YKWeCareArbor
CBC Final Draft
August 18, 2004
PIN #

APPROVAL AS TO FORM OF A SINGLE CONTRACT

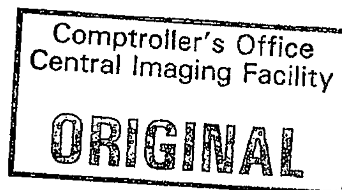
Contractor's Name: FEDERATION EMPLOYMENT AND GUIDANCE SERVICE, INC., d/b/a F.E.G.S. HEALTH AND HUMAN SERVICES SYSTEM, d/b/a F.E.G.S.

Pursuant to the powers vested in me by Section 394, subd. b of the New York City Charter, I hereby approve as to form the annexed contract entered into by the Department of Social Services of the Human Resources Administration on behalf of the City of New York.

DATED: OCT 26 2004

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

BY: [signature]
ACTING CORPORATION COUNSEL

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AGREEMENT BETWEEN THE CITY OF NEW YORK ACTING THROUGH THE DEPARTMENT OF SOCIAL SERVICES OF THE HUMAN RESOURCES ADMINISTRATION AND FEDERATION EMPLOYMENT AND GUIDANCE SERVICE, INC., d/b/a F.E.G.S. HEALTH AND HUMAN SERVICES SYSTEM, d/b/a F.E.G.S.

THIS AGREEMENT dated the 10th day of November, 2004, is by and between the City of New York, acting through the Department of Social Services of the Human Resources Administration "Department", "Agency" or "HRA"), with offices at 180 Water Street, New York, New York 10038, and Federation Employment and Guidance Service, Inc., d/b/a F.E.G.S. Health and Human Services System, d/b/a F.E.G.S. ("FEGS", "Contractor", or "Supplier"), with offices at 315 Hudson Street, New York City, N.Y. 10013 (hereinafter, "the Parties").

**WITNESSETH:**

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 physical and mental health problems; and

WHEREAS, the Department's Wellness, Comprehensive Assessment, Rehabilitation and Employment ("WeCARE") Program, formerly Personal Roads for Individual Development and Employment ("PRIDE II"), 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, disability benefits assistance and advocacy ("the Services"); and

WHEREAS, the Department, as of August 4, 2003, 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:

**PART 1.**

ARTICLE 1. THE WeCARE PROGRAM

1. Overview.

The Contractor, as further detailed in this Agreement, the Department's RFP, annexed and incorporated as Exhibit 1, and the Contractor's Proposal, annexed and incorporated as Exhibit 2, including all addenda thereto, 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, 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.

2. 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.

3. 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.

4. Program Adjustments.

(a) The Department may require the Contractor to make adjustments to the Program from time-to-time based upon operational feedback, subject to Article 27, section 2(b)(i), below.

(b) The Contractor shall obtain the Department's prior written approval before making any adjustments to the Program on its own initiative.

5. Review and Approval by Department.

(a) The determination of each of the following WeCARE Program components is subject to review and approval by the Department before being effected:

(i) WeCARE Services criteria;
(ii) WeCARE policies and procedures;
(iii) the assignment and program status of Participants;
(iv) the criteria for discharging Participants from the Program; and
(v) the formatting and required elements of all WeCARE documents, including, without limitation, the Biopsychosocial Assessment, the Wellness Plan, the Comprehensive Services Plan ("CSP"), the Diagnostic Vocational Evaluation ("DVE"), the Individual Plan for Employment ("IPE"), and all consent forms.

(b) The Department hereby reserves the right to review and approve any Biopsychosocial Assessment, determination of functional capacity, Wellness Plan, CSP, DVE, or IPE prepared by the Contractor or any subcontractor.

6. Monitoring, Assisting and Reporting.

The Contractor shall:

(a) monitor the Participant's levels of attendance and participation in the activities required by the Comprehensive Service Plan ("CSP") herein;
(b) assist the Participant in complying with all attendance requirements; and
(c) report the Participant's attendance to the Department, as the Department requires.

7. Participant Choice.

(a) The Contractor, when referring WeCARE Participants to third-party providers for medical, skills training, education, job placement, job retention or disability benefits services, shall identify and provide to the Participant a reasonable number of providers offering such service(s), and allow the Participant to choose a provider.

(b) Participants must be afforded freedom of choice in selecting third-party service providers. The Contractor may not "steer" Participants to providers of its choosing.

8. Staff Development.

The Contractor shall insure that all staff providing WeCARE Program Services herein receive appropriate training on an ongoing basis, including any training that

the Department provides or recommends, subject to notice pursuant to Article 27, section 2(a), below.

9. Required Forms.

The Contractor shall fulfill all administrative, fiscal and reporting requirements set forth in the applicable provisions of this Agreement using the forms, formats and methods prescribed by the Department, including, without limitation, milestone billing, subject to notice pursuant to Article 27, section 2(a), below.

10. Service Coordination.

The Contractor, in performing the WeCARE Services herein, shall cooperate with all HRA programs concurrently providing services to Participants.

11. Legal and Regulatory Compliance.

The Contractor shall strictly conform, and shall insure that any subcontractors conform, to the following legal and regulatory requirements, as case-appropriate, in the performance of the WeCARE Services herein:

(a) Reasonable Accommodations. The Contractor shall provide such reasonable accommodations on behalf of any WeCARE Participant with a disability as required by the applicable provisions of the Americans with Disabilities Act ("ADA").

(b) Disability Applications. The Contractor, in preparing and processing applications for federal disability benefits, shall comply with all applicable federal statutes, regulations, rules and policy directives.

(c) Notice, Authorization and Reporting Requirements. The Contractor, in preparing and transmitting all reports required herein, shall comply with all notice, client authorization and reporting requirements imposed by applicable federal, state and local laws and regulations, including, without limitation:

(i) adherence to all applicable federal, state and local reporting, notice and authorization requirements, including Communicable Disease Reporting, Human Immunosuppressive Virus ("HIV") Reporting and Partner Notification; and
(ii) compliance with federal, state and local provisions regarding the reporting of suspected domestic violence and child abuse or maltreatment, including making reports in appropriate cases to the New York State Central Registry ("SCR").

(d) Client Authorizations. The Contractor shall be solely responsible, subject to the Department's review and approval, for obtaining, in the required form, all client

authorizations required by the laws, regulations, policies and procedures applicable to this Agreement, including, without limitation, the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Public Health Law Article 27-F, prior to disclosing any Participant information to another person or entity, including the Department.

(e) Client Confidentiality.

(i) The Contractor, as to all Participant information herein, shall be bound by the same client confidentiality requirements imposed upon the Department by the applicable federal and New York State laws, and, to the extent legally mandated thereby, shall hold confidential all Participant information prepared, assembled or used pursuant to this Agreement, including, without limitation, program reports, information and data, and information regarding Participants' public assistance, medical, mental health, alcoholism, substance abuse, and HIV/AIDS status.

(ii) This subsection (e) shall remain in full force and effect following the termination of this Agreement or the cessation of the services hereunder.

(f) Translation Services. The Contractor shall provide all Participants classified by the Department as having Limited English Speaking Ability ("LESA") with such language translation services as are mandated by the applicable federal, state and local statutes and regulations.

(g) Agreements, Court Orders and Decrees. The Contractor, in the performance of this Agreement, shall comply with all applicable agreements, consent decrees and court orders to which the Department is a party, including, without limitation, collecting and reporting any data that the Department may require.

(h) Federal, State and Local Laws. The Contractor, in the performance of this Agreement, shall conform to the applicable provisions of each of the following statutes, including all subsequent amendments and re-authorizations, and regulations promulgated thereunder:

(i) the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA");
(ii) the New York State Welfare Reform Act of 1997;
(iii) the Social Services Law of the State of New York ("SSL");
(iv) the Federal Rehabilitation Act;
(v) the Americans with Disabilities Act ("ADA");
(vi) the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA");
(vii) Article 27-F and Article 28 of the Public Health Law;
(viii) all other applicable federal, state and local laws, rules and regulations; and
(ix) all applicable HRA policies and procedures, subject to Article 27, section 2(c), below.

12. HRA Operational Procedures.

(a) All WeCARE Services herein must be performed by the Contractor in strict compliance with the Department's Operational Procedures, annexed hereto as Exhibit 6 and incorporated by this reference in the Agreement.

(b) The Department hereby reserves the right to revise and update its Operational Procedures from time-to-time, subject to Article 27, section 2(c), below.

13. Transfers.

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

(i) the Biopsychosocial Assessment;
(ii) the Comprehensive Services Plan ("CSP");
(iii) the Diagnostic Vocational Evaluation ("DVE");
(iv) the Individual Plan for Employment ("IPE").

(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 (i) through (iv).

ARTICLE 2. WeCARE PARTICIPANTS

The Department will refer to the Contractor for WeCARE Services eligible individuals who report that they have, or that the Department believes may have, a medical and/or a mental health problem that may affect their functional capacity ("the Participants"). The Contractor shall provide WeCARE Services to all Participants referred by the Department.

ARTICLE 3. CONTROLLING DEFINITIONS

In the event the Parties disagree about the definition of any term used to describe the WeCARE Services herein, the definition of that term set forth in the annexed Appendix A, "Definitions", which is hereby made a part of this Agreement by this reference, will control.

ARTICLE 4. CONTROLLING ORDER

The Contractor shall perform the program of services herein in accordance with the provisions of this Agreement, the Department's RFP and the Contractor's Proposal, including all addenda thereto. In the event of a conflict between any of the provisions of

these three documents, the controlling order of precedence will be as follows: (1) the Agreement, (2) the Department's RFP, and (3) the Contractor's Proposal.

ARTICLE 5. TERM OF PERFORMANCE

1. The term of performance of this Agreement is a period of three (3) years from the date of registration and award, unless sooner terminated pursuant to the applicable provisions set forth herein.

2. The Department has the right and the option to renew this Agreement for one (1) additional three (3) year term, upon the same terms and conditions as set forth in this Agreement, subject to all required approvals, the applicable PPB Rules and the appropriation of funds for the option period.

3. As part of the option to renew, the Department reserves 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 such increase in unit prices will be based solely upon enhanced or additional services provided by the Contractor.

ARTICLE 6. SCOPE OF SERVICES

As further detailed in the Department's RFP, annexed as Exhibit 1 and incorporated by this reference in this Agreement, and the Contractor's Proposal, annexed as Exhibit 2 and incorporated by this reference in the Agreement, including all addenda thereto, the Contractor shall provide the following Program of WeCARE Services to Participants, upon referral by the Department:

A. BIOPSYCHOSOCIAL ASSESSMENT AND COMPREHENSIVE SERVICE PLAN.

PART A.I: General Requirements.

1. Biopsychosocial Assessment. The Contractor shall administer a comprehensive Biopsychosocial Assessment ("Biopsychosocial Assessment") to all Participants, *except* those meeting the criteria in Article 1, section 13, subsection (a)(i) above, which must assess all of the family, community, social, educational, vocational, health and mental health factors affecting the Participant's functional capacity.

2. Comprehensive Service Plan. The Contractor, based upon the findings of the Biopsychosocial Assessment, shall prepare a comprehensive service plan (Comprehensive Service Plan or "CSP") for each Participant.

3. Deadline for Completion. All required components of the Biopsychosocial Assessment and the Comprehensive Service Plan must be completed within twelve (12) working days after the Participant's initial assessment appointment, *except that* the time reasonably required to complete one or

more of the outreach activities required in Part II, subsection 8 of this Section 6.A. will not count against the 12-day deadline for CSP completion.

4. QHP Approval. Those elements of the Report of Biopsychosocial Assessment listed in subsection 12, paragraphs (a), (b), (c), (d), (e) and (f) below must be reviewed, approved and signed by the duly-credentialed qualified health care professional ("QHP") who completed the Psychosocial Assessment herein.

5. Physician Approval. All elements of the completed Report of Biopsychosocial Assessment and the Comprehensive Services Plan must be reviewed, approved and signed by the examining physician or physicians who completed the Medical Evaluation.

6. Participant Review. The Contractor, and any subcontractors, shall discuss the findings and recommendations of the Report of Biopsychosocial Assessment and the Comprehensive Service Plan with the Participant.

PART A.II: Biopsychosocial Assessment Requirements.

7. Components. The Biopsychosocial Assessment must be made up of two components: a psychosocial assessment ("Psychosocial Assessment") and a medical evaluation ("Medical Evaluation").

(a) Psychosocial Assessment. The Contractor, through a duly-credentialed qualified healthcare professional ("QHP"), shall complete, as the first component of the Biopsychosocial Assessment, a Psychosocial Assessment, which must elicit from the Participant, without limitation, all of the required information detailed in the annexed Exhibit 5., Required Psychosocial Information, which is incorporated by this reference in the Agreement.

(b) Medical Evaluation. The Contractor, through a licensed and board-certified physician, shall complete, as the second component of the Biopsychosocial Assessment, a Medical Evaluation ("Medical Evaluation"), which must identify and assess the Participant's level of function relative to employment and self-sufficiency.

(c) Phase I. All WeCARE Participants must receive a Phase I Medical Evaluation ("Phase I Medical Evaluation"), which must include the following required clinical elements:

(i) ROS: a review of systems ("Review of Systems" or "ROS") screening, administered by a duly-credentialed qualified health care professional ("QHP"), in conformity with all applicable professional standards and practice guidelines, to elicit any past or

present symptoms of physical or mental disease, including any past or present symptoms or diagnoses of cardiovascular, musculoskeletal, respiratory, gastrointestinal, genitourinary, hematologic, infectious, oncologic, endocrine, dermatologic, psychiatric, or neurologic disease; and

(ii) SME: a standard medical examination ("Standard Medical Examination" or "SME"), performed by a licensed physician with general medical training who is, at a minimum, board certified in family practice or internal medicine, in conformity with all applicable professional standards and practice guidelines, to identify all physical or mental health conditions affecting the Participant. The SME performed by the Contractor must include the following clinical components, without limitation:

- a review of the ROS;
- obtaining such additional relevant history from the Participant and other sources as may be medically indicated;
- review and consideration of all relevant medical documentation presented by or on behalf of the Participant;
- a complete physical examination;
- 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, ALT, 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, EKG, Body Mass Index and Urinalysis;
- based upon clinical criteria reviewed and approved the Department, X-rays, including chest X-rays, as indicated; and
- the results of other relevant laboratory or diagnostic tests, as
- clinically appropriate.

