for the past twelve (12) months and that may make the participant eligible for federal disability benefits.
 - j. Determination of a functional capacity outcome, in categories established and defined by the Agency.
 - k. Clinical justification for the assessment and determination of functional capacity.
- B: The report of each Phase II specialty evaluation would contain the following elements:
- a. The results of each component of the Phase II medical examination as described above in Appendix 2B
 - b. Current medical and/or mental health diagnoses.
 - c. Treatment and service recommendations, if applicable.
 - d. Referral for assessment by a Credentialed Alcoholism and Substance Abuse Counselor designated by the Agency for any participant who has or may have a substance abuse disorder.
 - e. Any accommodations the participant requires, including those needed in order to fulfill work requirements for those clients not determined to be disabled or temporarily unemployable.
 - f. Documentation of any residual functional impairments that have prevented the participant from working for the past twelve (12) months and that may make the participant eligible for federal disability benefits.

- g. Review and consideration of all relevant medical documentation presented by or on behalf of the participant.
- h. Recommendation of a functional capacity outcome, categories established defined by the Agency.
- i. Clinical justification for the assessment and recommendation of functional capacity.

All reports would be prepared by the examining clinician and be reviewed and electronically signed by the examining or supervising physician.

ATTACHMENT 4

CLINICAL REVIEW TEAM

The Clinical Review Team would serve individuals who are currently participating in HRA's WeCARE program, or are being re-referred to WeCARE for an assessment, who require a review of their most recent Functional Capacity Outcome,

Referrals to the Clinical Review Team

Individuals would be referred to the CRT under the following circumstances:

An individual currently engaged in WeCARE may report a new or deteriorating medical and/or mental health condition that interferes with his/her capacity to participate in WeCARE activities or the vendor might observe a new or deteriorating condition during the individual's engagement in WeCARE activities.

An individual who is not currently receiving WeCARE services who reports a medical and/or mental health problem that interferes with his/her ability to participate in work activities and who had a previous Biopsychosocial (BPS) Assessment and FCO determination within the last twelve (12) months.

An individual who contests the WeCARE employability determination will be referred to the CRT if a Fair Hearing orders a review of the FCO determination.

Timeframe

An outcome would be posted within 14 calendar days of the original CRT appointment date. If no CRT outcome is posted by the 14th day, NYCWAY will autopost an infraction.

Clinical Review Team Process

CRT reviews would be conducted by clinical staff and include an interview with the client. All fully employable and limited employable outcomes would have a physician's approval and sign-off.

After reviewing all relevant documentation, the interviewer would engage the individual in a dialogue and encourage active involvement in the WeCARE plan and recommendations. The individual is afforded an opportunity to present new medical documentation or information, give an account of his/her current condition and ask pertinent questions.

Clinical Review Team Outcome Determinations

The CRT determinations reflect consideration of all relevant clinical information gathered in the interview and document review. Possible CRT outcomes are:

Previous Functional Capacity Outcome affirmed, return to previous WeCARE activity

Change in Functional Capacity Outcome. New WeCARE activity

New BPS needed to determine Functional Capacity Outcome.

ATTACHMENT 5

STAFF QUALIFICATIONS

Assessment Staff

Medical Staff

- a. All medical and clinical staff providing WeCARE Program Services would have the current licensure or certification required by Law.
- b. Physicians would have current board certification in the applicable medical specialty from an American Board of Medical Specialties member board or a certifying board recognized by American Osteopathic Association Bureau of Osteopathic Specialists.

Psychosocial Assessment Staff

Staff conducting Psychosocial Assessments would have the following minimum qualifications:

- a. A Master of Social Work (MSW) degree; or
- b. a master's level degree in a related field, such as psychology, vocational rehabilitation or occupational rehabilitation; or
- c. bachelor's degree in social work a related field, such as psychology, vocational rehabilitation or occupational rehabilitation from an accredited institution with one (1) year experience, or
- d. training and/or work experience determined to be acceptable by the Agency.

Case Management Staff

Supervisory Case Management Staff would have the following minimum qualifications:

- a. A graduate degree in social work or a related field, such as psychology, vocational rehabilitation or occupational rehabilitation from an accredited institution; and two (2) years supervisory experience or three (3) years case management experience; or
- b. training and/or work experience determined to be acceptable by the Agency.

Non-Supervisory Case Management Staff would have the following minimum qualifications:

- a. a bachelor's degree in social work or a related field, such as psychology, vocational rehabilitation or occupational rehabilitation from an accredited institution and one (1) year experience in case management; or
- b. training and/or work experience determined to be acceptable by the Agency.

DVE/IPE Staff

Supervisory staff overseeing the DVE/IPE process would have the following minimum qualifications:

- a. current Certified Rehabilitation Counselor credentials from Commission on Rehabilitation Counselor Certification and three (3) years experience in vocational rehabilitation services including one year of supervisory experience; or
- b. training and/or work experience determined to be acceptable by the Agency.

Non-supervisory staff conducting vocational evaluations would have the following minimum qualifications:

- a. a bachelor's degree from an accredited institution, preferably with one (1) year of prior VIII related work experience; or
- b. training and/or work experience determined to be acceptable by the Agency.

Employment Preparation Staff

Supervisory staff overseeing the employment preparation process would have the following minimum qualifications:

- a. A masters degree in education or a related field and three (3) years experience employment preparation instruction including one year of supervisory experience; or
- b. training and/or work experience determined to be acceptable by the Agency.

Non-supervisory staff providing employment preparation would have the following minimum qualifications:

- a. a bachelor's degree from an accredited institution in education or a related field, preferably with one (1) year of prior related work experience; or
- b. training and/or work experience determined to be acceptable by the Agency.

SSI Staff

Supervisory SSI Staff would have the following minimum qualifications:

- a. a graduate degree in social work or a related field, such as psychology, vocational rehabilitation or occupational rehabilitation from an accredited institution; and two (2) years supervisory experience or three (3) years case management experience. or

- b. training and/or work experience determined to be acceptable by the Agency.

Non-Supervisory SSI Staff would have the following minimum qualifications:

- a. a bachelor's degree in social work or a related field, such as psychology, vocational rehabilitation or occupational rehabilitation from an accredited institution; and one (1) year experience in case management; or
- b. training and/or work experience determined to be acceptable by the Agency.

Developers, Employment Retention, and WEP Supervisory Staff

Job Developers, Employment Retention, and WEP Supervisory Staff would have the following minimum qualifications:

- a. an bachelor degree from an accredited institution; or
- b. one year of related work experience; or
- c. training and/or work experience determined to be acceptable by the Agency.

Clinical Review Team Staff

Medical Staff

- a. All medical and clinical staff would have current licensure and certification required by
- b. Physicians would have current board certification in the applicable medical specialty from an American Board of Medical Specialties member board or a certifying board recognized by American Osteopathic Association Bureau of Osteopathic Specialists.

Social Work Staff

Supervisory staff would have the following minimum qualifications;

- a. a graduate degree in social work or a related field, such as psychology, vocational rehabilitation or occupational rehabilitation from an accredited institution and two (2) years supervisory experience or three (3) years case management experience, or
- b. training and/or work experience determined to be acceptable by the Agency.