(d) Phase II. The Contractor shall complete a Phase II specialty Medical Evaluation ("Phase II Specialty Medical Evaluation"), through a licensed physician who is board-certified in the appropriate specialty, in conformity with appropriate professional standards and practice guidelines, *if* the Phase I Medical Evaluation:

(i) elicits signs or symptoms of a medical disorder that cannot be diagnosed to a reasonable degree of medical certainty by a medical generalist;

(ii) elicits signs or symptoms of a medical disorder that can be diagnosed to a reasonable degree of medical certainty by a medical generalist, but no clear treatment recommendation can be made;

(iii) elicits significant signs or symptoms of a mental health disorder;
(iv) a functional capacity determination cannot be made without a Phase II Specialty Medical Evaluation; *or*
(v) a Phase II Specialty Medical Evaluation is otherwise deemed necessary, based upon clinical criteria reviewed and approved by the Department.

(e) Required Phase II Elements. The Phase II Specialty Medical Evaluation must include, without limitation, the following required clinical elements:

(i) review of all the Phase I medical documentation;
(ii) review and consideration of any available psychosocial information;
(iii) review and consideration of all relevant medical documentation presented by or on behalf of the Participant;
(iv) additional relevant medical history elicited from the Participant and other sources, as applicable;
(v) the results of any other available medical examination conducted in conformity with the appropriate professional standards and practice guidelines; and
(vi) the results of all related laboratory and/or diagnostic tests.

8. Outreach. If a Participant, for any reason, fails to appear for any appointment or fails to participate in any component of the Biopsychosocial Assessment, the Contractor shall make, and shall document, reasonable and progressively escalating efforts to reach out to the Participant, in order to engage or to re-engage the Participant in the WeCARE Program. Such outreach efforts must include as many of the following activities, on a progressively escalating basis, as are case-appropriate and reasonably required to engage or re-engage the Participant in the Program: telephone calls, letters, collateral contacts, and at least one field visit to the Participant's residence.

9. Consolidation. The Contractor shall, insofar as practicable, conduct all components of the Biopsychosocial Assessment at the same Service Facility and Site, and consolidate all components of the Assessment into as few Site visits as are clinically necessary.

10. Participant Support. Each Participant must be allowed to have a case manager, a friend, or a family member of the Participant's choice present throughout all Biopsychosocial Assessment appointments herein.

11. Collateral Medical Documentation. The Contractor shall accept and shall give due consideration in the Biopsychosocial Assessment to all collateral medical documentation presented by or on behalf of the Participant.

12. Pediatric Referrals. The Contractor shall encourage all Participants determined through the Biopsychosocial Assessment to be parents of minor children to enroll in the Early and Periodic Screening, Diagnostic and Treatment ("EPSDT") Program, and thereafter assist such Participants in establishing an on-going relationship with a pediatrician and adhering to a program of well-child pediatric visits.

13. Report of Biopsychosocial Assessment. The Contractor shall prepare a comprehensive written report of Biopsychosocial Assessment ("Report of Biopsychosocial Assessment"), in a standardized format approved by the Department, integrating the findings of the Medical Evaluation and the findings of the Psychosocial Assessment, which must contain, without limitation, the following required elements:

(a) history of any health and/or mental health conditions, including treatment history;
(b) current health and/or mental health diagnoses;
(c) treatment recommendations;
(d) service recommendations;
(e) assessment of the Participant's functional strengths and deficits;
(f) as to any Participant identified as having a substance abuse disorder, a documented referral for assessment by a duly-credentialied alcoholism and substance abuse counselor ("CASAC") designated by the Department;
(g) any accommodations the Participant requires in order to fulfill work requirements;
(h) assessment and determination of functional capacity, in those categories established and defined by the Department;
(i) clinical justification for the assessment and determination of functional capacity;
(j) 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;
(k) assessment of the Participant's level of awareness relative to his/her functional status and receptiveness to service referrals; and
(l) a list of occupational tasks the Participant is capable of performing.

PART A.III: Comprehensive Service Plan ("CSP") Requirements.

14. CSP. The Contractor, after completing the Biopsychosocial Assessment in Part II, above, shall prepare a written Comprehensive Service Plan ("CSP") based upon the results of the Biopsychosocial Assessment, and shall forthwith incorporate all relevant portions of the CSP into the Participant's HRA Employment Plan, making all appropriate follow-up assignments or appointments.

(a) Required CSP Elements. The CSP must set forth measurable case planning goals for the Participant, and must contain, without limitation, the following required elements:

(i) identify the Participant's medical, mental health, social, familial, community and vocational barriers to employment;
(ii) define the steps necessary to enable the Participant to achieve his or her highest possible levels of function and self-sufficiency;
(iii) identify the specific activities the Participant must complete in order to attain an optimal level of function, and provide time-frames for the Participant's completion of each specific activity;
(iv) identify any WeCARE-related service needs of the Participant's family and/or significant others; and
(v) in addition to the above paragraphs (a) through d), include, if clinically indicated and case-appropriate, one or more of the following:

- a Wellness/Rehabilitation Plan ("WRP") (see section C below);
- a Diagnostic Vocational Evaluation ("DVE") (see section E below);
- an Individualized Plan for Employment ("IEP") (see section F below); and
- any other such CSP components as are case-appropriate.

(b) Contractor's CSP Responsibilities. The Contractor shall perform the following required tasks, without limitation, in order to effect the Participant's CSP:

(i) discuss the CSP with the Participant and revise the CSP to reflect the Participant's feedback, as clinically appropriate;
(ii) monitor and assist the Participant in complying with and in remaining compliant with all services and activities included in the CSP, including any WRP or IPE, and facilitate the Participant's achievement of the goals of all such services and activities;
(iii) report the Participant's level of compliance with CSP services, activities and goals to the Department;
(iv) provide case management interventions as needed to restore compliance in the event the Participant becomes non-compliant with any of the services or activities prescribed in the CSP; and
(v) maintain ongoing and appropriate contact with all collateral service provider(s), modifying the CSP as required by the applicable findings and recommendations of any such collateral service provider, and actively assisting the Participant in

achieving the concurrent goals of such collateral service providers.

(c) CSP Updates.

(i) The Contractor shall revise and update the Participant's CSP as needed to accurately reflect the Participant's feedback and case planning progress, but no less frequently than once each quarter.

(ii) The Contractor shall update the CSP and shall forthwith incorporate the update into the Participant's HRA Employment Plan, making all appropriate follow-up assignments to or appointments with the Department, if any of the following occur:

- any aspect of the Participant's biopsychosocial status changes;
- the Participant's WRP changes;
- the Participant completes the WRP;
- the Participant completes the DVE/IPE process;
- the Participant's IPE changes; or
- the Participant's employment status changes.

C. WELLNESS REHABILITATION PLAN ("WRP").

1. In the event the Medical Evaluation incorporated in the Biopsychosocial Assessment includes a finding of one or more unstable or untreated medical or mental health conditions affecting the Participant's functional capacity, the Contractor shall complete a Wellness Rehabilitation Plan ("WRP") addressing the findings of the Medical Evaluation and Report as a component of the Participant's CSP.

2. Required WRP Elements.

The WRP prepared for the Participant must contain the following required elements, without limitation:

(a) a detailed diagnosis of each of the Participant's past or present medical and/or mental health conditions;
(b) any unstable or untreated medical and/or mental health conditions requiring treatment; and
(c) the estimated time period, not to exceed ninety (90) days, required to stabilize or to resolve the medical and/or mental health condition(s) identified, which 90-day period may be extended, if authorized by the Department, as provided in subsection 3, below.

3. Term of WRP.

(a) The term of the WRP must not exceed ninety (90) days, *except* that the WRP may be renewed for one or more subsequent 90-day terms, upon the submission by the Contractor to the Department of a renewal request, in the form prescribed by the Department, articulating sound clinical justification for the renewal.

(b) The Department hereby reserves the right to require the Contractor to submit any such request for renewal to the Department for review and approval.

(c) If the Contractor is required to submit such request to the Department for review and approval, the Department will notify the Contractor in writing of its determination.

4. Contractor's WRP Responsibilities.

The Contractor shall perform the following required tasks, without limitation, in order to effect the Participant's WRP:

(a) discuss the WRP with the Participant and revise it to reflect the Participant's feedback, as clinically appropriate;
(b) refer the Participant for appropriate services;
(c) link the Participant to appropriate treatment;
(d) monitor the Participant's compliance with treatment and achievement of the treatment goals, and report thereon to the Department;
(e) provide case management interventions as needed to restore compliance, in the event the Participant becomes non-compliant with treatment;
(f) maintain ongoing, appropriate contacts with all treatment provider(s) and modify the WRP as needed, based upon the treatment provider's findings and recommendations;
(g) cooperate with other HRA wellness initiatives; and
(h) when necessary, assist Participants in obtaining child care services, by: 1) explaining the applicable HRA procedures; 2) providing the required forms and helping Participants complete them; 3) helping Participants identify providers and reserve slots; and 4) utilizing the HRA ACCIS System to authorize provider payments.

5. WRP Review and Update.

After completing the WRP, the Contractor, through the physician who developed the WRP, shall periodically review the Participant's medical status and update the functional capacity determination, as necessary to reflect any subsequent status changes.

6. WRP Follow-up.

The Contractor, after the medical and/or mental health condition necessitating the WRP has been resolved and/or stabilized, shall do as many of the following as are case-appropriate in order to assist the Participant in progressing toward maximal levels of function and self-sufficiency:

(a) refer the Participant for HRA services;
(b) refer the Participant for vocational rehabilitation services;
(c) assist the Participant in applying for federal disability benefits.

D. DIAGNOSTIC VOCATIONAL EVALUATION ("DVE").

1. The Contractor shall prepare a Diagnostic Vocational Evaluation ("DVE") for each Participant identified through the Biopsychosocial Assessment as requiring significant vocational rehabilitation and support in order to become employable, with or without accommodation, which must identify each of the Participant's vocational strengths and weaknesses.

2. Exemption.

The Contractor is not required to prepare a DVE for any Participant identified as potentially eligible for federal disability benefits, or any functionally-limited Participant requiring only minimal accommodation in order to be employable.

3. DVE Completion Deadline.

The DVE must be completed by the Contractor not more than forty (40) working days after the CSP has identified the Participant's need for vocational rehabilitation services.

4. Required DVE Components.

(a) The DVE prepared by the Contractor must include each of the following required evaluation components, *unless* the Contractor has determined and documented, based upon adequate testing or observation, that one or more such components are not clinically appropriate:

(i) work history;
(ii) educational history;
(iii) results of standardized tests;
(iv) results of academic achievement tests, including math and reading;
(v) writing samples;
(vi) results of multiple interest inventories;

(vii) results of aptitude testing, including oral directions, spatial, clerical, mechanical, and service;
(viii) results of other appropriate, clinically recognized instruments administered in the DVE process;
(ix) behavioral observations of the Participant;
(x) results of Participant interviews;
(xi) results of career exploration and counseling sessions with the Participant;
(xii) assessment of Participant's reasoning/learning, including logic and learning style;
(xiii) work samples in at least three occupational clusters correlative with Participant's interests, aptitudes and work history;
(xiv) simulated work; and
(xv) any history of vocational counseling, group or individual.

(b) If indicated by the individual case circumstances, the Contractor shall include the following *supplemental* evaluation components in the DVE:

(i) higher-level work samples and aptitude testing;
(ii) situational assessments;
(iii) personality testing;
(iv) employment exploration;
(v) transferable skills analysis; and
(vi) supplemental screening.

5. Contractor's DVE Responsibilities.

The Contractor, in order to effect the Participant's DVE, shall perform the following required tasks, without limitation:

(a) prepare a report summarizing and interpreting all components of the findings of the DVE and identifying the Participant's employment-related assets and limitations;
(b) discuss the DVE with the Participant, and revise the DVE to reflect the Participant's feedback, as clinically appropriate;
(c) engage the Participant, during the DVE period, in HRA-approved activities for the time period legally required, as determined by the Department, *except* where reduced hours are clinically justified;
(d) monitor and assist the Participant in complying with all required HRA-approved activities, on an ongoing basis;
(e) monitor and assist the Participant on an on-going basis in complying with the DVE process, and report on Participant's compliance to the Department;
(f) provide case management interventions as needed to restore compliance, in the event the Participant becomes non-compliant with the DVE process; and

(i) when necessary, assist Participants in obtaining child care services, by: 1) explaining the applicable HRA procedures; 2) providing the required forms and helping Participants complete them; 3) helping Participants identify providers and reserve slots; and 4) utilizing the HRA ACCIS System to authorize provider payments.

E. INDIVIDUALIZED PLAN FOR EMPLOYMENT ("IPE").

1. The Contractor, based upon the findings of the DVE, shall prepare a written Individualized Plan for Employment ("IPE") for each Participant identified through the Biopsychosocial Assessment as in need of significant vocational rehabilitation and support in order to become employable, with or without accommodation, which must be made a part of the Participant's CSP and must be used to track the Participant's progress under the CSP.

2. <u>IPE Completion Deadline</u>.

The IPE must be completed not more than forty (40) working days after the CSP has identified the Participant's need for vocational rehabilitation services.

3. <u>Required IPE Elements</u>.

Each IPE must be signed by the Participant and the Contractor and must contain the following required elements, without limitation:

(a) the Participant's employment goals;
(b) measurable objectives within each employment goal, and the designated time-frame for the achievement of each such objective;
(c) the services to be provided by all service providers in order to achieve the employment goals of the IPE;
(d) a list of service providers required to provide the services identified in the IPE; and
(e) designation of the respective responsibilities of the Contractor, the Participant, the service providers, and any other partners in the IPE.

4. <u>Contractor's IPE Responsibilities</u>.

The Contractor shall perform the following required tasks, without limitation, in order to effect the Participant's IPE:

(a) monitor and assist the Participant in complying with the IPE process on an on-going basis and report to the Department on the Participant's compliance;
(b) provide case management interventions to restore compliance in the event the Participant becomes non-compliant with the IPE process;

(c) discuss the IPE with the Participant and revise the IPE to reflect the Participant's feedback, as clinically appropriate;
(d) link the Participant to the services identified in the IPE;
(e) monitor and assist the Participant in complying and in remaining compliant with IPE services;
(f) assist the Participant in achieving the service goals of the IPE;
(g) maintain ongoing case-appropriate contacts with all collateral service provider(s) and modify the IPE based on the findings and recommendations of such service providers, as clinically appropriate; and
(j) when necessary, assist Participants in obtaining child care services, by: 1) explaining the applicable HRA procedures; 2) providing the required forms and helping Participants complete them; 3) helping Participants identify providers and reserve slots; and 4) utilizing the HRA ACCIS System to authorize provider payments.

5. IPE Report.

The Contractor shall prepare a report summarizing the findings of the DVE and the recommendations of the IPE within five (5) days after completing the DVE.

F. IPE VOCATIONAL REHABILITATION, EMPLOYMENT PREPARATION AND EDUCATION AND TRAINING.

1. Work Requirement.

(a) The Contractor, upon completing the DVE/IPE process, shall, within the time frame established by the Department, engage those Participants receiving vocational rehabilitation and employment preparation services in HRA-approved work, training and educational activities ("the Work Requirement").

(b) The Work Requirement herein must conform to the New York City Temporary Assistance/Food Stamp Employment Plan for Welfare to Work, as amended.

(c) When clinically feasible in light of the Participant's physical and/or psychological limitations, the Work Requirement schedule must be at least twenty-five (25) hours per week, or as otherwise mandated by law.

(d) When justified by the Participant's medical condition, disability and/or functional limitations, the Department reserves the right to *pre*-approve an exception to the Work Requirement herein.

(e) The Contractor shall develop and maintain a sufficient number of WEP (or any successor program) placements to accommodate those Participants receiving vocational rehabilitation and employment preparation services who require WEP (or any successor program) assignment.

(f) All WEP (or any successor program) assignments herein must be:

(i) reasonably consistent with the Participant's interests and abilities, to the extent that such interests and abilities are made known to or are reasonably discernable by the Contractor; and

(ii) provide any accommodation reasonably required by the Participant, to the extent that the need for such accommodation is made known to or is reasonably discernable by the Contractor.

(iii) The Department hereby reserves the right to determine the WEP (or any successor program) placement of any Participant receiving vocational rehabilitation and employment preparation services herein.

2. Education and Skills Training.

(a) Education. When the Contractor, in its sound discretion, determines, based upon the Participant's IPE, that formal instruction in basic educational competencies ("Education") will contribute to the Participant's functional capacity, the Contractor shall identify and coordinate the provision of such Education, including, without limitation, adult basic education ("ABE"), English as a Second Language ("ESL") and General Equivalency Diploma ("GED") programs.

(b) Education Providers. Education herein may be provided by the Contractor, or may be provided by one or more subcontractors, subject to approval by the Department.

(c) Skills Training. In addition to Education, the Contractor, shall, based upon the Participant's IPE, identify and coordinate the provision of appropriate skills training ("Skills Training"), including, without limitation, classroom, on-the-job ("OJT") and/or work experience training.

(d) All classroom-based Skills Training herein must be in occupational areas that can readily absorb new hires.

(e) All OJT must be linked to identified job opportunities and commitments to hire Participants upon successful completion of training.

(f) To facilitate employment, the Contractor shall develop strong working relationships with potential employers, including for-profit, not-for-profit and government employers.

(g) Skills Training Providers. All Skills Training herein must be provided by a program listed in the HRA-approved List of Educational and Training Programs, which is hereby incorporated by this reference in the Agreement, *except* that an employer who has agreed to hire the Participant upon completion, subject to approval by the Department, may provide Skills Training.

(e) All Skills Training must be funded outside the Agreement budget, although no prohibition is thereby implied on the provision of Skills Training through the expenditure of reinvestment funds herein.

3. Contractor's IPE Skills Training and Education Responsibilities.

The Contractor shall perform the following required tasks, without limitation, to effect the Skills Training and Education requirements of the Participant's IPE:

(a) link the Participant to the Skills Training and Education services identified in the IPE;
(b) monitor and assist the Participant in complying with Skills Training and Education on an ongoing basis;
(c) assist the Participant in achieving the goals of Skills Training and Education;
(d) monitor the Participant's attendance and compliance with mandated activities and assist Participant in remaining compliant with such activities;
(e) report the Participant's attendance and compliance with mandated activities to the Department on an ongoing basis;
(f) provide case management interventions as needed to restore compliance, in the event the Participant becomes non-compliant with Program activities;
(g) maintain ongoing, appropriate casework contacts with all collateral training and educational service provider(s), and modify the IPE based on the findings and recommendations of such providers, if clinically indicated; and
(k) when necessary, assist Participants in obtaining child care services, by: 1) explaining the applicable HRA procedures; 2) providing the required forms and helping Participants complete them; 3) helping Participants to identify providers and reserve slots; and 4) utilizing the HRA ACCIS System to authorize provider payments.

G. CSP CASE MANAGEMENT SERVICES.

1. The Contractor shall provide the Participant with such integrated, coordinated and followed-up case management services ("Case Management Services") as are required to insure that:

(a) all components of the Participant's CSP are fully implemented;
(b) all identified barriers to employment and self-sufficiency are adequately addressed;
(c) all necessary updates are completed; and
(d) the Participant consistently progresses toward maximal levels of function and self-sufficiency.

2. Eligibility Criteria and Coordination Procedures.

The Department, in its sole discretion, will establish the eligibility criteria for the Case Management Services herein, and will establish coordination procedures for single-point-of-service consolidation of services delivered to those Participants determined through the Department to be multiply-eligible therefor.

3. Mandatory Case Management.

Case Management Services must be provided to each Participant whose progress toward maximal levels of function and self-sufficiency is jeopardized by non-compliance or under-compliance with WeCARE Services.

4. Case Management Components.

(a) Client Contact and Case Management. The Contractor shall establish and maintain ongoing client contact with Participants, the frequency of which contact will be determined by the Department, and shall provide Participants with individualized case management services (Case Management Services").

(b) Outreach. As a part of Case Management Services, the Contractor shall make reasonable outreach efforts, on a progressively escalating basis, to engage or to re-engage Participants in the service program, including, without limitation, the following, as case-appropriate:

(i) face-to-face meetings with the Participant at the Participant's home, at the office of a treatment provider, at the Participant's workplace, at a training site, at WEP (or any successor program) sites, and at other appropriate locations; and

(ii) such other contacts as are required to engage or re-engage the Participant in the service program, including, without limitation, telephone calls and collateral contacts with the Participant's family members and/or significant others.

(c) Facilitation. The Contractor shall insure that the Participant attends all scheduled appointments, providing all reasonable accommodations necessitated by the Participant's functional limitations, including providing an escort, as case-appropriate.

(d) Monitoring. The Contractor shall monitor and evaluate the Participant's progress toward maximal levels of function and self-sufficiency, on an ongoing basis.

(e) CSP Compliance. The Contractor shall facilitate the Participant's progress toward maximal levels of function and self-sufficiency, as to all aspects of the CSP, by:

(i) engaging the Participant in completing the service plan;
(ii) facilitating Participant's compliance with all applicable requirements of the Department;
(iii) facilitating the establishment and maintenance of productive relationships between the Participant and collateral service providers, including treatment providers;
(iv) facilitating Participant's access to the services in the CSP;
(v) advocating on the Participant's behalf with collateral service providers, as needed;
(vi) attending interdisciplinary team meetings with collateral service providers;
(vii) providing service linkages to all appropriate supportive services, through referrals to community-based providers;
(viii) acting as staff liaison to collateral service providers and the Department and coordinating their joint provision of services;
(ix) providing such support, including group support, as will enable the Participant to remain engaged in treatment, training, work and other services, while progressing toward maximal levels of function and self-sufficiency;
(x) facilitating Participant's involvement in self-help groups, as case-appropriate and as clinically indicated;
(xi) providing outreach and intervention, in order to re-engage the Participant in services, treatment, training and work in the event of lapse;
(xii) helping the Participant to better cope with essential daily tasks;
(xiii) assisting the Participant in preparing all necessary applications for services;

(xiv) providing the Participant with individual counseling services, as appropriate;

(xv) providing the Participant with financial counseling services, as case-appropriate;

(xvi) monitoring the Participant's compliance with medication, as case-appropriate;

(xvii) assisting family members and/or significant others, as case-appropriate, in addressing the issues affecting the Participant's ability to achieve maximal degrees of function and self-sufficiency; and

(xviii) providing such other Case Management Services, including employment services, as are required for the Participant to attain maximal degrees of function and self-sufficiency.

(f) Crisis Intervention. The Contractor shall provide crisis intervention services to the Participant, as case-appropriate, including, without limitation, the following:

(i) closely monitoring the Participant, in order to identify any early warning signs of crisis and/or relapse, and conducting timely crisis/relapse interventions, in cooperation with collateral service providers; and

(ii) maintaining ongoing, 24/7 availability in order to intervene in crises, and assist the Participant in obtaining emergency services, when necessary.

(g) CSP Review. The Contractor shall review and revise the Participant's CSP no less frequently than once every ninety (90) days, or as may be required by changed circumstances or relevant input from collateral sources.

H. EMPLOYMENT AND RETENTION SERVICES.

1. The Contractor shall provide employment and retention services ("Employment and Retention Services") to each Participant requiring significant vocational rehabilitation and case planning support in order to become employable, with or without accommodation.

2. Employment Services.

The Contractor shall provide such Participants with employment services ("Employment Services"), including, as case-appropriate, the following, without limitation:

(a) employment preparation;
(b) resume development;

(c) interviewing skills;
(d) developing reasonable accommodation plans;
(e) job search activities;
(f) job clubs;
(g) job development;
(h) job placement;
(i) job coaching;
(j) job shadowing;
(k) internships;
(l) skills training;
(m) life skills training;
(n) coordination with non-HRA-reimbursed job placement services;
(o) individual and group vocational counseling;
(p) orientation to the legal rights of people with disabilities;
(q) assistance in obtaining appropriate rehabilitative devices or technology;
(r) monitoring the Participant's compliance with treatment;
(s) insuring that the Participant remains treatment-compliant; and
(t) intervening to restore compliance in the event Participant becomes non-compliant with treatment.

3. <u>Retention Services</u>.

The Contractor shall provide retention services ("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, including, without limitation, the following, as case-appropriate:

(a) assist the Participant and the employer in implementing any reasonable accommodation plan in place;
(b) help the Participant obtain benefits in support of employment, including, without limitation, Earned Income Tax Credit, Food Stamps, Childcare and transitional Medicaid;
(c) refer the Participant to employment-related support groups;
(d) meet with the Participant off-site to identify issues that may negatively impact on retention, and assist the Participant in fairly and reasonably resolving them;
(e) meet with the Participant's employer on-site to identify any issues that negatively impact on retention, and assist the employer in fairly and reasonably resolving them;
(f) assist the Participant in identifying and obtaining the skills training and education necessary to enhance the Participant's future functional capacity;
(g) assist the Participant in conducting appropriate job search activities; and
(h) provide information about opportunities to upgrade employment.

4. Qualifying employment, for purposes of the Employment and Retention Services herein, may be either unsubsidized or subsidized, as those terms are defined in the annexed Appendix A, "Definitions".

I. FEDERAL DISABILITY BENEFITS ASSISTANCE.

1. Application.

(a) Deadlines. As to any Participant determined through the Biopsychosocial Assessment to be potentially eligible for federal disability benefits, the Contractor shall complete any *application* for benefits within twenty (20) business days, and any *pre*-application for benefits within five (5) business days, after the determination of potential eligibility is made.

(b) Updates. The Contractor shall thereafter update the Participant's benefits application within five (5) business days after obtaining the additional information necessitating the update.

(c) Authorized Representatives. The Contractor shall advise the Participant that s/he has the option of designating an authorized representative ("Authorized Representative") in all appeals to the Social Security Administration, and shall provide the Participant with a printed list of Authorized Representatives supplied by the Department, in order to facilitate the Participant's exercise of the option.

(d) Client Authorizations. If the Participant elects to designate an Authorized Representative, the Contractor shall obtain all necessary client authorizations from the Participant prior to sharing any Participant information with the Authorized Representative designated.

(e) Disclosure. Where the Participant has designated an Authorized Representative, and after obtaining all client authorizations required for the disclosure of such information, the Contractor shall forward copies of all requested *paper* documents to the Authorized Representative within ten (10) business days after receipt of the request, and copies of all requested *electronic* documents to the Authorized Representative within one (1) business day after receipt of the request, subject to all applicable laws and regulations and applicable provisions of this Agreement regarding such disclosure.

(f) Monitoring. The Contractor shall closely monitor the Participant's status during the pendency of any application for federal disability benefits, and shall take all necessary steps to insure that the Participant appears for all scheduled meetings with the Social Security Administration and any Authorized Representative.

(g) Liaison. The Contractor shall maintain contact with the Social Security Administration and the Authorized Representative, and shall assist the Participant in obtaining any supporting documentation requested by either.

(h) Referrals. The Contractor shall develop linkages with SSI/SSDI advocacy and counseling organizations and programs, in order to refer Participants to such organizations, as case-appropriate.

ARTICLE 7. PARTICIPANT MEDICAL RECORDS.

1. 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 otherwise required by federal, New York State or local law or by court order in any proceeding in which the Department is a party.

2. Copies.

(a) If a Participant requests a copy of medical records herein, the Contractor shall timely reproduce such records and provide the copies to the Participant.

(b) Except as otherwise provided by New York State law, the Contractor may not give any original medical reports or test results to a Participant.

(c) If the Contractor obtains any abnormal medical reports or results for any Participant, as determined by the Contractor in its sound medical discretion, the Contractor must forthwith report such results to the Participant and provide the Participant, as case-appropriate, with a referral letter and a recommendation for follow-up treatment.

3. Transmission of Imaged Records and Reports to the Department.

The Contractor, as required by Article 11 of Part 1 of the Agreement, shall transmit all medical records herein, including, without limitation, reports of medical examinations, laboratory tests and x-rays, to the Department in the document format(s) designated by the Department, subject to the notice requirement of Article 27, section 2(a), below.

4. Nothing in this Article 7 is intended to prohibit the Contractor or any subcontractors 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 Article 11 of Part 1 and all other applicable provisions of this Agreement.

ARTICLE 8. STAFFING REQUIREMENTS

1. Training and Experience.

All staff providing WeCARE Services herein, whether employed by the Contractor or any subcontractors, must have relevant training and/or prior experience providing services to individuals with impairments affecting functional capacity secondary to medical and/or mental health conditions, and must meet the training and/or experience criteria established by the Department and by the applicable provisions of this Agreement, subject to the notice requirement of Article 27, section 2(a), below.

2. Approval.

The Department reserves the right to interview and to approve the hiring of all executive and managerial WeCARE staff, whether employed by the Contractor or by any subcontractors.

3. Staffing Changes.

(a) Notice. The Contractor shall promptly notify the Department of all proposed material staffing changes ("Material Staffing Changes"), as defined in subsection (b) below, including any changes in subcontractor and volunteer staff.

(b) Material Staffing Changes. Any proposed staffing change at the executive or managerial level, or any proposed staffing change that may affect the staffing pattern, the caseload ratio, or the qualifications of the staff performing WeCARE Services herein, is deemed a Material Staffing Change for purposes of this section 3.

4. Qualified Healthcare Professionals ("QHPs").

(a) The Contractor shall provide all of the Qualified Healthcare Professionals ("QHPs") necessary to timely complete the Biopsychosocial Assessments required herein, including, without limitation:

(i) physicians;
(ii) nurse practitioners;
(iii) registered nurses ("RNs");
(iv) licensed practical nurses ("LPNs");

(v) physicians' assistants ("PAs");
(vi) social workers;
(vii) vocational rehabilitation counselors;
(viii) medical assistants; and
(ix) laboratory technicians.