Non-supervisory Social Work staff would have the following minimum qualifications:

- a. hold a bachelor's degree in social work or a related field, such as psychology, vocational rehabilitation or occupational rehabilitation from an accredited institution and one year experience in case management, or
- b. training and/or work experience determined to be acceptable by the Agency,

ATTACHMENT 6

DEFINITIONS

Biopsychosocial Assessment (BPS)

The Biopsychosocial Assessment is an evaluation of an individual's functional capacity and potential for federal disability benefits that identifies and integrates relevant medical conditions, mental health conditions, and social and community circumstances.

Comprehensive Service Plan (CSP)

The Comprehensive Service Plan defines the actions that will enable the participant to achieve the highest possible level of functioning and self-sufficiency. The CSP is reviewed and adjusted on a regular basis to reflect changes in the participant's circumstances.

Case Management

Case management a face-to-face, individualized activity that ensures the coordination and provision of a range of services that address the individual needs of each participant. The goal of case management is to assist eligible individuals to obtain federal benefits and to help other participants reach the highest attainable level of function, facilitate progress toward the maximum attainable level of self-sufficiency, and whenever possible, employment. Outreach (below) is a case management activity.

Diagnostic Vocational Evaluation (DVE)

The Diagnostic Vocational Evaluation (DVE) assesses aptitudes, interests, academic achievement, skills and work tolerance, to determine vocational interests, skills and values and assists the participant in setting a vocational goal. The DVE identifies an individual's vocational strengths and weaknesses and suggests the appropriate remediation. The DVE is the basis of the Individualized Plan for Employment (below).

Employment Preparation

Employment Preparation services enable participants to prepare for, obtain and maintain employment by providing services including, but not limited to, employment counseling, job search techniques, assistance in addressing the need for reasonable accommodations, and work experience

Employment Retention Services

Employment retention services assist participants who have moved into the labor force to maintain employment and increase their income. Services include helping participants obtain available benefits (e.g. Earned Income Tax Credit), referral to employment-related support groups, helping resolve employment related issues, and assistance in obtaining additional skills training and education.

Federal Disability Benefits

Federal disability benefits include:

- Social Security Disability Insurance (SSDI) provided to individuals who have worked, paid Social Security taxes and are unable to work due to physical or medical disability.

- Supplemental Security Income (SSI), blind and disabled individuals with low income or few assets, based on financial need.

Individualized Plan for Employment (IPE)

The individualized Plan for Employment is a written plan, based on the results of the DVE that outlines the participant's vocational goal, and the services to be provided to reach the goal.

Outreach

Outreach is the effort to establish contact with participants who are non-compliant with program requirements and to re-establish compliance with program requirements.

Wellness Plan (WP)

Wellness Plans are developed for participants who are temporarily unemployable due to an unstable or untreated medical and/or mental health conditions. The Wellness Plan identifies the participant's makes treatment recommendations and provides a time frame for a resolution or improvement.

Work Activity

Participants with an FCO of *Employable with limitations requiring accommodation and/or vocational rehabilitation* are required to engage in an activity that is included in the New York City Temporary Assistance/ Food Stamp Employment Plan for Welfare-to-Work. These can include assignment to the Work Experience Program (WEP), skills training, or basic education.

HRA CONTRACT FISCAL MANUAL

Revised

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Revised September, 2011

CONTRACT FISCAL MANUAL

Foreword

The New York City Human Resources Administration/Department of Social Services (HRA) is pleased to release this revised manual to assist contractors and auditors in understanding financial and reporting specifications that are contained in our contracts.

These contracts include but are not limited to the Parks Opportunity Program (POP), Substance Abuse Centralized Assessment Process (SACAP), Back to Work (BTW), HIV/Aids Services Administration (HASA), Individual Training Accounts (ITA), Domestic Violence, Wellness Comprehensive Assessment Rehabilitation and Employment (WeCARE), and Begin Employment Gain Independence Now (BEGIN). Each type of contract contains features that are unique and require the development of reporting and documentation formats to comply with the rules and regulations of the governmental agencies that are funding them. We recommend that you utilize this manual, even if your type of contract is not currently specified, as HRA intends to continue to add contract types to this process. Additionally, there is information of use for all human service contracts.

As you will note, we have enhanced this manual to include a wide array of topics that will assist you in managing your contract. Inside the manual you will find a set of instructions documenting the applicable policies and procedures of HRA in such matters as record-keeping, reporting, invoicing and claiming, budgeting, cost allocation, procurement and payroll, as may be amended by HRA. It is incorporated by reference to our human services contracts and may be found online at http://www.nyc.gov/html/hra/html/contracts/contracts_procurement.shtml. This manual is not intended to amend the material terms of the executed contract with respect to either scope of work, or the terms and conditions of the executed contract.

While specific audit and reporting requirements will be identified, this manual is not an audit guideline. Rather, it will assist you in the financial management of your contract. Auditors will be expected to use American Institute of Certified Public Accountants (AICPA) Audit Accounting Guides and Statement of Positions, Government Accounting Office (GAO) and Office of Management and Budget (OMB) Circulars as well as audit guides available from the City of New York Department of Small Business Services and the Human Resources Administration in the development of their audit programs.

N.B. Sections related to programs/contracts that have ended have been deleted from this current edition of the fiscal manual. These sections are:

- Skills Assessment and Job Placement
- Employment Services and Placement
- Special Populations
- PRIDE
- RIPE

The contracts included in this manual are currently utilizing HRA's online Payment and Claiming System (PaCS) for payment of performance based milestones and/or reimbursement of line item expenditures.

Contract Fiscal Manual

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CHAPTER 1

Contracts

A. Overview of Contracts

HRA continues in its effort to assist economically disadvantaged persons to gain self-sufficiency through employment. As a result, the Agency has been entering into contracts with both for-profit and not-for-profit vendors to provide needed services. These contracts are designed to provide services leading to job placement and long-term employment retention.

Most of these contracts are performance-based or provide a combination of performance and line item payments for successful outcomes. The milestone payments are designed to allow for-profit contractors a reasonable profit and not-for-profit contractors to reinvest a reasonable amount of program income in their programs. Even the programs reimbursed on a performance basis may have their expenses captured in the line item module of the Payment and Claiming System.

All contracts are funded through a combined mix of funding streams, including Temporary Aid to Needy Families (TANF), Safety Net and Food Stamp and Employment Training (FSET) funds as well as other funding streams.

Descriptions of the contract types are as follows:

1. BACK-TO-WORK (BTW)

The Back-to-Work Program was developed by the New York City Human Resources (HRA). The goal of the program is to provide job readiness training and placement services to applicants, recipients of Cash Assistance (CA), Non Custodial Parents (NCP), Food Stamp Only clients, and Emancipated Youth 18-21 years of age referred by the Administration for Children Services (ACS). Through these services it is expected that non-exempt and some exempt employable individuals will successfully transition from PA to employment and become self-sufficient. Participants in BTW programs work with a single employment services provider from application throughout the duration of service, allowing them to build a stronger relationship with the provider which will lead to more successful job placement and retention. The Program focuses on assessing the client's needs and preparing them for work, job placement, job retention, and career advancement.

2. BEGIN

The BEGIN Managed Programs were developed by the New York City Human Resources (HRA) to prepare low-level literacy and or limited-English-proficient participants with literacy and communication skills to help them become employed. Begin Work Study (BWS) provides Adult Basic education (ABE) to

General Equivalency Diploma (GED) coursework. BEGIN Language Work Study (BLWS) provides instruction in English through English as a Second Language (ESL) coursework. BEGIN programs are available to CA participants 19 years of age or older who lack basic skills in reading, writing, arithmetic and/or English proficiency. These skills are provided in a concurrent education/work study model for 35 hours a week.