5. Required QHP Degrees and Credentials.

The Contractor shall be responsible for verifying and for ensuring, on an ongoing basis, that all QHPs providing WeCARE Program Services herein, whether employed by the Contractor or by any subcontractors, have all of the academic degrees and professional credentials required by Law to provide the Services, including, without limitation, the following:

(i) current professional licenses and certifications; and
(ii) for physicians, current board certification in the applicable medical specialty.

6. Staff Qualifications.

(a) Supervisory Case Management Staff. All supervisory case management staff, whether employed by the Contractor or any subcontractors, must be QHPs who meet all of the training and/or experience criteria established by the Department and the applicable provisions of this Agreement, subject to the notice requirement of Article 27, section 2(a), below.

(b) Non-Supervisory Case Management Staff. All non-supervisory case management staff, whether employed by the Contractor or any subcontractors, must meet all of the training and/or experience criteria established and required by the Department and the applicable provisions of this Agreement, subject to the notice requirement of Article 27 2(a), below.

(c) DVE/IPE Supervisory Staff. All supervisory staff overseeing the DVE/IPE process, whether employed by the Contractor or any subcontractors, must have the following minimum qualifications:

(i) be a certified, masters-level rehabilitation counselor;
(ii) have five (5) years of prior experience in vocational rehabilitation services; and
(iii) meet all other training and/or experience criteria established and required by the Department and the applicable provisions of this Agreement, subject to the notice requirement of Article 27 2(a), below.

(d) Vocational Evaluation Staff. All non-supervisory staff conducting vocational evaluations, whether employed by the Contractor or any subcontractors, must have the following minimum professional credentials:

(i) a bachelor's degree, plus two (2) years of prior related work experience;
(ii) an associate's degree, plus five (5) years of prior experience, two (2) of which must have been "related work experience", as defined in paragraph (iii) below; *or*
(iii) "related work experience", defined herein as work experience in one or more of the following areas:

- job placement
- vocational assessment
- disability services.

(e) Psychosocial Assessment Staff. All staff conducting Psychosocial Assessments must have the following minimum credentials:

(i) a Master of Social Work ("MSW") degree;
(ii) a master's level degree in a related field, such as psychology, vocational rehabilitation or occupational rehabilitation; *or*
(iii) prior work experience in mental health services.

## ARTICLE 9. SERVICE DELIVERY

A. SERVICE REGIONS AND DELIVERY SITES.

1. Service Region I. The Contractor, as directed by the Department, shall be responsible for providing WeCARE Services within the area designed herein as Service Region I, comprised of the boroughs of Manhattan, the Bronx, and Staten Island.

2. Service Delivery Sites. As directed by the Department, the Contractor shall provide at least two (2) service delivery sites ("Service Delivery Sites") within Service Region I, one (1) of which must be in the Borough of the Bronx, and one (1) of which must be in the Borough of Manhattan, with the optional inclusion of a site in the Borough of Staten Island.

3. Deadline. All Service Delivery Sites within Service Region I must be fully operational within ninety (90) days after the effective date of this Agreement.

B. SERVICE FACILITIES.

1. The Contractor shall provide the facilities and equipment necessary to adequately support the Contractor's staff, and any staff out-stationed by HRA, at each Service Delivery Site (hereinafter referred to as "Service Facility") in Region I, subject to the notice requirement of Article 27, section 2(a), below, including, without limitation, providing sufficient

space, furnishings, computer hardware and software, telecommunications equipment and access.

2. Facilities Requirements.

(a) General Requirements. The Contractor, and any subcontractors, shall operate each Service Facility in strict conformity with all applicable federal, state and local laws and regulations regarding the operation of such facilities, and shall provide all of the equipment, amenities, and ancillary services necessary to facilitate the Participants' compliance with WeCARE Program requirements, including, without limitation, the following:

(i) possession of a valid Certificate of Occupancy;
(ii) compliance with all applicable New York City and State Sanitary Codes, including, without limitation, providing adequate sanitation facilities for staff and Participants;
(iii) provision of adequate heat, ventilation and air conditioning, as seasonally appropriate;
(iv) provision of sufficient daily seating capacity in all areas;
(v) provision of sufficient space for any staff out-stationed by HRA pursuant to Section B.1, above; and
(vi) provision of adequate privacy protections, as mutually determined by the Parties hereto. for client counseling and consultation sessions.

(b) Medical Service Facilities Requirements. The Contractor, and any subcontractors, shall insure that each Service Facility providing medical services meets the following additional minimum requirements:

(i) possession of a valid operating permit issued pursuant to Article 28 of the New York State Public Health Law;
(ii) possession of all other licensing and inspection certificates required to operate a medical facility, copies of which certificates must be provided to the Department prior to the effective date of this Agreement, and made available upon request to the Department; and
(iii) operation in full compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations thereunder, and with all other applicable laws and regulations.

(c) Accessibility. Each Service Facility providing WeCARE Services herein, whether operated by the Contractor or any subcontractors, must be convenient to and accessible by public transportation, as to all Participants within the catchment area served.

## ARTICLE 10. MANAGEMENT INFORMATION SYSTEMS ("MIS")

1. The Contractor, in the performance of the Services herein, shall utilize, and shall insure that any subcontractors utilize, an automated management information system ("MIS") fully compatible with that of the Department and any other subcontractors.

2. The MIS utilized by the Contractor and any subcontractors must, at minimum, track and analyze each Participant's performance and progress in the WeCARE Program and provide aggregate data to the Department for purposes of program analysis and improvement.

3. In order to comply with the requirements of this Article 10, the Contractor shall use, and shall require any subcontractors to use, an automated computer tracking and reporting system developed by the Department, in accordance with the applicable standards established by the Department, subject to the notice requirement of Article 27, section 2(a), below.

4. System Requirements.

The MIS utilized by the Contractor and by any subcontractors, in performing this Agreement, must, at all times relevant hereto, be utilized in strict conformity with the requirements set forth in the annexed Information Security Policy (see Appendix B) and in the Data-Sharing Agreement between the Parties (see Exhibit 4), and, must, in addition, meet the following *supplemental* system requirements:

(a) be fully compatible with all relevant information systems of the Department, of all other WeCARE Contractors, and of all subcontractors hereunder;
(b) include a relational database capable of timely generating all reports requested by the Department that are derivable from information in the database, utilizing listed database elements provided by the Department;
(c) be expandable, if the Department requires, subject to Article 27, section 2(b)(ii), below;
(d) save all entered data without overwriting;
(e) not purge records, except as the Department requires;
(f) systematically log the date of every action taken on the system, the identity of the person who made the determination, and the person who entered the data;
(g) be capable of recovering all data entered;
(h) meet all applicable information systems requirements imposed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations thereunder;
(i) conform to all other applicable federal, state and local laws and regulations;
(j) conform to all applicable HRA MIS policies and procedures, subject to Article 27, section 2(b)(iii), below;
(k) conform to all applicable provisions of this Agreement;
(l) be capable of collecting and transmitting electronic signatures;

(m) utilize user roles and access rights to appropriately restrict information access to duly-authorized system users;
(n) utilize password protection; and
(o) be capable of distinguishing between active and inactive users.

ARTICLE 11. IMAGING SERVICES

1. The Contractor, subject to all client authorizations required by this Agreement pursuant to the above Article 1, subsection 11(d), "Client Authorizations", shall provide the Department, through document imaging services ("Imaging Services") with accurate copies of each of the following documents:

   (a) as to each Participant, the Biopsychosocial Assessment, the WRP, the CSP, the DVE and the IPE, including all revisions thereto and all related documentation;
   (b) all of the licenses and certificates required in the above Article 8 of this Agreement;
   (c) all of the certificates and permits required in the above Article 9 of this Agreement; and
   (d) all other documents requested by the Department.

2. All such imaged documents herein must be submitted to the Department in an electronic format that:

   (a) is fully compatible with the HRA Specifications for Information Scanning and Storage, annexed hereto as Appendix C and hereby made a part of the Agreement; and
   (b) that facilitates the retrieval of data by the Department for purposes of statistical analysis.

3. All imaged documents herein must be provided by the Contractor in strict compliance with:

   (a) the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated thereunder;
   (b) all other applicable federal, state and local laws and regulations;
   (c) all applicable HRA imaging policies and procedures, subject to Article 27, section 2(b)(iv), below; and
   (d) all applicable provisions of this Agreement.

ARTICLE 12. DATA-SHARING AGREEMENT

1. The Contractor shall, within twelve (12) months after the effective date of this Agreement, execute a separate Data-Sharing Agreement with the Department, in the document format provided by the Department therefor, establishing the terms and conditions upon which electronic information may be shared by the Department and the Contractor in performing the service program herein, which Data-Sharing

Agreement must be annexed hereto as Exhibit 4, and is hereby made a part of this Agreement.

2. The Contractor, prior to sharing any of the Department's data with any subcontractors pursuant to this Agreement, shall execute a separate Data Sharing Agreements with each such subcontractor, subject to the Department's review and approval, which subcontractor Data-Sharing Agreements must be annexed as appendices to Exhibit 4, of which they are hereby made a part.

3. All required Data-Sharing Agreements herein must be executed before any electronic information is exchanged pursuant to this Agreement between the Department and the Contractor, or between the Contractor and any subcontractors.

## ARTICLE 13. RECORDS AND REPORTS

A. RECORDS.

1. The Contractor shall maintain complete records detailing each of the WeCARE Services provided herein, including, without limitation, staffing patterns and service utilization reviews.

2. The Contractor shall keep readily identifiable individual files and records for each Participant, separate from the files of clients receiving other services from or through the Contractor. In addition to the information normally kept by the Contractor in individual client files, such as basic identifying facts, the Contractor shall describe and record each use of the Services by the Participant, the Participant's progress, and such other information as the Department may require.

B. REPORTS.

1. Database Reports.

Reporting Categories. The Contractor shall timely provide the Department with all requested reports that can be generated from the database described in the above Article 10, subsection 4(b), including, without limitation, monthly and year-to-date reports addressing each of the following categories:

(a) caseload data;
(b) reasons for discharge;
(c) HRA case compliance;
(d) compliance with treatment;
(e) functional capacity status;
(f) employment;
(g) retention;

(h) case management activities;
(i) Participant case management/service needs;
(j) Psychosocial Assessments;
(k) Wellness Plans;
(l) Comprehensive Service Plans;
(m) Vocational Rehabilitation Plans;
(n) DVE/IPE; and
(o) such other database reports as the Department may require, subject to the notice requirement of Article 27, section 2(a), below.

2. Monthly Financial and Program Reports.

The Contractor, as required by the Department, shall provide monthly financial and programmatic reports that:

(a) evaluate the impact of the WeCARE Services herein;
(b) identify and document the eligible costs incurred;
(c) detail the services provided to Participants; and
(d) detail such other financial and program information as the Department may require.

4. Final Programmatic Report.

(a) No later than thirty (30) days before the end of each fiscal year during the term of this Agreement, the Contractor shall submit a final programmatic report ("Final Programmatic Report") detailing the results of the Contractor's performance of the Services herein.

(b) Such Final Programmatic Report must include, without limitation, the following statistics:

(i) the Participants served;
(ii) the types of services rendered;
(iii) the units of service completed; and
(iv) the total amount of funds expended by the Contractor, both under this Agreement and otherwise.

## ARTICLE 14. INTELLECTUAL PROPERTY

1. Development.

The Parties hereto mutually understand and agree that the performance of this Agreement may result in the development or customization of intellectual

property[1], and that the Department may require the Contractor, and any subcontractors, to develop or customize intellectual property in or through such performance for use in providing the Services herein, including, without limitation, the following:

(a) software;
(b) databases to provide or track data under the Agreement;
(c) predictive models based on database-generated information;
(d) analytical models based on database-generated information;
(e) assessment tools;
(f) screening instruments;
(g) referral mechanisms;
(h) evaluation criteria or models; and
(i) programmatic or operational models.

2. Except as provided in subsection 1, above, the Contractor shall obtain the Department's written approval before developing or customizing any intellectual property herein.

3. All intellectual property required by the Department herein, if readily available in the required forms or formats, must be delivered by the Contractor within the timeframes specified by the Department. If such intellectual property is not readily available in the required forms or formats, and if it can be re-formatted, the Contractor and the Department will establish a mutually agreeable timeframe for delivery.

4. Nothing contained in this Article 14 gives the Department ownership rights in any intellectual property that:

(a) was developed or customized by the Contractor prior to the effective date of this Agreement; or that
(b) does not, wholly or partially, result from the Contractor's performance of this Agreement.

## ARTICLE 15. DELIVERABLES AND PERFORMANCE MILESTONES

1. The Contractor shall timely complete the Schedule of Deliverables and Performance Milestones annexed hereto as Exhibit 5 and made a part of the Agreement by this reference.

[1] For purposes of this Article 14, intellectual property is defined, without limitation, as concepts, ideas, methodologies, techniques, models, templates, hardware, software, user interfaces, screen designs, consulting and software tools, logic, coherence and methods of operation of systems.

2. The Department, in the event of a contract modification, may revise the Schedule of Deliverables and Performance Milestones accordingly, subject to the Contractor's written approval.

ARTICLE 16. MILESTONE DOCUMENTATION

1. 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 in the annexed Exhibit 6.

2. In order to receive timely payment of its invoices, the Contractor shall submit all supporting documentation required in section 1, above, not later than ninety (90) days after milestone achievement. Submissions made more than 90 days after milestone achievement will be deemed late.

3. The Department will not pay any invoice submitted by the Contractor without the required documentation, or any invoice for which the required documentation is submitted late.

4. Unless the Department has authorized an alternative method such as an employment clearing house, the Contractor shall provide the Department with as many of the following forms of supporting documentation of milestone achievement as the Department determines applicable to each Participant:

   (a) copies of the Participant's paychecks for a full workweek;
   (b) copies of the Participant's pay stubs for a full workweek;
   (c) a statement, on the employer's official letterhead, signed by the employer, the Participant and the Contractor, stating that the Participant is working or has worked at the reported wages and hours.

3. In addition to updates of the documentation submitted by the Contractor pursuant to the above section 2 paragraphs (a) though (c), the Department reserves the right to consider the following information, obtained through NYCWAY, in determining the amount of milestone payments:

   (a) 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
   (b) 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.

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

5. Compliance Sampling.

(a) If, based upon a statistically valid sample of claimed milestone achievements drawn by the Department, it is determined that the Contractor is out of compliance with the milestones herein, the Department will so notify the Contractor in writing, stating the factual basis for its determination;
(b) Within three (3) weeks after receiving the notice of non-compliance, the Contractor may submit supplemental documentation of compliance to the Department;
(c) The Department will duly consider all such supplemental documentation submitted by the Contractor;
(d) If the Department determines, based upon due consideration of the documentation submitted by the Contractor, to modify its determination, it will so notify the Contractor in writing;
(e) The Contractor's failure to timely submit supplemental documentation of compliance pursuant to the above subsection (b) will result in the Department automatically deducting a percentage amount representing the gap in milestone compliance, as determined by the Department, from the Contractor's next payment.

## ARTICLE 17. LIQUIDATED DAMAGES

1. In the event the Contractor fails to deliver any required report or deliverable required by the annexed Exhibit 6. or by any other applicable provision of this Agreement, within the mandated time frame therefor or within any extended delivery period provided for by the Department, 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.

2. Liquidated damages for summary reports ('Summary Reports") herein will be assessed at the rate of $25.00 per day for each day the Summary Report is late. Liquidated damages for client-specific reports ("Client-Specific Reports") herein will be assessed at the rate of $25.00 per day for each day the Client-Specific Report is late, multiplied by the number of clients.

3. As to any of the milestones in the annexed Exhibit 6 timely achieved by the Contractor, no liquidated damages may be assessed by the Department solely based on the Contractor's submission of required supporting documentation beyond the 90-day limit imposed in above Article 16.2.

4. 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.

5. The Department may not hold the Contractor liable for any delays in delivering any report herein due to the Department's failure to perform this Agreement. In such

case, the delivery date will be adjusted to reflect any such delays caused by the Department.

ARTICLE 18. OWNERSHIP OF DELIVERABLES

All deliverables herein, including records, reports, files and intellectual property, except as otherwise provided by New York State law as to medical records and reports, are the sole property of the City of New York and the Department, and the Contractor may not allow the same to be used, except for purposes of this Agreement, without the express prior written consent of the Department.

ARTICLE 19. PAYMENT

1. 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 one hundred and nine million nine hundred seventy-one thousand ninety dollars ($109,971,090.00), pursuant to the approved line-item budget annexed as Exhibit 3 and the Schedule of Deliverables and Performance Milestones annexed as Exhibit 6, which are hereby made a part of the Agreement.

2. 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.

3. 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.

4. The Department, in its sole discretion, may modify the Agreement in accordance with its determination pursuant to the above subsection 3, subject to all required approvals and the Rules of the Procurement Policy Board of the City of New York ("PPB Rules"), as amended.

5. Payment of all contract funds herein shall be made pursuant to invoices submitted by the Contractor at such times, in such a manner and form, and together with such supporting documentation, as the Department deems acceptable, subject to Article 27, section 2(b)(v), below.

6. No travel expenses will be paid, including expenses for travel outside New York City and to and from professional conferences, *except* those expenses 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.

7. <u>Reduction in Federal, State or City Funding</u>.

(a) Termination and Reduction Options. The Contractor, acknowledging that this Agreement is funded wholly or partially through funds secured from federal, state or city government sources, agrees that, if such funds are reduced or discontinued by federal, state or city government action, the City of New York and/or the Department will have, in their sole discretion, the right and option to terminate this Agreement, wholly or partially, or to reduce the funding and level of services, caused by such federal, state or city government action, including, without limitation, in the case of the reduction option, reducing or eliminating programs, services or service components, reducing or eliminating contract-reimbursable staff or staff-hours, and correspondingly reducing the Agreement budget and the total amount payable under the Agreement.

(b) Effective Date. In the case of the termination option in subsection (a) above, such termination will take effect immediately upon written notice thereof to the Contractor. In the case of the funds reduction option in the above subsection (a), such reduction will be effective as of the date set forth in a written notice thereof to the Contractor, which must be not less than thirty (30) calendar days from the notice date.

(c) Prior to sending any notice of reduction, the Department must advise the Contractor that the reduction option is being exercised, and must afford the Contractor an opportunity to make, within seven (7) calendar days, any suggestions it may have as to which programs, services, service components, staff or staff-hours might be reduced or eliminated. The Parties mutually understand and agree, however, that the Department is not bound to utilize any of the Contractor's suggestions, and that the Department, in its sole discretion, will decide how to effectuate any reductions.

(d) The Department's termination and reduction options, set forth in this section 7, 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.

6. <u>No Duplicate Reimbursement</u>.

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 21 of this Agreement are excluded from this Article 19, section 6.

ARTICLE 20. FISCAL PROVISIONS

A. FISCAL PROVISIONS: INITIAL ALLOCATION OR ADVANCE.

1. Application.

This section A. applies to an initial allocation or advance of funds, or both, made by the Department to the Contractor pursuant to this Agreement, and is in addition to, not in lieu of, the other provisions of this Agreement.

2. Initial Allocation or Advance.

The Department may, in its discretion, make an initial allocation or advance of funds in the amount of twenty-five percent (25%) of projected yearly expenditures to the Contractor for the provision of the service program herein, upon the submission by the Contractor to the Department of the following:

(a) receipted copy of the bank authorization required in subsection 15, below;
(b) written notice of proper signatories required in subsection 16, below; and
(c) written proof that the bond required in subsection 18, below, is in effect.

3. The amount of any initial allocation or advance will be determined solely by the Department and reviewed by the City, subject to all appropriate approvals.

4. The Contractor shall deposit the initial allocation or advance in a bank account pursuant to this section A., and shall use the Initial Allocation exclusively to pay obligations properly incurred pursuant to the annexed approved budget.

5. The Contractor shall repay the full amount of the initial allocation or advance to the Department prior to the termination of this Agreement, at such a time, and in such a manner and form, as is agreeable to the Department.

6. Any uncommitted funds in the hands of the Contractor will be and remain the property of the Department, and must be returned to the Department upon the termination of this Agreement.

7. The Parties mutually understand and agree that the Prompt Payment provisions in Part 2, Article 8, section 18 of this Agreement exclude the payment of interest on any initial allocation or advance made pursuant to this Article 20, section A.

8. Monthly Allocation.

(a) The Department, in its sole discretion, may make a monthly allocation to the Contractor pursuant to this Agreement, *subject to* the Contractor's submission to the Department of an Expenditure Report covering the expenditures actually incurred in performing the Agreement during the preceding month.

(b) The amount of any such monthly allocation will be determined by the Department in its sole discretion, based upon operating expenses in any lines for which the Department has agreed to advance funds, the amount of the expenditures stated in the Expenditure Report, any charges incurred within the scope of services, and any other factors the Department deems relevant.

(c) The Contractor shall deposit each such monthly allocation in a bank account pursuant to this section A., and shall use the funds exclusively to pay obligations properly incurred pursuant to the approved budget.

(d) Expenditure Report. The Contractor, in the event a monthly allocation is made pursuant to this subsection 8, shall submit to the Department, no later than ten (10) days after the end of each month, an Expenditure Report, in the form provided by the Department.

(e) No monthly allocation may be made unless the Contractor has timely submitted an Expenditure Report to the Department and the Department has received all reports requested under this Agreement.

9. Bank Accounts.

(a) The Contractor shall establish and maintain, within the City of New York, a separate bank account as a depository for any funds advanced under this Agreement. The funds must not be co-mingled with funds from any other source or with funds received under any other agreement.

(b) *Alternatively*, if the Contractor maintains only one bank account within the City, the Contractor shall deposit all of the funds advanced under this Agreement in such bank account, under the heading of a single ledger line dedicated exclusively to the items in the annexed approved budget. If the Contractor utilizes this alternative, the Contractor shall maintain detailed accounting records delineating the activity in this account.

(c) Funds advanced under this Agreement must be deposited only in a bank account that is approved by the Department.

(d) The requirements of this subsection 9 are mandatory, and may not be waived by the Parties hereto, except upon the recommendation of the Department and the written approval of the New York City Office of Contract Agency Finance.

10. Interest. All funds advanced under this Agreement must be deposited in an interest-bearing account, and all interest must be promptly paid to the City as it is earned, or, if the Department so directs, applied as a credit.

11. Notice. As to any funds advanced under this Agreement, the Contractor shall notify the Department of the names, locations and account numbers of all bank accounts established pursuant to this section A., and of any change in such bank accounts, within five (5) days after such establishment or change.

12. Share of Total Funding.

(a) Accounts and Records. In the event the Contractor is required to provide a share of the total funding as part of this Agreement, the Contractor shall, unless an exemption to this requirement has been approved in writing by the Department:

(i) establish and maintain a separate bank account within the City of New York as a depository for the monies solicited, collected or received by and from fund raisers;
(ii) keep and maintain accurate and complete records of these funds; and
(iii) make such records available for audit by the Department and the Comptroller of the City of New York.

(b) *Alternatively*, if the Contractor maintains only one bank account within the City, the Contractor shall deposit all funds solicited, collected or received by and from fundraisers in the said bank account and such funds must be recorded under the heading of a single ledger line of the account, which must be dedicated exclusively to the funds raised for this Agreement.

(c) The requirements of this subsection 12 are mandatory, and may not be waived by the Parties hereto, except upon the written approval of the Department, with the concurrence of the New York City Office of Contract Agency Finance.

13. Bank Authorization.

(a) When a bank account or ledger line is established pursuant to this section 13(a), the Contractor shall deliver to the bank an authorization executed by the Contractor, stating that:

(i) the bank account or ledger line is maintained pursuant to an agreement with the Department;
(ii) the Contractor authorizes, empowers and directs the bank to forthwith comply with any written request by the Department to furnish bank statements, cancelled checks or other information in the bank's possession or control relating to the bank account; and
(iii) the Contractor authorizes, empowers and directs the bank to comply forthwith with any written requests by the Department to transfer the balance of funds remaining in the account or ledger line to the Department, or to another account.

(b) The Contractor shall deliver a copy of the said authorization to the Department, bearing the signature of an authorized bank representative stating that the bank has received and accepted the authorization and will comply with the Department's demand, if and when made. A copy of such request and/or instructions will be given to the Contractor.

14. Proper Signatories.

(a) The Contractor, as to any funds advanced pursuant to this subsection 14(a), shall notify the Department of the names and home addresses of the person(s) authorized by the Contractor to receive, handle or disburse such funds.

(b) Such notification must be in writing, and must be furnished to the Department within five (5) days after this Agreement is executed, or within five (5) days after any subsequent change or substitution of authorized signatories.

(c) The Contractor shall notify the Department of the names and locations of all of the Contractor's depositories within five (5) days after opening an account or changing or substituting a depository.

15. Bonding.

(a) In the event the Department makes an initial allocation, the Contractor shall obtain, and shall maintain at all times during the term of the Agreement, a fidelity bond or equivalent insurance acceptable to the Department, covering the activities of each person authorized by the Contractor to receive, handle or disburse the funds advanced.

(b) Such fidelity bond must:

(i) be in an amount equivalent to the amount of advance herein;
(ii) be issued by an insurer duly licensed by the Superintendent of Insurance of the State of New York to transact fidelity bond business in New York State; and
(iii) provide that any payments thereunder for losses sustained by either or both the parties to the Agreement through the fraudulent or dishonest act of any bonded person(s), must be payable to the Department or the City.

(c) *Alternatively*, the Contractor shall establish and maintain a line of credit from a financial institution equivalent to the amount of the advance.

16. Limitations on Use of Funds.

No advanced funds shall be spent for any of the following:

(a) expenses not necessarily and actually incurred in performing the service program provided for in the annexed approved budget;
(b) the purchase of real property;
(c) the cost of employee meals, except while travelling on business directly related to the service program herein;
(d) expenses incurred for travel, including travel outside New York City and to and from professional conferences, in excess of the travel expenses 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;
(e) payments to any profit-making firm, company, association, corporation or organization in which a member of the Contractor's board of directors or a member of his/her immediate family has any ownership or control or financial interest resulting from employment or services rendered, "ownership" being defined for purposes of this subsection (e) as owning three percent (3%) or more of the assets, stock, bonds or other dividend or interest-bearing securities, and "control" is defined as membership in the Board of Directors or other governing body, or holding a position as a corporate officer;
(f) payments to a member of the Contractor's board of directors or other governing body, of any fee, remuneration, salary or stipend for employment or services, except direct and ordinary expenses incurred in attending meetings of the board of directors or other governing board, or a nominal stipend, in accordance with the Department's regulations; or
(g) any expense that violates any provision of this Agreement.

17. Examination by Independent Accountants.

(a) Contractor-Initiated. When the annexed approved budget provides for the employment by the Contractor of an independent certified public accountant or licensed public accountant, the fiscal records of the Contractor under this Agreement must be examined not less than once each year by such independent certified public accountant or licensed public accountant. The Contractor shall submit to the Department a true copy of the report thereon within ten (10) days after completion.

(b) Department-Initiated. If the approved budget does not provide for the employment by the Contractor of an independent certified public accountant or licensed public accountant, then the fiscal records of the Contractor under this Agreement will be examined not less than once each year by one or more independent certified public accountants or licensed public accountants employed by the Department or City, and a report thereon will be submitted to the Contractor within ten (10) days after completion.

18. Examination by the Department.

In addition to the periodic examination by independent accountants provided for in the above section 17, the Department has the right to examine and audit the fiscal records of the Contractor under this Agreement at such times as the Department, in its sole discretion, deems necessary.

19. Cost Allocation.

(a) The Department reserves the right to require the Contractor to fairly and accurately allocate the costs attributable to the operation of two or more programs between or among such programs by a method representing the cost benefit to each program.

(b) Cost Allocation Plan. The Department may require the Contractor to submit a cost allocation plan ("Cost Allocation Plan") within six (6) weeks after the contract start date that accumulates and distributes allowable direct and indirect costs and identifies the allocation methods used for cost distribution. The Cost Allocation Plan must include, at a minimum, the following required elements:

(i) organization chart identifying the departments, types of services provided and staff functions chargeable to each funding source;
(ii) description of the types of services provided and their relevance to each funding source;
(iii) copies of financial statements or budgets;
(iv) expense items included in the cost of services, including all joint or pooled costs requiring allocation;
(v) the methods used to distribute the cost to the benefiting cost objectives; and
(vi) certification by an authorized organization official that the plan has been prepared in accordance with applicable requirements.

(c) No cost allocation plan will be approved by the Department unless the plan:

(i) relates to allowable costs as defined in applicable laws, regulations and policies of the Federal, State, and City governments;
(ii) relates to costs necessary for the Contractor's performance pursuant to this Agreement;
(iii) fairly and accurately reflects the actual allocable share of such cost with respect to this Agreement;
(iv) is developed in accordance with generally accepted accounting principles; and
(v) is accompanied by such supporting documentation as the Department deems necessary to evaluate the plan.

(d) Notwithstanding any contrary provision in this subsection, the Department further reserves the right to withhold any payments to the Contractor for allocated costs, in the event that the Department:

(i) deems the cost allocation plan wholly or partially unsatisfactory;
(ii) determines that such allocated costs have been incorrectly determined, are not allowable, or are necessary; or
(iii) determines that such allocated costs are not properly allocable pursuant to this Agreement and an approved cost allocation plan.