3. Domestic Violence

The Office of Domestic Violence (ODV) provides temporary housing, emergency shelter and social services to victims of domestic violence in crisis. The DV Liaison Units station social workers in Job Centers to assess and counsel domestic violence victims. They outline recommended engagement plans that may include counseling, working, attending General Equivalency Diploma (GED) or English as a Second Language (ESL) classes, obtaining job or skills training, or performing unsubsidized work. The Liaison Unit workers help coordinate work and work-related activity. Other DV programs include the Substance Abuse/Domestic Violence program, the Adopt-a-School program and the Literacy Program, all of which give additional services to the victims of domestic violence.

4. HASA

The HIV/AIDS Services Administration (HASA) provides expedited access to benefits and social services needed by persons living with AIDS or advanced HIV illness and their families. In addition to specialized intake and needs assessment, and direct linkages to PA, Medicaid, Food Stamps, Home Care and Homemaking, there is intensive case management and permanency planning for the target population. HASA also provides housing services and placements, voluntary vocational counseling and rehabilitation, assistance with SSI and SSDI applications, and referrals to community based resources.

5. ITA

Individual Training Accounts (ITAs) are established for eligible participants to cover training costs to assist them in entering the workforce or upgrading their job positions. After an assessment, HRA's Employment Services authorizes participation in a State-approved educational or training program for these individuals. Program costs must meet pre-approved time limits. Training institutions are eligible to receive voucher payments after participants achieve certain milestones

6. POP

The Parks Opportunity Program (POP) provides subsidized employment in the NYC Parks Department for those participants which HRA designates as eligible. The program's aim is to hire CA recipients and move them to permanent full time jobs. While at Parks, they participate in job training and development. Parks has relationships with private companies and works with them to secure employment for the participants. HRA does not pay the initial placement to Parks

for placements into jobs in other City agencies. However, HRA will pay the retention milestones if they are achieved.

7. LIDS

The Low-Income Dads Program (LIDS) was established to engage low-income non-custodial fathers in the lives of their children and increase their compliance with child support. Specifically, the program is designed to (a) help young, low-income, non-custodial fathers gain and sustain employment and engage financially and emotionally with their children, (b) recruit and engage disengaged fathers and connect them to the formal child support program and (c) establish productive relationships between custodial and non-custodial parents that lead to better father/child relationships.

8. SACAP

The Substance Abuse Centralized Assessment Program (SACAP) provides for the evaluation of PA applicants and recipients who may be abusing alcohol or drugs and their assignment to the appropriate level of care. HRA contracts with vendors to perform thorough evaluations and assignments to care. It is expected that the participants will ultimately be able to enter employment programs or the workforce.

9. WeCARE

The Wellness Comprehensive Assessment Rehabilitation and Employment (WeCARE) program provides a continuum of assessment, treatment, and rehabilitation services for CA applicants and recipients with medical and mental health conditions. The goal of the WeCARE program is to help these CA recipients attain and maintain their maximum level of self-sufficiency by providing comprehensive and integrated services. HRA contracts with qualified vendors to provide WeCARE services to eligible CA applicants and recipients.

B. Contract Requirements

All contracts are funded through a combined mix of funding streams consisting primarily of Temporary Aid to Needy Families (TANF), and Food Stamp, Employment Training (FSET) funds, and grants as appropriate. As it is essential that there be compliance with all funding source regulations and documentation needs, contract and reporting specifications are designed to meet the most detailed source requirements when they overlap and there is no conflict. In instances, where the requirements of one program do not fully account for the needs of other funding sources, supplementary documentation and financial information is required.

C. Audits

All programs must be audited in accordance with their contract. Contractors, in most circumstances, will be responsible for obtaining the services of an

independent auditor and insuring that the audit is concluded within six months of the completion of the fiscal period covered by the audit. The type of audit required will depend on such factors as whether the contractor is a for-profit or not-for-profit organization and whether the amount of federal funding exceeds \$500,000 and is received from two or more federal funding sources. Not-for profit organizations which do not spend \$500,000 annually in Federal funds or receive federal funds from only one federal funding source may be assigned an auditor by HRA. The audit must be submitted to HRA upon its completion.

Audit reports must conform to *Government Auditing Standards* and must contain the appropriate supplemental schedules listed in the *Human Resource Administration Audit Guide*. Audits conducted in accordance with OMB Circular A-133 must adhere to its reporting requirement and include the additional supplemental schedules required by HRA. A copy of all A-133 reports submitted to HRA should be sent to the Bureau of Audit Review and Contracting (email to molanphyj@hra.nyc.gov and chinj@hra.nyc.gov or mail to 180 Water Street, 22nd floor, New York, NY 10038).

Specific schedules required for these contracts are,

- a. Statement of the Entity's Assets, Liabilities and Fund Balances.
- b. Schedule of Revenue and Expenditures and Changes in Fund Balances.
- c. Schedule of the Current Cumulative Questioned Costs.
- d. Schedule of the Fixed Assets Inventory.
- e. Schedule of Consultants
- f. Schedule of the auditor's adjustments to the voucher data submitted to the Agency.

In addition, a certified statement must be provided indicating that program income or profit permitted to be retained for reinvestment purposes was reinvested back into the organization's programs in accordance with the general reinvestment plan submitted and approved by the Agency (as appropriate).

Agencies receiving government funds are held to a much higher degree of accountability from both the general public and elected officials. As a result lower standards of materiality are to be used when reporting questioned costs and fraud. All questioned costs are to be deemed material and any fraud that the contractor or auditor is aware of must be reported to the Agency immediately.

HRA's Finance Office will make available, upon the request of the auditor, at the end of the year documentation detailing reported expenditures and payments. The auditor must evaluate the adequacy of the contractor's procedures to

process invoices, to determine if the total valid invoices for the audit period are supported by the contractor's books and records, and to determine whether the contractor has appropriate fiscal controls in place to ensure the integrity of the program. See definition of Internal Control in Section D below.

In addition to the required audits by Certified Public Accountants, HRA reserves the right to send its own staff or contracted agents to contractor sites to review all records for compliance with fiscal and programmatic requirements.

D. Internal Controls

Internal control is a major part of performance-based management. It consists of the plans, methods, and procedures used to achieve an organization's missions, goals and objectives. Control activities are the policies, procedures, techniques and mechanisms that enforce management's directives, and are an integral part of an entity's planning, implementing, reviewing and accountability.

In addition, internal control is the primary method for safeguarding assets and preventing and detecting errors and fraud. Therefore, internal control should provide reasonable assurance that organizational objectives are being achieved in the following categories:

- Effectiveness and efficiency of operations including the use of the entity's resources,
- Reliability of financial reporting, including reports on budget execution, financial statements, and other reports for internal and external use; and
- Compliance with applicable laws and regulations.

Examples of control activities include:

- Top level reviews of actual performance,
- Reviews by managements at the functional or activity level,
- Management of human capital,
- Controls over information processing,
- Physical control over vulnerable assets,
- Establishment and review of performance measures and indicators,
- Segregation of duties,
- Proper execution of transactions and events,
- Accurate and timely recording of transactions and events,
- Restricted access to and accountability for resources and records, and
- Appropriate documentation of transactions.

E. Fund Accounting

The United States Department of Labor, the funding agency of Food Stamps Employment and Training (FSET), requires that the accounting system be established on a fund basis. A fund is defined as a self-balancing set of

accounts recording all assets and related liabilities and fund balances. Contractors should establish those funds necessary to meet its accounting and reporting needs. A minimum of one fund per year is required. The most prevalent fund is the General Fund, which is used to account for all financial resources except those required to be accounted in another fund. The General Fund may be used to account for funds usually accounted for in a special revenue fund unless law requires the need for this fund.

F. Cost Allocation Plans

Contractors are required to submit written cost allocation plans within six weeks from the start of the contract that accumulate and distribute allowable direct and indirect costs and identify the allocation methods used for distributing the costs. The cost allocation plan should, at a minimum, include the following elements:

- a. Organization chart that identifies all departments, types of services provided, and staff functions that are chargeable to the different funding sources.
- b. Description of the types of services they provide, and their relevance to the different funding sources.
- c. Copy of financial statements or budgets.
- d. Expense items included in the cost of services. This would include all joint or pooled costs needing to be allocated.
- e. The methods used in distributing the cost to the benefiting cost objectives.
- f. Certification by an authorized organization official that the plan has been prepared in accordance with applicable requirements.

Cost allocation plans should be updated when there are changes in the basis of allocations and submitted to the:

Human Resources Administration
Bureau of Accounting & Special Programs
180 Water Street 8th Floor
New York, N.Y. 10038
Attn: Director

G. Participant Tracking

Contractors will have to maintain participant-specific information and meet all applicable reporting requirements. Presently, two reporting systems are to be used.

- a. For CA clients, the contractors use the New York City Work Accountability and You (NYCWAY) web-based system. HRA staff also uses this system to track the progress of participants towards their goals of self-sufficiency.
- b. HRA uses the Workforce Information System Automated Reporting Database (WISARD), an Intranet system, to track non-CA participants. Non-CA recipients include customers referred by HRA's Office of Child Support Enforcement (OCSE) and the Administration for Children's Services (ACS)

Both NYCWAY and WISARD feed into the Payment and Claiming System (PaCS), which satisfies the payment and claiming requirements of all the funding streams.

Information stored in these systems must be accurate, complete, and maintained in a timely fashion. Corroborating documentation will have to be stored in a way that maintains its integrity and admissibility as evidence in an audit or any other proceeding. It must be readily retrievable.

The specific requirements for eligibility for participation in these contracted programs are defined in their contracts with HRA in its role as the Social Service District responsible for administering TANF, Safety Net, Welfare-To-Work and Food Stamp Programs. All services that are being funded are being provided to participants identified by HRA as eligible or potentially eligible for services.

H. Profit and Program Income Limit

Contractors are funded on a performance-based, expense-based or combination basis, for which unit costs and/or budgets have been established. For-profit service providers are permitted to earn a profit and not-for-profit service providers are permitted to earn program income. Profit and Program Income will be measured, based on the following computation: Excess Revenue, defined as total revenue less expenditures, divided by total revenue, equals the profit or program income percentage.

Program income is defined and examples of types of program income are listed in 29 CFR 97.25. Program income is defined as "the gross income received by a grantee or sub-grantee directly generated by a grant-supported activity, or earned only as a result of the grant agreement during the grant period". In addition to fees for service in excess of expenditures, it includes other items such as user or rental fees and sale of products. Excluded from program income are items such as applicable credits, proceeds from the sale of property and profits earned by a commercial for-profit organization.

The term "program income" is used exclusively for not-for-profit organizations that are in receipt of federal funds. It is in some respects similar to the term "profit" that is employed by commercial for-profit organizations; however, there are restrictions on the use of program income set by the United States

Department of Labor that does not apply to commercial for-profit organizations. Namely, not-for-profits are required to use 100% of program income to enhance services.

The contract provides that all contractors are permitted to earn a 15% profit or program income over the term of the contract for services. For-profit contractors are required to reinvest any profit in excess of 10% and up to the 15% limit into the organization by the completion of the contract. All contractors are required to return to HRA all profits or program income exceeding the 15% limit when the contract term is completed.

At the beginning of the contract period, but no later than six weeks into the contract year, contractors are required to submit a plan to HRA for approval identifying how program income or profit designated for reinvestment will be used. The primary limitation is that the plan must be reasonable and assist participants. Generally, they can be dedicated to assist participants end dependency by, promoting job preparedness, skill development, work and marriage, providing services to strengthen families, reduce teen pregnancy, reduce school dropout rates, assist the disabled and elderly, and provide assistance to the needy. HRA will notify contractors within thirty days of receipt whether their plan was approved.

Program income and profit designated for reinvestment, must be reinvested by the end of the contract and renewal term(s). Within 90 days of the completion of the current contract term, contractors are required to submit a report detailing program income and profit designated for reinvestment expenditures. Please ensure that all profit used for this or any appropriate program clearly segregates the profit-supported expenditures from those of the line item budget of the program. (* Please see the example below.) All unexpended program income and profit designated for reinvestment earned during the current term of the contract must be returned to the Agency.

***Example of Report Detailing Program Income and Profit, Segregated from Line Item Budget Expenditures:**

Not-for-profit organization XYZ has a contract for \$125,000 for their Program for Fiscal Year 2006 (FY '06). They submitted a plan for how profit income of up to \$18,750 would be spent to enhance the program with a computer lab for their participants' use.

The following represents their income and expenditures for FY '06.

Milestones Income	\$125,000
Line Item Budget	100,000
Line Item Expenditures	
Personnel	60,000
OTPS	40,000
Total	100,000

Program Income reinvested	13,000
Program Income Earned	25,000
Allowed Program Income	18,750
Program income returned to HRA	\$12,000

XYZ earned \$25,000 in program income from the Program. They are limited to a maximum of \$18,750 due to the 15% cap. They submitted a plan to use the program income on a computer lab and spent \$13,000 of the possible \$18,750 allocated for the project. Therefore, the total amount of program income returned to HRA is \$12,000. This includes the \$6,250 (\$25,000 program income earned through milestones - \$18,750 maximum program income allowed = \$6,250) and \$5,750 in unspent program income (\$18,750 budgeted to enhance the program - \$13,000 actually reinvested to enhance the program = \$5,750.) The Program Income earned and reinvested is reported separately from the line item budget and expenditures.

I. Financial Reporting and Payments

Contractors are required to monitor monthly expenditures and report them to HRA. Expenditures are restricted to activities permitted by the contract, federal and state law, and regulations of the funding sources. Reported costs must meet the following generic qualifications:

- a. They must be reasonable and necessary for the performance and administration of Federal Awards.
- b. They must be allocable to a particular cost under the provisions of OMB's cost principles circular.
- c. They must be authorized or not prohibited under federal, state, or local laws, regulations or policy.
- d. They must receive consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances.
- e. They must be adequately documented. This includes being accurate, complete and readily available.
- f. They must be net of all applicable credits that result from transactions that offset direct or indirect costs.
- g. Indirect costs charged to these contracts must be supported and consistent with a cost allocation plan submitted and approved by HRA.

Contractors are required to submit monthly records of expenditures and requests for line item reimbursement by the tenth day of the following month. Other than an approved initial advance, payments will not be released to the contractor unless expenditure data has been received. Expenditure data and payment requests are to be provided in accordance with the agreed upon formats established between the contractor and HRA and must contain all agreed upon information. In addition, payments will also be held back if the Finance Office is notified by the HRA program that the contractor has failed to provide required programmatic reports.