(e) All books and records regarding allocated costs herein are subject to audit pursuant to this subsection, as are all other costs. Such books and records are further subject to Part 2 of this Agreement, GENERAL PROVISIONS, Article 5, section 7, regarding maintenance of separate and accurate books and records, and Article 5, section 8, regarding the retention period for books and records.

20. Determination of Allocation and Recoupment.

The Department, in its sole discretion, will determine whether to make an initial allocation or advance, the amount of any such allocation or advance, and the recoupment schedule, methods and procedures to be followed.

B. GENERAL FISCAL PROVISIONS.

The following fiscal provisions are generally applicable to the Agreement.

1. Recoupment of Disallowances, Questioned Costs and Overpayments.

The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement, up to the total amount of any questioned costs or disallowances resulting from any audits of the Contractor, or up to the total amount of any overpayment to the Contractor pursuant to this or any other agreement between the Department and the Contractor, including an agreement for a term commencing prior to the term of this Agreement.

2. Purchases.

(a) All purchases of furnishings, equipment and other property made under this Agreement must be in accordance with the administrative procedures prescribed by the Department. No purchase of furnishings, equipment or other property may be made under this Agreement, except in accordance with the Department's procedures, *except* upon the Department's prior written approval for the specific items to be purchased.

(b) The Contractor shall maintain a separate, detailed inventory of all furnishings and equipment purchased under this Agreement, and shall

submit an accurate and complete inventory, in the format prescribed by the Department, each quarter.

(c) The Contractor shall obtain the prior written approval of the Department for the use of any funds herein to alter or renovate facilities, or to remove and transport heavy equipment. The installation of air conditioners requiring structural repair upon removal should be avoided, and window models that do not require removal of window panes should be used whenever possible.

3. Budget Review.

The Contractor and the Department shall jointly review, at such time(s) as the Department deems necessary, but not less than once each fiscal year, the amount of payments made pursuant to the Agreement, to determine the appropriateness of each fiscal year's budget in light of any program increases or reductions, or both, and wage and salary increases or decreases, of any combination thereof.

4. Budget Modification.

(b) By the Department. The Department may require one or more modifications of the budget to be submitted to program management. Such modifications shall become effective only upon written notice to the Contractor and the receipt by the Contractor of the modification in final form.

(c) By the Contractor. The Contractor may submit to the Department, using forms supplied by the Department, requests for budget modification. Such modification requests will become effective only upon the Department's prior written approval.

5. Audits.

As further detailed in Part 2, Article 4 of this Agreement, all contracts will be audited. The type of audit required by the Department will depend on such factors as whether the Contractor is for or not-for-profit and whether the amount of federal funding exceeds five hundred thousand dollars ($500,000.00). Not-for-profit entities that do not annually spend five hundred thousand dollars ($500,000.00) in federal funds will be assigned an HRA auditor. In most circumstances, Contractors will be responsible for obtaining the services of an independent auditor and insuring that the audit is concluded within six (6) months after the end of the fiscal period covered by the audit.

(a) All audits must be conducted in accordance with OMB Circular A-133, must adhere to its reporting requirements, and must include any additional supplemental schedules required by the Department.

(b) All audit reports herein must conform to Government Auditing Standards and must contain the appropriate supplemental schedules listed in the HRA Single Audit Guide.

(c) Agencies receiving government funds are held to a higher degree of accountability than the general public. As a result, a lower threshold of materiality applies when reporting questioned costs and fraud. All questioned costs must be deemed material, and any fraud of which the Contractor or the auditor becomes aware must be timely reported to the Department.

(d) The HRA Finance Office will make available to the auditor at the end of the year documentation detailing reported expenditures and payments. The parties mutually anticipate that the auditor will evaluate the adequacy of the Contractor's procedures for processing invoices, to determine whether the valid invoices for the audit period are supported by the Contractor's books and records and whether the Contractor has appropriate fiscal controls in place to ensure the integrity of the Program.

6. Multiple Funding Sources.

(a) If this Agreement is funded from two or more sources, the financial statements and supplemental schedules must differentiate between funding streams, and, where applicable, the Contractor shall provide a certified statement indicating that program income or profit permitted to be retained for reinvestment purposes was reinvested back into the organization in accordance with the general reinvestment plan submitted to and approved by the Department.

(b) The following schedules are required for such contracts:

(i) Statement of Entity's Assets, Liabilities and Fund Balances;
(ii) Schedule of Revenue and Expenditures and Changes in Fund Balances;
(iii) Schedule of Current Cumulative Questioned Costs;
(iv) Schedule of Fixed Assets Inventory;
(v) Schedule of Consultants; and
(vi) Schedule of the auditor's adjustments to the voucher data submitted to the Department.

7. Fiscal Controls.

(a) Uniform Administrative Requirements. The Contractor shall comply with all uniform administrative requirements for grants and agreements applicable to the type of entity receiving the funds, as set forth in rules or circulars promulgated by the Office of Management and Budget ("OMB").

(b) Cost Principles. The Contractor shall comply with the applicable uniform cost principles included in the appropriate OMB circulars for the type of entity receiving the funds.

8. Program Income.

(a) This Agreement is funded based upon expenditures and performance. Unit costs have been established in the annexed Exhibit 6. The Contractor, as a non-profit organization, is permitted to earn program income ("Program Income"), calculated by the Department as total revenue less expenditures, divided by total revenue.

(b) Cap. The Contractor may earn up to a total of fifteen percent (15%) in Program Income over the term of this Agreement. All Program Income earned in excess of the fifteen percent (15%) cap must be refunded to the Department at the termination of this Agreement.

(c) Reinvestment Plan. Not later than six (6) weeks after the commencement date of this Agreement, the Contractor shall submit for the Department's approval a reinvestment plan ("Reinvestment Plan") identifying how Program Income designated for reinvestment will be used.

(i) The Reinvestment Plan submitted by the Contractor must:

- be reasonable;
- not contain administrative costs in excess of the administrative cost cap; and
- provide for services promoting: 1) assistance for the disabled, elderly and needy; 2) job preparedness, skills development and work; 3) deferred pregnancy, high-school completion, marriage and family life, and 4) economic self-sufficiency.

(ii) At the termination of this Agreement, all Program Income not spent as provided in the approved Reinvestment Plan must be refunded to the Department.

(d) Records. The Contractor shall maintain current and accurate records of all Program Income and expenditures using appropriate documentation, according to generally-accepted accounting procedures ("GAAP"). All such records of Program Income and expenditures must be available for

review at all times and a final Program Income statement must be provided to the Department within one hundred and twenty (120) days after the termination date of this Agreement.

9. Withholding.

The Department, in its sole discretion, may, upon prior written notice to the Contractor, withhold funds under this Agreement in an amount to be determined by the Department, in its sole discretion, if:

(a) the Department deems that withholding is necessary to ensure the Contractor's compliance with the requirements of any prior agreements between the Parties;
(b) the Contractor has, knowingly or unknowingly, made a material misrepresentation to the Department;
(c) the Contractor has failed to comply with any provision of this Agreement, including failing to meet performance outcomes;
(d) the quality of the Contractor's assessments fails to meet the Department's standards;
(e) litigation or an investigation is pending with regard to the Contractor's performance of this Agreement; or
(f) the Contractor fails to timely submit required financial or program reports.

10. Disallowance.

In the event the Contractor or any subcontractors receive any payment from the Department that is found to violate any of the provisions of this Agreement, the Department will disallow such payment and will request reimbursement from the Contractor.

11. Repayment.

The Contractor hereby agrees to participate in and to be bound by any disallowed cost determination herein arising out of the Department's verification of eligibility, placement and disallowed cost resolution procedures. All such disallowed costs must be repaid in full within thirty (30) calendar days after receipt by the Contractor of the request for repayment or in accordance with a written repayment schedule approved by the Department.

12. Offset.

The Department reserves the right to use funds payable to the Contractor under this Agreement to offset funds owed by the Contractor to the Department under any other prior or current agreements between the Contractor and the Department.

13. Reduction.

The Contractor's reported performance may be reduced based upon compliance reviews or audit findings during or after the term of this Agreement.

ARTICLE 21. MEDICAID CLAIMING

1. 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 21, *provided, however*, that such Medicaid claiming requirement is agreed to in a separate writing signed by both Parties hereto.

2. The Parties understand and agree, subject to section 1, above, that, for purposes of this Article 21:

(a) the Biopsychosocial Assessment herein includes both Medicaid-reimbursable components and components that are not Medicaid-reimbursable;
(b) 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
(c) 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.

3. Claiming Procedure.

(a) Subject to section 1, above, the Contractor, as to any Participant eligible for fee-for-service Medicaid Coverage:

(i) 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
(ii) shall accept any Medicaid reimbursement received from NYSDOH as payment-in-full for all such covered tests and procedures.

(b) If the Contractor submits a Medicaid reimbursement claim to NYSDOH pursuant to the above subsection 3(a), it shall not request reimbursement from the Department, *except* as set forth in subsection 3(c), below.

(c) As to any Medicaid reimbursement claim submitted pursuant to the above subsection 3(a) *denied* by NYSDOH, *except* claims NYSDOH has previously acted upon:

(i) The Contractor is entitled to submit a request for reimbursement to the Department in an amount determined pursuant to subsection 3(c)(ii), below; and

(ii) The Department will pay any reimbursement requests submitted pursuant to the above subsection 3(c)(i) 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.

(d) 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.

(e) 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 3(c), above. Any duplicative amounts so verified will be recouped by the Department pursuant to the applicable provisions of this Agreement.

## ARTICLE 22. SALARY AND WAGE LIMITATIONS

1. 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.

2. 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 1, 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

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Corrective Actions.

i) Negative or unacceptable findings
Department, in its discretion, deem
in the Department requiring the Co
and within the time frame it design
plan ("Corrective Action Plan") fo
the actions the Contractor will take
the negative or unacceptable findin

i) If the Department approves the Co
complete all actions required to ef
satisfaction, within the time frame

i) Remedies for Late Submission or
timely submit an acceptable Corre
its failure to timely complete an ap
result in one or more of the follow
Department:

- the assessment of liquidated da
amount of twenty-five dollars (
Contractor is late submitting an
completing an approved Corre
twenty-five thousand dollars ($
- the reduction or withholding o
invoices.

) Notice and Opportunity to Respo
of the remedies detailed in the ab
Contractor in writing of its intent
a reasonable opportunity to respo
Department will duly consider in

toring by the Department.

Department will monitor all aspec
ar basis, and the resulting findings
endent Quality Review, to complete
e of Contract Services ("MOCS").

is.

Contractor shall cooperate fully,
rate fully, with all requests for r
ver(s) and by the Department.



Procedure for Contract Employee Pay Increases and Adjustments, p
the City of New York, and in accordance with all other applicable C
Department policies and guidelines.

## ARTICLE 23. SUBCONTRACTS

As further detailed in Article 5.13 of Part 2, GENERAL PROVISIONS, the
shall not enter into any subcontracts for the performance of any of its obliga
Agreement, *except* upon the Department's prior review and written approva
Article 27, section 2(vi), below.

## ARTICLE 24. CONTRACT MODIFICATION.

1. Unforeseen Circumstances. Either the Department or the Contracto
that the terms of the Agreement be re-negotiated when circumstance
or reasonably foreseeable by the Parties at the time of contracting a
performance period of the Agreement.

2. Form of Modification. Contract modifications pursuant to this Artic
in writing, and will become effective only when signed by both Partie

3. Unilateral Modification by Department. The Department reserves
unilaterally modify this Agreement, effective upon the Contractor's
copy of the modification signed by the Department, when such m
necessitated by any of the following:

(a) to incorporate new or revised Federal, State or City regulations, o
the Department;
(b) to correct program deficiencies;
(c) to de-obligate program funds due to under-expenditures, funding r
identified program income;
(d) to comply with a court order or judgment; or
(e) to incorporate any modifications by the Parties hereto that are du
and acknowledged in the text of this Agreement.

## ARTICLE 25. 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

1. Contractor's Quality Assurance Program.

(a) Standardization. The Contractor shall adhere to a program of continu
improvement that assures standardized performance and quality care,

ARTICLE 26. CONTRACT ADMINISTRATION

The Commissioner of the Department of Social Services or his or her designee will administer this Agreement.

ARTICLE 27. RESPONSIBILITIES OF THE DEPARTMENT

1. Approvals.

(a) As to any provision of this Agreement requiring the Department's approval as a prerequisite, such approval may not unreasonably delayed or denied by the Department.

(b) In the event the Department denies a request for approval submitted by the Contractor, the Department will notify the Contractor of its determination, stating the grounds therefor, within a reasonable time period.

(c) Subcontracts. The Department will use its best efforts to complete its review of any subcontracts submitted for approval by the Contractor pursuant to the above Article 23 within thirty (30) days after submission.

2. Notice.

(a) Notice in General.

Except as otherwise specified in subsection (b), below, or another applicable provision of this Agreement, the Department will provide notice to the Contractor that is both timely and reasonable under the circumstances.

(b) Written Notice.

The Department will notify the Contractor in writing of each of the following:

(i) any required adjustments to program pursuant to the above Article 1, section 4;
(ii) system expansion specifications pursuant to the above Article 10, section 4(c);
(iii) applicable MIS systems policies and procedures pursuant to the above Article 10, section 4(j);
(iv) applicable HRA imaging policies and procedures, pursuant to the above Article 11, section 3(c);
(v) when, how, and in what format invoices and supporting documentation must be submitted to the Department pursuant to the above Article 19, section 5; and
(vi) notice of subcontract approval pursuant to the above Article 23;

(c) Notice of Revised or Updated Operational Procedures.

The Department, when it revises or updates its Operational Procedures pursuant to Article 1, section 12, above, will provide a copy of such revised or updated Procedures to the Contractor, prior to the effective date thereof.

(d) Notice of Default.

(i) In the event the Department determines that the Contractor has failed to comply with any term of the Agreement or defaulted in any respect on its obligations under the Agreement, the Department will so notify the Contractor in writing within thirty (30) days after such determination, specifying the factual basis therefor.

(ii) Thereafter, the Department will allow the Contractor ten (10) days after receipt of such notice to cure such failure or default or to request a reasonable extension of time in which to do so, which request the Department may not unreasonably deny.

(iii) The Department may not determine a default against the Contractor except after complying with the requirements of the above paragraphs (i) and (ii).

(iv) The Contractor's failure meet performance milestones, while it may not be deemed a default or failure to comply with the Agreement or its component terms and conditions, may result in the termination of the Agreement by the Department pursuant to the applicable provisions herein.

3. <u>Discretion</u>.

The Department's discretion, where provided for in this Agreement, is subject to the requirement of reasonableness, and may not be exercised in an arbitrary and capricious manner.