The process for reporting expenditures has been simplified and is being incorporated into the WEB-based PaCS system. At this time, different contract types submit different expenditure reports, but HRA created a generic expenditure report that will satisfy the requirements of all of the programs involved. While vendors continue to be required to submit actual expenditure data each month, not all vendors are reimbursed based on them.

As the Agency has reduced the amount of expenditure detail that must be reported monthly by certain vendors, it is expected and required that each contractor's financial records will be maintained in sufficient detail to readily document the basis of the expenditure information reported to HRA.

Performance milestone payments to contractors will be based on levels of service provided in accordance with negotiated unit prices. The ratio of expense to income will fluctuate from month to month. Cumulative payment and expenditure data will be retained and, if necessary, an adjustment will be made to the last month's payments and during the close-out process to insure that contractors' payments do not exceed the agreed upon profit margin.

J. Program Income/Profit Cap

Contractors with multi-year contracts will not be permitted to exceed the profit or program income margins established for the term(s) of the contract. However, on an annual basis contractors may exceed the profit or program income limits in order that they may be permitted to earn the maximum allowed under the terms of the contract.

K. Transportation

Transportation costs required by participants in order to attend their work or work related activities (including pre-employment engagement activities), will be paid for by HRA and are entirely outside the contract. Contractors will disburse transportation funds or Metro Cards to participants who do not receive this service directly from HRA. Included here are CA recipients and applicants who have been placed in employment and are no longer receiving carfare and non-

CA individuals referred by ACS and HRA/OCSE who require carfare to engage in active job search or training activities or are employed.

Carfare should not exceed the prevailing price of a 30-day unlimited Metro Card unless the participant is traveling outside the area covered by the MTA's Metro Card. If the participant is traveling outside the area covered by the MTA's Metro Card, the contractor can reimburse the participant for carfare at the cost of public transportation to the place of work. In addition, documentation for reimbursement at a cost greater than the prevailing price of a 30-day unlimited must include the address of the employer and documentation supporting the cost of public transportation such as round trip ticket or fare schedule for the area where the employer is situated.

Post-employment carfare has been automated for BTW clients. It is available for up to three months once a BTW client is employed, as a transitional payment that enables the client or former client to move to self-sufficiency. Transitional payments are available for former CA clients for three months after Job Start Date. BTW contractors will receive reimbursement from HRA for post employment transportation costs based on the submission of Metro Card reimbursement requests on PaCS. If the requests meet the established guidelines, the expenses will be reimbursed.

Pre-employment carfare is available for participants who do not receive transportation costs as part of their benefits. HRA will reimburse the vendors for transportation costs they have provided to these participants, based on bi-weekly data received from the automated attendance system.

For Pre-Employment Carfare the Department introduced a Pre-Employment Report module to PaCS TRACS. The report assists contractors in reconciling payments with pre-employment carfare disbursements to participants.

For other programs, transportation reimbursement is a manual process at this time contractors will receive reimbursement from HRA for post employment transportation costs based on the submission of a disk containing an Excel spreadsheet with the following information for each client served during the reporting period:

- Client Name (Last name, first name in separate columns)
- Client Social Security Number (No spaces between numbers)
- Client Case Number (Case number suffix and line number in separate columns)
- Date Disbursed (YYMMDD)
- Number of trips Taken During Reporting Period
- Type of Card Distributed (Daily, Weekly, or Monthly)
- Amount to be Disbursed
- Assignment Date
- Date of Placement

Contractors must retain the actual departure and arrival locations in the report on file, and it must be readily available for audit purposes or at the request of HRA to substantiate or document the reports submitted for reimbursement of transportation expenses.

L. Other

Vendors may have access to and are encouraged to obtain other non-City resources, often in the form of private donations. In instances such as this, these additional resources may be used as the local and possibly the state match to obtain federal matching funds. In order to proceed to use other resources, vendors must notify the HRA Executive Deputy Commissioner of Finance in writing with a copy to DAPR. Please address the letter to:

Human Resources Administration
Finance Office – Executive Office
180 Water Street 11th Floor
New York, New York 10038
Attn: Executive Deputy Commissioner of Finance

Please provide the following information:

- a. An explanation of the type of funds, i.e., private donations
- b. The amount of funds available
- c. Whether the funds are one-time or on-going
- d. A letter of commitment that shows the funds have been awarded to you for the amount and duration indicated.
- e. A description of the purpose for which you want to use the funds

HRA will then schedule a meeting with the vendor to discuss your submission and to discuss both performance and financial milestone payments. The milestones should reflect the enhancements offered to the Agency as a result of the increased funding and overall goals of the program. All expenses and revenues associated with non-City resources would have to be contained in their own fund, readily distinguishable from all other funding sources.

Should the need arise vendors must be able to provide HRA at minimum with the names, social security numbers and address of these participants receiving services with non-City funds so the Agency can determine the individuals' eligibility for various federal or state funding.

CHAPTER 2

FINANCIAL FORMS AND PAYMENT PROCESS

This chapter discusses the financial reporting requirements. Employment contractors must use the Contract Expenditure Report to report monthly expenditures at this time. HRA has implemented the automated PaCS line item contracts module. Contractors will need to comply with instructions identifying requirements governing programmatic and fiscal processing. A brief description of important documentation requirements is included in this chapter. A brief description is also provided of the payment process that will be used to provide and account for contractual advances. Included are a series of examples depicting potential end of year payment adjustments for exceeding the profit/program income cap.

A. Contract Expenditure Report

This form is designed to capture monthly expenditures in a manner that will meet HRA reporting requirements. Monthly, the contractor is required to capture all direct and indirect expenditures.

Each category of expenditures is to be further broken down into three columns: Cumulative Through Prior Month, Current Month, and Cumulative. There are to be no adjustments permitted to the Cumulative Through Prior Month expense without express approval from HRA.

The chart of accounts is broken down into the following two types of expenditures:

1. Personal Services (PS)

Personal Costs include payments of salary, overtime, holiday pay and bonuses to full time and part time employees working or allocated to the contract. It includes fringe benefit payments made on the behalf of employees such as medical, retirement, FICA and Workmen's Compensation.

2. Other Than Personal Services (OTPS)

OTPS includes all direct or indirect allowable charges that are not allocated to the Personal Services category.

The Employment Contract Expenditure Report is due by the 10th day of the month for the prior month's activities. The reports are to be sent to:

Human Resources Administration
Division of Accounts Payable and Reporting
180 Water Street -8th Floor
New York, New York 10038
Attn: Director DAPR

Please note, HRA will not issue payments if the monthly expenditure report is not received by the required due date.

B. Payment Request Submissions

The Payment request format that was initially used by HRA for performance-based contracts had been modified to accommodate the fully automated web-based Payments and Claiming System (PaCS). It is anticipated that contractors not currently using PaCS will be integrated into the system as quickly as possible. This system has been enhanced to accommodate other than performance based-contracts. PaCS summarizes on a participant-specific basis, services provided and milestones achieved. It also provides the Agency with the necessary data to appropriately claim reimbursement from government sources. Contractors continue to comply with current instructions identifying requirements governing programmatic and fiscal processing.

The automated system facilitates the transmission of data between the contractor, HRA staff, and the computer systems that are used to verify information submitted for payment and enter required tracking and claiming information. The system facilitates the receipt of participant data, milestone achievement, service provision, and payment requests. It tracks in real time the status of payments made, payments pending, and reasons for payment denial, and provides an interactive avenue to resolve payment problems.

PaCS is being implemented in several phases. Currently Employment Vendors, NADAP, WeCARE, ITA, and LIDS programs utilize this system. It is expected that eventually all Human Service contracts will be paid and tracked through this system. HASA, APS, BTW, LIDS, NIP, ODV and WeCARE programs currently utilize the line-item module of the PaCS system to request reimbursement of monthly expenses.

Additional information regarding the web-based system will be sent under separate cover as necessary. As HRA is always looking for ways to improve the documentation and verification processes utilizing technology, we will continue to update you as these systems emerge. We also welcome any suggestions you have to improve the payment process.

The next generation of PaCS (PaCS Web) is currently in development and will be implemented shortly with Food Stamp Employment (FSE) as the pilot.

PaCS Web provides enhanced functionality for the vendor, including a powerful suite of inquiry functions as well as the ability to download data directly to their systems and build a local history of their payment activity.

As PaCSWeb is further developed, all milestones payments processed on the current PaCS system will migrate to PaCSWeb.

C. Documentation Requirements

All Back to Work programs' milestone documentation must be scanned and available on the HRA viewer. All other programs milestone documentation must be sent to:

Human Resources Administration
Finance Office - Accounting and Special Programs
Division of Employment Placement Verification
180 Water Street – 8th Floor
New York, NY 10038
Attn: Director (DEPV)

1. Employability Plan

The contractor completes the appropriate section of the Employability Plan (W584-A) on the web-based system (NYCWAY).

For Back to Work programs only, an assessment is reimbursable so long as testing is included in the objective assessment process and it is completed thoroughly. The steps for payment are as follows:

- Vendors scan a copy of the appropriately signed and scored Employability Plan into the HRA Viewer.
- Vendors are required to retain a copy of the assessment on file for their records and future audit purposes. The assessments must be fully completed and retained in a readily retrievable manner.
- The achievement of the Employability Plan (EP) milestone is the date the EP completion code is posted on NYCWAY. PaCS recognizes an action code and a referral code in NYCWAY and initiates payment upon receipt of the vendor's request for payment in the PaCS system.
- A vendor will be paid for only one Employability Plan per six-month period per participant, based on the date the EP was input in NYCWAY
- Non-CA and Food Stamp clients are not eligible for EP payment.

2. Employment Milestones

A "placement" is defined in your contract as "entry on an employer's payroll for paid employment, for not less than twenty (20) hours per week..." The contractor must submit participant documentation on an ongoing basis to support milestones entered on the web-based system. For PA participants the Form FIA 3A is the first step in documenting employment. It notifies the Agency that a participant is employed, and in the case of CA recipients it initiates actions to re-budget or close the case and provide childcare and transitional benefits. The FIA 3A must be submitted within one week after the participant starts working. This information is necessary because the failure to re-budget a case in a timely manner can result in overpayments to a participant.

In addition, the FIA 3A is to be completed when there is a change in employment status, such as a new job placement after the initial placement was reported or an increase in salary or hours worked. Sampling will include a check of the FIA3A to ensure that job placement milestones submitted match the FIA 3A of record.

The following documentation is also required:

a. Initial Placement

Contractors must verify placement for permanent or temporary jobs by submitting either 1) a dated pay stub, 2) a copy of a pay check, 3) a letter signed by the employer, participant and contractor attesting to the fact that the participant is working at the reported wages and hours, 4) the Employment Verification Form, or 5) documentation obtained from an Employment Clearinghouse. A placement is deemed achieved only upon the completion of 30 days of continuous employment in the job after the start date of the position.

The following guidelines represent the Agency's policy regarding placing BTW Employment Contract participants on your own agency's payroll:

Vendors may NOT claim a placement milestone under their Employment Contract for participants placed onto their organization's own payroll in any position that is subsidized by HRA, where the vendor is receiving the subsidy. This includes individuals participating in Grant Diversion administered by HRA's Business Link.

b. Job Retention and Career Plan (JRCP) Effective 2/1/2011 this is no longer a payment point

c. Retention Milestones

Contractors must verify retention by submitting documentation showing employment during the time for which payment is being requested. This can take the form of 1) a dated pay stub, 2) a copy of a pay check, 3) a letter signed by the employer, participant and contractor attesting to the fact that the participant is working at the reported wages and hours as of the retention milestone date, 4) the Employment Verification Form, or 5) documentation obtained from an Employment Clearinghouse.

Please note that with 90-day and 180-day retentions:

- The employer does not have to be the same employer for whom the participant had been working at the initial placement.
- If a participant leaves a job, but obtains employment elsewhere within 7 days, this is considered continuous employment (applicable to programs requiring continuous employment). **Retention is tracked from the start date on the initial placement.**

Additional Requirements: The FIA 3A is filled out for PA cases by completing the electronic FIA 3A contained in NYCWAY. If there is any change in employment status, such as increased earnings, different hours or a job change, a new FIA 3A must be completed.

One payment each for 90-day and 180-day retention will be paid in a 12-month period for each participant for each vendor, based on the retention creation date.

Time Limits: Effective January 15, 2004, all documentation of milestones and subsequent retention milestones must be received by HRA no later than your contract's specified number of days from the date each milestone is achieved. Milestone information and documentation received after the contract's specified number of days deadline will not be honored.

Time Limits Table

PROGRAM	# Days from the date of achievement of milestone
BTW	75 (75 days from JSD for placement)
BEGIN	75
POP	90 days of the milestone being achieved
LIDS	75
WeCARE	90 (90 days from JSD for 30 day retention)

The vendor may be reimbursed in the future for the 90- and 180-day retentions, even though an initial placement was not paid, if the placement documentation has been submitted within the required timeframes and successfully verified.

Contract Renewals: The initial placement milestones that are achieved subsequent to the start date of the renewed contract are paid the rates of the renewal contract, as will the retention payments for those placements. Contractors have six (6) weeks from the end of the original contract to submit documentation for payment for initial placements that occur prior to the start of the renewal contract in order to be paid under the original payment schedule. Retention milestone payments for placements made and paid under the original contract will be paid according to the original contract payment schedule as well. Initial placements made during the original term of the contract, but not submitted within the six-week window from the end of the original contract, will be paid under the renewal payment schedule.

3. Non-Employment Milestones- WeCare

a. Biopsychosocial (BPS) Phase 1 and Phase 2 Assessment Milestones

The Biopsychosocial (BPS) assessment is used to determine the level of employability of an individual who claims (a) medical or psychiatric condition(s) that impacts his/her ability to participate in HRA-required work activities. The WeCARE vendor provides a BPS assessment to all participants referred to the vendor by HRA Job Centers or designated HRA contractors. While a standard medical and psychological examination suffices in most cases, a significant number of participants require specialty exams as well. Based on the results of the BPS assessment, the WeCARE vendor creates a Comprehensive Service Plan (CSP) that defines the steps necessary to enable participants to achieve the highest possible level of self-sufficiency.

The BPS assessment results in a Functional Capacity Outcome (FCO) which can be one of the following determinations:

- Fully employable and therefore referred back to the job center
- Employable with limitations requiring minimal accommodations or Vocational Rehabilitation Services (VRS)
- Temporarily unemployable requiring a Wellness Plan to treat/stabilize unstable or untreated medical/psychiatric conditions that affect employability
- Unemployable for 12 months or more and therefore referred for assistance in applying for federal disability benefits.