4. <u>Work Product of Prior Vendors</u>.

The Department, as to any case transferred to the Contractor pursuant to Article 1, section 13(b) above, will not hold the Contractor liable for any error, omission, action or breach in service delivery as to any services performed by a prior HRA vendor.

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# PART 2.

# GENERAL PROVISIONS

## ARTICLE 1. DEFINITIONS

As used throughout this Agreement, the following terms will have the meanings set forth below:

1. "City" means the City of New York, its departments and political subdivisions.
2. "Comptroller" means the Comptroller of the City of New York.
3. "Department" means the Department of Social Services of the Human Resources Administration, its constituent agencies, departments, bureaus and bureau subdivisions.
4. "Administrator", "Commissioner" or "Agency Head" means the Administrator of the Human Resources Administration and Commissioner of the Department of Social Services or his/her duly authorized representative. The term "duly authorized representative" includes any person or persons acting within the limits of her/his authority.
5. "Law" or "Laws" includes without limitation the New York City Charter, the New York City Administrative Code, the local laws of the City of New York, and any ordinance, rule or regulation having the force of law.
6. The pronoun "it", when referring to the Contractor, includes he or she, and the adjective "its" includes his or her, as the case may be.
7. "Agency Chief Contracting Officer" ("ACCO") means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate agency staff in conjunction with the City Chief Procurement Officer ("CCPO")

## ARTICLE 2. INSURANCE

A. PROFESSIONAL LIABILITY INSURANCE.

The Contractor shall insure the Department and City of New York ("City"), as their interests may appear, with paid-up professional liability insurance in the sum of not less than five million ($5,000,000) dollars to cover all claims for damages attributable to the errors and omissions or malpractice, as the case may be, of the Contractor, in its performance of this Agreement, and to cover all risks involved therein.

B. COMPREHENSIVE GENERAL LIABILITY INSURANCE.

1. The Contractor shall carry paid up comprehensive commercial general liability insurance ("CGL") in the sum of not less than three million ($3,000,000) dollars per occurrence to protect the Department and the City against any and all claims, losses or damages, in contract or in tort, including claims for death, personal injury or property damage, whether attributable to statutory or common law negligence or to any other acts of the Contractor, its employees, or otherwise.

2. All required insurance policies shall be obtained from and maintained with a company or companies that may lawfully issue the required policy having an A.M. Best rating of at least A-7 or a Standard & Poor's rating of at least AA, unless prior written approval is obtained from the Mayor's Office of Operations.

3. All required insurance policies shall name the Department and the City of New York as additional insured parties thereunder, shall provide that the Department must be notified at least fifteen (15) days in advance of any cancellation thereof, and shall provide that the carrier must appear, defend and indemnify the Department and City, including their agents, servants and employees, in connection with any claims, losses or damages.

4. Two (2) executed copies of all insurance policies shall be delivered to the Department for approval as to form prior to the effective date of this Agreement.

C. MOTOR VEHICLE LIABILITY INSURANCE.

1. If the performance of this Agreement involves the use by Contractor of any motor vehicles, the Contractor shall obtain Motor Vehicle Liability Insurance, naming the City as an additional insured party, in the sum of not less than five million ($5,000,000) dollars, to cover all claims for damages arising in connection with the operation of said motor vehicle in the performance of Contractor's obligations under this Agreement.

2. All required insurance policies shall be obtained from and maintained with a company or companies that may lawfully issue the required policy having an A.M. Best rating of at least A-7 or a Standard & Poor's rating of at least AA, unless prior written approval is obtained from the Mayor's Office of Operations.

3. All required insurance policies shall name the Department and the City of New York as additional insured parties thereunder, shall provide that the Department must be notified at least fifteen (15) days in advance of any cancellation thereof, and shall provide that the carrier must appear, defend and indemnify the Department and City, including their agents, servants and employees, in connection with any claims, losses or damages.

4. Two (2) executed copies of all insurance policies shall be delivered to the Department for approval as to form prior to the effective date of this Agreement.

D. WORKER'S COMPENSATION AND DISABILITY BENEFITS.

1. The Contractor shall secure compensation for the benefit of its employees in compliance with the provisions of Chapter 615 of the Laws of 1922, known as the "Workers' Compensation Law" and acts amendatory thereto, inclusive of Disability Benefits, and keep such employees insured during the life of this Agreement. In addition, pursuant to Section 57 of the New York State Workers' Compensation Law, the Contractor shall submit the required proof of workers' compensation and disability benefits coverage to the Department or shall submit the required proof that workers' compensation and/or disability insurance coverage are not applicable, prior to the effective date of this Agreement.

2. All Participants in the work experience program ("WEP") herein who are employed by the Contractor to perform work under this Agreement are neither employees of the City nor under contract to the City. The Contractor alone is responsible for their work, direction and personal conduct while engaged under this Agreement. Nothing in this Agreement shall impose any liability or duty upon the City for the acts, omissions, liabilities or obligations of the Contractor, or any person, firm, company, agency, association, corporation or organization engaged by the Contractor as an expert, specialist, trainee, employee, servant or agent. The Contractor alone shall be solely responsible for providing workers' compensation in accordance with the provisions of the New York State Workers' Compensation Law. In the event the Contractor fails to secure workers' compensation coverage, the Contractor shall hold harmless and indemnify the Department of Social Services for any and all costs the Department may incur under the Workers' Compensation Law.

E. UNEMPLOYMENT INSURANCE.

The Contractor shall obtain and provide Unemployment Insurance coverage for its employees.

## ARTICLE 3. REPRESENTATIONS AND WARRANTIES

A. PROCUREMENT OF AGREEMENT.

1. The Contractor represents and warrants that it has not employed or retained any person or selling agency to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. 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 hereof.

2. For a breach or violation of such representations or warranties, the Administrator will have the right to annul the Agreement without liability and the City will be entitled to recover all monies paid hereunder, and the Contractor may not make claim for, or be entitled to recover, any sum(s) due under the Agreement. This remedy, if effected, will not constitute the sole remedy afforded the City for falsity or breach, nor will it constitute a waiver of the City's right to claim damages, refuse payment, or take any other action provided for by law or by this Agreement.

B. CONFLICT OF INTEREST.

1. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest, or will acquire any interest, directly or indirectly, that would or may conflict in any manner or to any degree with performing or rendering the services provided for herein. The Contractor further represents and warrants that it will not employ any person having such interest or possible interest in the performance of this Agreement. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, wholly or in part, from the City Treasury, may participate in any decision relating to this Agreement affecting his/her personal interest or the interest of any corporation, partnership or association in which s/he is, directly or indirectly, interested, nor may any such person have any interest, direct or indirect, in this Agreement or the proceeds hereof.

2. The names and addresses of the members of the Contractor's board of directors shall be delivered to the Department upon execution of this Agreement. The Contractor shall report any changes in the makeup of the board within ten (10) working days thereafter.

3. The Contractor's employees and members of their immediate families may not serve on:

   (a) the Contractor's board of directors; or
   (b) any committee with authority to order personnel actions affecting his/her job, or which, by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program.

4. No person may hold a job or position over which a member of his immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise. For purposes of this section, a member of a board of directors of the

Contractor is deemed to exercise authority over all employees of the Contractor. A member of an immediate family includes: husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, cousin and separated spouse, unless such job or position is wholly voluntary and unpaid.

5. The Contractor may 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 New York City Charter.

C. FAIR PRACTICES.

The Contractor and each person signing on behalf of any Contractor represents, warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief:

1. The prices in this Agreement have been arrived at independently, without collusion, consultation, communication or agreement for the purpose of restricting competition as to any matter relating to such prices with any other bidder or competitor;

2. Unless otherwise required by law, the prices quoted in this Agreement and in the proposal submitted by the Contractor have not been knowingly disclosed, directly or indirectly, by the Contractor prior to the proposal opening to any other bidder or competitor; and

3. The Contractor has made no attempt, nor will make any attempt, to induce any other person, partnership or corporation to submit or not submit a proposal, for the purpose of restricting competition.

4. The fact that the Contractor has done any of the following does not constitute, without more, a disclosure within the meaning of this subsection:

   (a) has published price lists, rates, or tariffs covering items being procured;
   (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items; or
   (c) has sold the items to other customers at the same prices being bid.

D. AFFIRMATION OF RESPONSIBILITY AND PAID TAXES.

The Contractor hereby affirms and declares that it is not in arrears to the City of New York upon any debt, contract or taxes, and is not a defaulter, as a surety or otherwise, upon any obligation to the City of New York, and has not been declared non-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 Contractor to receive public contracts, except as otherwise stated in the affirmation pertaining to the foregoing furnished to the Department.

## ARTICLE 4. AUDIT BY THE DEPARTMENT AND CITY

1. All vouchers or invoices presented for payment hereunder, and the books, records and accounts upon which they are based, are subject to audit by the Department and the Comptroller of the City of New York pursuant to the powers and responsibilities conferred upon them by the New York City Charter and the Administrative Code of the City of New York, and all orders and regulations promulgated thereunder.

2. The Contractor shall submit any and all documentation and justification in support of its expenditures or fees under this Agreement as may be required by the Department and the Comptroller so as to evaluate the reasonableness of the charges, and shall make its records available to the Department and to the Comptroller, as they consider necessary.

3. To the extent that the Contractor receives as payment three hundred thousand dollars ($300,000.00) or more pursuant to this Agreement or in the aggregate from all other agreements, which is derived from federal sources, the Contractor will be subject to an annual agency wide audit. Such audit will be in accordance with the directive of the Comptroller of the City of New York and/or the Human Resources Administration, and Federal Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and other Nonprofit Organizations. "The Contractor shall require its auditor to attest to the accuracy of revenues and expenses attributable to HRA funds and segregate them from the Contractor's financial statements in the audit report. Additionally, for Contractors subject to this section, the audit report shall be received no later than six (6) months after the end of the fiscal year being audited. All such audit reports are subject to review by the Inspector General in accordance with other provisions of this Agreement.

4. All books, vouchers, records, reports, cancelled checks and any and all similar material related to this contract and the work hereunder may be subject to periodic inspection, review and audit by the State of New York, the Federal Government and other persons duly authorized by the City, including the Office of the Inspector General. Such audit may include examination, review and photocopying of the source and application of all funds, whether from City, State or Federal government, private, or other sources.

5. The Contractor will not be entitled to final payment until all requirements of this Agreement have been satisfactorily met.

## ARTICLE 5. COVENANTS OF THE CONTRACTOR

1. INVESTIGATIONS.

   A. The Parties hereto agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York or City of New York governmental agency or authority 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/her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

B.(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 will 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.

C.(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 must be paid by the City.

E. The commissioner or agency head must 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 which 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 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 C(1), above, gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity shall present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F.(1) The term "license" or "permit" as used herein is defined as a license, permit, franchise or concession not granted as a matter of right.

F.(2) The term "person" as used herein is defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

F.(3) The term "entity" as used herein is 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.

F.(4) The term "member" as used herein is 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 Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this contract.

2. EMPLOYEES.

All experts, consultants or employees of the Contractor employed to perform work under this Agreement are neither employees of the City nor under contract to the City, and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Agreement. Nothing in this Agreement imposes any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature, including without limitation unemployment insurance, worker's compensation, disability benefits and social security.

3. LIABILITY.

(a) The Contractor is solely responsible for death or physical injuries caused to its agents, servants, employees or others, and for all property damage sustained during its operations and work under this Agreement resulting from the commissions, omissions, or judgment errors of its officers, trustees, employees, agents, servants, or independent contractors, and will hold harmless and

indemnify the City from liability upon any and all damage claims due to such personal injuries, death or property damage caused by the neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor is solely responsible for safety and protection of its employees, and for any injuries to them caused by the Contractor's negligence, fault or default.

(b) In the event any claim is made or action brought against the City arising out of the negligent or careless acts of the Contractor's employee, within or without the scope of his/her employment, or arising out of the Contractor's negligent performance of this Agreement, then the City will have the right to withhold further payments hereunder for purposes of set-off, in sufficient sums to cover the said claim or action. The rights and remedies of the City provided for in this subsection are not exclusive, but are in addition to any other rights and remedies provided by law or by this Agreement.

4. MINIMUM WAGE.

Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, 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 prescribed by law. Any breach or violation of this subsection will be deemed a breach or violation of a material provision of this Agreement.

5. INDEPENDENT CONTRACTOR STATUS.

The Parties agree that the Contractor is an independent contractor, not an employee of the Department or the City of New York, and that, in accordance with its status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City of New York, or of any department, agency or unit thereof, by reason of this Agreement, and that they will not, by reason hereof, make any claim, demand, or application to/for any right or privilege applicable to an officer or employee of the City of New York, including, without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage. or employee retirement membership or credit.

6. CONFIDENTIALITY.

(a) All information obtained, learned of, developed or filed by the Contractor in connection with public assistance recipients or their relatives, or in connection with other recipients of services, including data contained in official Department files or records, shall be held confidential by the Contractor pursuant to the provisions of the Social Services Law of the State of New York, the Federal Social Security Act, and regulations promulgated thereunder, and

shall not be disclosed by the Contractor to any person, organization, agency or other entity, except as authorized or required by law.

(b) All of the reports, information or data furnished to or prepared, assembled or used by the Contractor under this Agreement shall be held confidential, and the Contractor agrees not to make them available to any individual or organization without the prior written approval of the Department.

(c) The provisions of this subsection will remain in full force and effect following the termination or cessation of the services provided for by this Agreement.

7. BOOKS AND RECORDS.

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence of accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs, of any nature, expended in the performance of this Agreement. Such records are be subject to review, audit, inspection and copying by City, State and Federal personnel upon reasonable notice, subject to the provisions of Article 5.19, below.

8. RETENTION OF RECORDS.

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement for a period of six (6) years after the final payment or the termination date of this Agreement, whichever is later. City, State and Federal auditors and any other persons duly authorized by the Department, including the Inspector General, will have full access to and the right to examine and photocopy, any and all of said materials during the said retention period.

9. COMPLIANCE WITH LAW.

The Contractor shall render all services under this Agreement in accordance with the applicable provisions of Federal, State and local laws, rules and regulations in effect at the time such services are rendered.

10. FEDERAL EMPLOYMENT PRACTICES.

The Contractor and any subcontractors shall comply with the Civil Rights Act of 1964, any amendments thereto and any rules and regulations promulgated thereunder.

11. NON-DISCRIMINATION AGAINST THE HANDICAPPED.

The Contractor agrees that it will comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and all regulations, guidelines and interpretations issued pursuant thereto.

12. ASSIGNMENT.

(a) The Contractor may not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or of the Contractor's right, title, interest obligations or duties herein, or the Contractor's power to execute such Agreement, or assign, by power of attorney or otherwise, any of its rights to receive monies due or to become due under this Agreement, without obtaining the prior written consent of the Department. Any such assignment, transfer, conveyance, sublease or other disposition without such consent will be void.