Upon completion of the CSP, the vendor may submit for the BPS Phase 1 assessment milestone. If the assessment included specialty medical/psychiatric exams, the vendor may also submit for the BPS Phase 2 assessment milestones. One BPS Phase 2 milestone may be submitted for each specialty exam conducted, up to a maximum of 3 medical specialty submissions/exams.

The WeCARE vendor has up to 12 business days from the most recently scheduled WeCARE appointment to complete the BPS Phase 1 assessment and BPS Phase 2 assessment milestones. The WeCARE vendor must then complete the CSP within 5 business days. Once the CSP is completed, the vendor has 90 days to submit the milestones for payment.

Participants who report a new and acute or worsened medical/psychiatric condition that they think affects their employability at any point in the WeCARE process are referred for an appointment with WeCARE's Clinical Review Team (CRT). The CRT, which is comprised of clinical staff, makes determinations on whether a participant's most current FCO determination is appropriate. Based on the outcome, if the CRT determines that the client has a new and acute medical/psychiatric condition, the participant is referred for a new BPS Phase 1 assessment, or Phase 2 assessments. Depending on the nature of the new and acute medical/psychiatric condition, some participants will only require a general medical examination (BPS phase 1), others may only require medical/psychiatric examinations (BPS phase 2), while still others will require both. If the participant has a new and acute medical condition and has already had a BPS assessment within the last 12 months, the vendor can submit for these additional BPS assessment milestones upon updating the participants CSP. All other BPS Phase 1 and Phase 2 assessment milestone rules must be met in order for the vendor to obtain payment for these additional BPS assessment milestones.

b. Wellness/Rehabilitation Plan Milestone

For those participants who are determined to be temporarily unable to work due to untreated or unstable medical/psychiatric conditions, the WeCARE vendor will create a Wellness/Rehabilitation Plan that specifies the medical/psychiatric conditions that require treatment. If the participant does not have a medical provider, the WeCARE vendor assists the participant in obtaining one. As applicable, the WeCARE vendor provides intensive case management and helps the participant comply with treatment.

Upon successful completion of the Wellness/Rehabilitation Plan, the individual's Functional Capacity Outcome is re-evaluated. The participant may be determined to be either fully employable, employable with limitations requiring minimal accommodations, employable with limitations requiring vocational rehabilitation, or unable to work. Once the new functional capacity is determined, the WeCARE vendor may submit for the Wellness/Rehabilitation Plan milestone. The WeCARE vendor has a maximum of 2 periods of 90 days each, for a total of 180 days, from the Wellness/Rehabilitation Plan initiation to complete this milestone. Once completed, the vendor has 90 days to submit the milestone for payment. The Wellness/Rehabilitation Plan milestone is only paid upon completion of a Wellness/Rehabilitation Plan that results in a new functional capacity determination.

In exceptional cases, Customized Assistance Services may authorize an additional extension for a participant's wellness plan. For these cases the WeCARE vendor has a maximum of 270 days from the Wellness/Rehabilitation Plan initiation to complete the milestone. All other Wellness/Rehabilitation Milestone rules must be met in order for the vendor to obtain payment for the extended plan.

Participants with completed wellness plans who are determined to be fully employable or employable are referred back to the Job Center. Participants who are determined to be employable with limitations requiring minimal accommodations or requiring VRS are referred for a Diagnostic Vocational Evaluation (DVE). Participants who are determined to be unable to work are assisted by the WeCARE vendor in applying for Federal disability benefits.

c. Diagnostic Vocational Evaluation (DVE)/Individualized Plan for Employment (IPE) Milestone

The DVE is a hands-on vocational assessment that identifies the participant's vocational strengths and weaknesses. The WeCARE vendor conducts a DVE for participants who are employable with limitations requiring accommodation or requiring VRS. Participants are required to be engaged for 25 hours per week during the DVE. Once the DVE is completed, the WeCARE vendor creates an Individualized Plan for Employment (IPE) with the participant. The IPE which is based on the results of the DVE describes the:

- Specific vocational, educational, employment, treatment, rehabilitation, counseling, accommodations and supports required by the participant to be able to obtain self-sufficiency
- Participant's short and long-term employment goal(s) and specifies measurable and manageable objectives and activities to be undertaken and achieved within defined time frames.
- Participant's functional strengths and limitations
- Responsibilities of the WeCARE vendor, the participant, and other service providers to help the participant attain his/her employment goals.

The IPE is signed by the WeCARE vendor and by the participant. Upon completion of the IPE, the WeCARE vendor may submit for the DVE/IPE Milestone. The WeCARE vendor has up to 7 calendar days from DVE End date to post the IPE completion. Once completed, the vendor has 90 days to submit the milestone for payment.

Once the IPE is complete, the participant will be referred to WeCARE work activities as specified in the IPE.

DVE/IPE Exception

Each case is normally allowed only one DVE/IPE Milestone per lifetime. In exceptional cases, Customized Assistance Services may authorize an additional DVE/IPE for a participant. For these cases, the WeCARE vendor may submit for an additional DVE/IPE milestone. All other DVE/IPE Milestone rules must be met in order for the vendor to obtain payment for the additional DVE/IPE.

D. PaCS TRACS

PaCSTRACS (PaCS Transaction Current Status) is a web-based computer application that provides the current status of payments to HRA Vendors for milestone-based contracts. Via a secured connection, authorized HRA Vendors and HRA staff may quickly track payment status from initial request through approval and payment completion. The system also enables the user to download their data to their own systems, where they may perform further analysis or maintain historical data.

OTHER FACTORS IMPACTING PAYMENT:

- Reports - failure to submit required expenditure reports or other reports as may be required by HRA will result in withholding of payment pending the receipt of the reports.
- Pending Milestones - The PaCS system contains a section reserved for vendors to hold milestones pending their receipt of verification. Once received, the vendor submits the milestone for payment.
- Milestones will be allowed to remain in a pending status for up to the number of days specified in your contract from the date the milestone was achieved. HRA will then remove the ability to bill for that milestone. All cases that have missed their 'window of opportunity' to submit a milestone payment request with supporting documentation will, after each allotted time period, be moved into the milestone Paid column and be highlighted in RED, indicating a missed opportunity for payment.
- Using the attached sampling instrument, HRA will conduct a statistically valid sample of documentation pertaining to clients served to confirm compliance with HRA requirements. Failure to comply may result in a disallowance, and recoupment. (See F. below)

E. Payment Process – Advances

Not-for-profit vendors may receive a two-month advance at the start of the contract, equal to one-sixth of the annual contract award. **Vendors must**

deposit any advance payments in an interest-bearing account at a financial institution which is (a) a member bank of the Federal Reserve System, (b) an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation, or (c) a credit union insured by the National Credit Union Administration.

An advance will be recouped during the course of the contract in accordance with Agency policy, no later than the last year of the contract. In the event of the contract is terminated the vendor will be required to return the two-month cash advance. In addition, upon mutual consent of the Department and vendor, an additional advance may be granted in accordance with Comptroller's Directives.

F. Payment Verification

Contractors will continue to submit supporting documentation to HRA to obtain payment for services and milestones either through the scanning process or delivery to DEPV. The vendor scans the necessary documents and transmits them through to the HRA Management Information Systems (MIS). MIS returns an e-mail acknowledgement of receipt. The vendor then forwards a transmittal from the PaCS system to HRA DEPV with a listing of the documents that were scanned. DEPV reviews the documents on the HRA Viewer. It is still the vendor's responsibility to ensure that these records are maintained on file as they are subject to random audit to confirm the validity of payment requests. Payments will be issued with a basic verification review and will be subject to a more detailed post-audit confirmation of the documentation on file at the vendor location.

G. Fiscal Agent

Where the Agency retains a fiscal agent to make payments to a third party on behalf of the contractor, a fiscal sponsorship agreement outlining project activities, sponsorship policies, restrictions, agreement termination, and related miscellaneous topics will be executed.

Contractors using a payroll processing agent must ensure that said processing agent performs the appropriate payroll processing tasks on its behalf, i.e. withholding and depositing taxes with federal and state tax authorities, providing checks and direct deposit stubs to employees, filing reports with the IRS, and executing payroll deductions as instructed.

H. Budget Modification

Throughout the course of a contract the situation may arise whereby you may need to request a budget modification in order to more effectively meet the needs of the program. Formal budget modifications require the contractor to submit a written request from the Chief Financial Officer or their designee

explaining the reason for the modification and the impact of the modification on the accomplishments of the program. The Agency will review the merits of the request and will respond in writing as to the results of the review. These modifications requests should be submitted to the Program Area head as well as the Finance/Contract unit in the program area for approval. Once the approval is obtained in writing a copy should be forwarded to the Deputy Commissioner of Fiscal Operations and the Director of Accounts Payable.

I. Subcontractors

Some vendors may acquire services or goods through a sub-contractor. This is allowed, however, three written estimates must be solicited and documented for purchase of services (including but not limited to consulting services) and equipment for amounts in excess of \$1,000.00 and for security-related services in excess of \$1500.00. The above-stated amounts apply to payments made or obligations undertaken in the course of a one year period with respect to any one person or entity. In addition, the subcontractor is also subject to NYC VENDEX regulations and a record of the selection process must be maintained detailing the basis of selection or rejection of a contractor and the basis for the contract price.

J. Reconciliation

The Agency will compare funds remitted to the vendor to earnings on a monthly basis. A portion of the final year's last month payment due to each vendor may be withheld pending the completion of a review of compliance with profit margin limitations. The last payment will be adjusted accordingly. Attached in Appendix A are examples of the format HRA will use to monitor vendor's compliance with this requirement.

K. Establishing and Controlling Petty Cash

The contract agency may establish a petty cash fund, for an amount authorized by management, but should not exceed an average of two months' usage. To ensure adequate segregation of duties, the agency should assign someone other than the bookkeeper to be custodian of the petty cash fund. Petty cash should be safeguarded in a locked box which is kept in a locked area (i.e., desk, safe or room). Only the custodian and a limited number of designated individuals should have access to the locked box.

How to Disburse Funds (Issuing a Petty Cash Voucher)

- Issue petty cash vouchers in sequential order.
- All vouchers must be payable to a person (not an organization). [Note: The person receiving the cash must provide receipts for purchases made.]

- All vouchers must be signed by the recipient and the custodian.
- Record the amount disbursed (not to exceed \$1,000) in a petty cash journal. After each disbursement, calculate and record the remaining fund balance.

How to Reimburse the Fund

- The petty cash account should be replenished periodically (i.e., at the end of the month) or when the balance falls below a designated threshold (i.e., a percentage of the balance or a fixed number of days' usage).
- When the petty cash fund needs to be replenished, do the following:
- On an 8 ½ x 11 sheet of paper, attach the petty cash vouchers and the supporting receipts.
- Prepare a check for the amount of receipts only.
- The person responsible for signing checks to replenish the fund should cancel (i.e., mark "PAID") the petty cash vouchers and receipts.
- Set up a petty cash folder, and file the vouchers and supporting receipts in an orderly fashion.

General Guidelines

- At all times, the contents of the petty cash box should equal the approved amount of the petty cash fund. This may be in cash, receipts, or a combination of cash and receipts. Any overages or shortages should be brought to management's attention.
- The contents of the petty cash box should be counted whenever the custodian changes (even temporarily). On a surprise basis, the petty cash box should be counted by an authorized person other than the custodian.
- At the end of each month, someone other than the custodian should perform a reconciliation of the cash balance, vouchers issued and receipts.

L. Equipment Inventory

All equipment and/or furniture purchased with HRA funds is the property of HRA and must be tagged "Property of HRA". An Equipment Register must be maintained and be available for review by the Agency. The Equipment Register must include at a minimum the following information:

- 1) Description;
- 2) Identification Number;
- 3) Quantity;
- 4) Date Acquired;
- 5) Purchased: New, Used or Gift;
- 6) Cost;
- 7) Funding/Revenue Source;
- 8) Location of Item;

- 9) Person Responsible (if applicable);
- 10) Disposition Method/Date;
- 11) Proceeds and
- 12) Verified by.

The contractor must establish an effective system of internal control for inventory. The Equipment Register must be shared with the Auditors and at the termination of the contract the Equipment Register must be sent to HRA to make decisions about the disposal of the Inventory. A Close-out Agreement will be signed by the contractor and HRA.

DEFINITIONS

- Action Screen** – A screen within NYCWAY that outlines a participant's activities, program participation, employment and case status
- BEGIN** – HRA developed programs that provide adult education and English as a second language classes.
- BPS** – Biopsychosocial assessment done by vendors for WeCARE participants
- BTW** – The Back-To-Work employment program.
- CA** – Cash Assistance recipient
- CSP** – Comprehensive Service Plan of WeCARE participants.
- DV** – Domestic Violence
- DVE** – Diagnostic Vocational Evaluation of WeCARE participants
- HASA** – The HIV/AIDS Services Administration
- HRA/DEPV** - HRA's Finance Office, Division of Employment Payment Verification
- IPE** - Individual Plan of Employment for WeCARE participants.
- ITA**- Individual Training Account Training Voucher
- Job Placement - PA Closed** - A PA recipient is earning enough money for his/her case to be closed by HRA.
- Job Placement - PA Never Opened** - A participant was referred and attended, and achieved employment before their PA cases became active, and therefore was "diverted from Cash Assistance."
- LIDS** – Low Income Dads
- NADAP** – The National Association of Drug Abuse Problems
- NCA** - Non-Cash Assistance recipient
- NYCWAY** – A case-management tracking system used by the Human Resources Administration
- Objective Assessment** – "An examination of the capabilities, needs, and vocational potential of a participant; used to develop an Individual Employment Plan (IEP) and employment goal."

PaCS – Payment & Claiming System- A web based payment-processing system implemented by HRA and used by vendors to expedite payments and improve internal controls.

Part-time Placement - The participant must be employed a minimum of 20 hours per week in order for a vendor to claim placement.

POP – The Parks Opportunity Program

SACAP – The Substance Abuse Centralized Assessment Program

SSN - Social Security Number

Subsidized - The employer may or may not be the employer of record. The individual's wages and benefits are reimbursed in part or in full by the government.

Unsubsidized - The employer is the employer of record and the cost of the individual's wages and benefits are paid by the employer without any form of governmental assistance.

WeCARE – The Wellness Comprehensive Assessment Rehabilitation and Employment program.

WISARD – Workforce Information System Automated Report Database