(b) In the event that the Contractor assigns, transfers, conveys, sublets or otherwise disposes of this Agreement as specified in subdivision a, above, without the prior written consent of the Department, the Department may revoke and annul this Agreement and the Department will be relieved and discharged from any and all liability and obligations growing out of such Agreement to the Contractor, its assignees, transferee or sublessee, and the Contractor will lose all monies theretofore earned under this Agreement, except so much thereof as may be required to pay the Contractor's employees. The provisions of this subsection do not hinder, prevent or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.

(c) This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

13. SUBCONTRACTING.

(a) The Contractor agrees not to enter into any subcontracts for the performance of its obligations, wholly or in part, under this Agreement, without the prior written approval of the Department, Two (2) copies of each proposed sub-contract shall be submitted to the Department with the Contractor's written request for approval. Individual employer-employee contracts are excepted from this section.

(b) All subcontracts herein must contain provisions specifying:

(i) that the work performed by the subcontractor must be in accordance with the terms of this Agreement;
(ii) that nothing contained in such subcontract may impair the rights of the Department;
(iii) that nothing in the subcontract or this Agreement may create any contractual relationship between the subcontractor and the Department; and
(iv) that the subcontractor agrees to be bound by the confidentiality provisions in this Agreement.

(c) The Contractor shall be as fully responsible to the Department for the acts and omissions of its subcontractors and the persons they employ, directly or indirectly, as it is for the acts and omissions of the persons it employs directly.

(d) The Contractor may not, by any subcontract, be in any way relieved of any of its responsibilities under this Agreement.

14. PARTICIPATION IN AN INTERNATIONAL BOYCOTT.

(a) The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or will participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, of the regulations of the United States Department of Commerce promulgated thereunder.

(b) Upon the final determination by the U.S. 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/her option, render forfeit and void this contract.

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

15. ANTI-TRUST.

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 anti-trust laws of the State of New York or of the United States relating to the particular goods or services purchased or procured by the City under this Agreement.

16. PUBLICITY.

(a) The Contractor shall obtain the prior written approval of the Department before it or any of its employees, servants, agents, or independent contractors may, at any time during or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Agreement.

(b) If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or the results and accomplishments achieved in such performance, the Department will have a royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

17. INVENTIONS, PATENTS AND COPYRIGHTS.

(a) Any discovery or invention arising out of or developed in the course of performing this Agreement shall be promptly and fully reported to the

Department, and if the work is supported by a federal grant of funds, it shall be promptly and fully reported to the Federal Government for determination as to whether patent protection should be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, should be disposed of and administered in order to protect the public interest.

(b) The Contractor may not copyright any reports, documents or other data or information produced wholly or in part with contract funds, nor may it register any notice of copyright in connection with any report, document or other data developed for the Agreement.

(c) If the Contractor develops any copyrightable material under, or in the course of performing this Agreement, any Federal Agency providing federal financial participation for the Agreement, the New York State Department of Social Services and the City of New York will have a royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, the work for governmental purposes.

(d) In no event will the above subsections a., b. and c. be deemed to apply to any report, document or other data or information, or any invention of the Contractor that existed prior to, was developed or was discovered independent from, the Contractor's activities related to or funded by this Agreement.

18. INFRINGEMENTS.

The Contractor will be liable to the Department, and hereby agrees to indemnify and hold the Department harmless for any damage, loss or expense sustained by the Department from any infringement by the Contractor of any copyright, trademark or patent, rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement.

19. INSPECTOR GENERAL REVIEWS.

Notwithstanding any provision herein regarding notice of inspections, all records of the Contractor kept pursuant to this Agreement will be subject to immediate inspection, review and copying by the Office of the Inspector General, without notice.

## ARTICLE 6. TERMINATION

1. The Department and/or the City have the mutual right to terminate this Agreement, wholly or in part, as follows:

(a) under any right of termination specified in any section of this Agreement, or for a material breach of this Agreement;

(b) upon the Contractor's failure to comply with any of the terms and conditions of this Agreement that is not cured within ten (10) days after the Department's request therefor;
(c) upon the Contractor's insolvency;
(d) upon the commencement under the Bankruptcy Act of any proceeding by or against the Contractor, voluntary or involuntary;
(e) upon the receipt of notification that State or Federal reimbursement or funding is no longer available for the services provided under to this Agreement; or
(f) without cause, or if the Department deems that termination would be in the best interests of the City.

2. The Department or the City shall give the Contractor written notice of termination of this Agreement, specifying the applicable provision(s) of the above Article 6.1 and the effective date thereof, which shall not be less than ten (10) days from the date the notice is received, except where termination is based on the above Article 6.1.f., in which case, no less than thirty (30) days shall be given.

3. The Contractor may apply to the Department to have this Agreement terminated by the Department due to the Contractor's failure to perform this Agreement (including the Contractor's failure to make progress prosecuting work hereunder that endangers such performance), if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, without restriction, acts of God or the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or any other cause beyond the Contractor's reasonable control. The determination that such failure arises out of causes beyond the Contractor's control and without the Contractor's fault or negligence will be made by the Department, which agrees to exercise reasonable judgment therein. If such determination is made and the Agreement is terminated by the Department pursuant to such application by the Contractor, the termination will be deemed to be without cause.

4. Upon termination of this Agreement the Contractor shall comply with the Department or City's close-out procedures, including, without limitation:

(a) accounting for and refunding to the Department or City, within thirty (30) days, any unexpended funds paid to the Contractor pursuant to this Agreement;
(b) furnishing, within thirty (30) days, an inventory to the Department or City of all equipment, appurtenances and property purchased through or provided under this Agreement, and carrying out any Department or City directive concerning the disposition thereof;
(c) not incurring or paying any further obligation pursuant to this Agreement after the termination date; (Any obligation necessarily incurred by the Contractor on account of this Agreement before receiving notice of termination that falls due after the termination date will be paid by the Department or City in accordance with the terms of this Agreement. In no event may the word "obligation", as

used herein, be construed to include any lease agreement, oral or written, between the Contractor and its landlord.)

(d) turn over to the Department or City or its designees all books, records, documents and materials specifically relating to this Agreement;

(e) submit, within ninety (90) days, a final statement and report relating to this Agreement, which report must be made by a certified public accountant ("CPA") or a licensed public accountant ("LPA");

5. In the event the Department or City terminate this Agreement, wholly or partially, as provided in the above Article 6.1, subsection a., b., c. or d., the Department or City may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Contractor shall continue performing this Agreement to the extent not terminated thereby.

6. Notwithstanding any other provisions of this Agreement, the Contractor may not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of contract, and the City may withhold payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due to the City from the Contractor is determined.

7. The provisions herein regarding the confidentiality of information will remain in full force and effect following the expiration or sooner termination of this Agreement.

8. The rights and remedies of the City provided in this Article are not exclusive, and are in addition to all other rights and remedies provided for by law or under this Agreement.

## ARTICLE 7. CONTRACTOR'S HIRING COMMITMENT.

1. Except as otherwise provided by Paragraph 7.7 of this Article, the Contractor agrees as a condition of this contract to hire at least one public assistance recipient ("PA Recipient") for each two hundred and fifty-thousand dollars ($250,000.00) in value of this contract, or to the extent that the Contractor enters into other contracts with the Department, for every two hundred and fifty-thousand dollars ($250,000.00) in cumulative value of contracts of the Contractor during the term of this Agreement.

2. Such hiring shall be for full-time employment for a minimum of thirty-five (35) hours per week at a rate of pay at least twenty percent (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 PA Recipient is replaced by the Contractor during that year, such replacement will not count as an additional employee toward the Contractor's hiring requirement set forth in Article 7.1 above.

3. Within thirty (30) days after the commencement date of this contract ("Commencement date") or fifteen (15) days after notice from the Department that a request for an exemption from the provisions of this Article 7 has been denied,

the Contractor shall submit, on forms specified by the Department, information and specifications for the job(s) available.

4. The Contractor has the option to 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.

5. The Contractor shall hire the number of employees agreed upon pursuant to Article 7.1 above within ninety (90) days after the commencement date or within such longer period as may be specified in writing by the Department.

6. In the event the Contractor fails to hire the agreed-upon number of PA Recipients within the time required pursuant to Article 7.5 above, and to pay and retain such employees pursuant to the above Article 7.2, the 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.

7. The Contractor may apply to the Department for exemption from all or part of the requirements of this Article 7. Any application for exemption shall be made within thirty (30) days after the commencement date of this contract or any subsequent contract, as discussed in the above Article 7.1, and shall be in the form specified by the Department. The Department has the sole discretion to grant an exemption upon a showing that the operation of this Article will constitute an extreme hardship, or that the Contractor employs fewer than twenty (20) employees at a place of business within the City of New York.

## ARTICLE 8. MISCELLANEOUS

1. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE.

(a) This Agreement will be deemed to have been executed in the City of New York, regardless of the Contractor's domicile, and will be governed by and construed in accordance with the laws of the State of New York.

(b) The Parties hereby agree that any and all claims asserted by or against the City arising under this Agreement or related thereto will be heard and determined in the courts of the United States in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") in the City and County of New York.

(c) To effectuate this intent, the Contractor agrees that, with respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have to:

(i) move to dismiss on grounds of forum non conveniens;

(ii) remove to Federal Court; and
(iii) move for a change of venue to a New York State Court outside New York County.

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

(e) If the Contractor commences an action against the City in a court outside the City and State of New York, then, upon the City's request, the Contractor shall consent to transfer the action to a court of competent jurisdiction in the City and State of New York, or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice, and may thereafter reinstate the action in a court of competent jurisdiction in New York City.

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

2. GENERAL RELEASE.

Acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, will constitute and operate as a general release to the City from any and all claims of and liability to the Contractor arising out of the performance of this Agreement.

3. CLAIMS AND ACTIONS THEREON.

(a) No action at law or proceeding in equity will lie or may be maintained against the City or Department upon any claim based upon or arising out of this Agreement or in any way connected with this Agreement, unless the Contractor has strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(b) No action at law or proceeding in equity will lie or be maintained against the Department or the City upon any claim based upon this Agreement or arising out of this Agreement unless such action is commenced within six (6) months after the date of final payment hereunder, or within six (6) months after the termination or conclusion of this Agreement, or within six (6) months after accrual of the cause of action, whichever is earliest.

(c) In the event any claim is made or any action brought in any way relating to the Agreement herein, the Contractor shall diligently render to the Department and/or the City of New York without additional compensation, any and all assistance which the Department and/or the City of New York may require of the Contractor.

(d) The Contractor shall report to the Department in writing within three (3) working days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

4. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES.

No claim whatsoever may be made by the Contractor against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this Agreement.

5. WAIVER.

Waiver by the Department of a breach of any provision of this Agreement will not be deemed to be a waiver of any other or subsequent breach and will not be construed to be a modification of the terms of the Agreement unless and until the same is agreed to in writing by the Department or City as required, as attached to the original Agreement.

6. NOTICE.

The Contractor and the Department hereby designate the business addresses hereinabove specified as the places where all notices, directions or communications from one such party may be delivered or mailed to the other. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by certified, registered or overnight mail will be conclusive and deemed to be sufficient service thereof upon such party as of the date such notice, direction or communication is received by the party. Such address may be changed 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 above. Nothing in this section may 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.

7. ALL LEGAL PROVISIONS DEEMED INCLUDED.

It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement will be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement will forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

8. SEVERABILITY.

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

9. MODIFICATION.

This Agreement may be modified by the parties in writing in a manner not materially affecting the substance hereof. It may not be altered or modified orally.

10. PARAGRAPH HEADINGS.

Paragraph headings are inserted herein as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Agreement or otherwise affect this Agreement.

11. CONSULTANTS' REPORTS.

For any consultant whose expenses are paid wholly or partially from the City treasury, a copy of each report submitted by the consultant to any City official or to any officer, employee, agent or representative of a City department, agency, commission, body, corporation, association or entity, shall be furnished to the Commissioner of the department to which such report was submitted or, if not a City department, to the chief controlling officer or officers of such other office or entity. A copy of such report will also be furnished to the Director of the Mayor's Office of Construction for matters related to construction or to the Director of the Mayor's Office of Operations for all other matters.

12. VENDEX QUESTIONNAIRES.

If this contract is valued at one hundred thousand ($100,000.00) or more, then:

(a) The Contractor affirms that the Principal, Individual, Business Entity and Not-for-Profit Organization Questionnaires (VENDEX Questionnaires), as the case may be, required by Procurement Policy Board Rule 2-08 and any regulations promulgated thereunder, have been duly executed and submitted to the Department.

(b) The Contractor understands that the Department's reliance upon the veracity of the information stated therein is a material condition to the execution of this Agreement, and affirms that such information is in no respect misleading.

(c) The Contractor shall submit the applicable VENDEX Questionnaires, or if applicable, an Affidavit of No Change, at least annually, or upon the renewal of this Agreement. Any contractor for which submission requirements for

Business Entities and Not-for-Profit Organizations apply shall submit the applicable new fully completed VENDEX Questionnaires to the Department every three (3) years.

(d) This Agreement will be a nullity until the Contractor has complied with any and all the requirements set forth in Procurement Policy Board Rule 2-08, as amended, any regulations promulgated thereunder, and the VENDEX Questionnaires.

13. EXTENSION OF TIME – NON-CONSTRUCTION.

Upon the Contractor's written application, the Agency Chief Contracting Officer ("ACCO") may grant an extension of time for performance of the contract. Said application shall state, at a minimum, in detail, each cause for delay, the date the cause of the alleged delay occurred, and the total number of delay in days attributable to such cause. The ruling of the Agency Chief Contracting Officer will be final and binding as to the allowance of an extension and the number of days allowed.

14. PRICING.

(a) The Contractor shall, whenever required during the contract, including but not limited to the time of bidding, submit cost or pricing data and formally certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a specified date. The contractor shall keep its submission of cost and pricing data current until the contract has been completed.

(b) The price of any change order or contract modification, subject to the conditions of paragraph A, will be adjusted to exclude any significant sums by which the City finds that such price was based on cost or price data furnished by the supplier which was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

(c) Time for Certification. The Contractor shall certify that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date.

(d) Refusal to Submit Data. When any contractor refuses to submit the required data to support a price, the Contracting Officer will not allow the price.

(e) Certificate of Current Cost or Pricing Data. Form of Certificate. In those cases when cost or pricing data are required, certificate will be made using a certificate substantially similar to the one contained in Chapter 2 of the PPB rules and such certification will be retained in the agency contract file.

15. RESOLUTION OF DISPUTES.

A. All disputes between the City and the supplier of the kind delineated in this section that arise under, or by virtue of, this Contract will be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board ("PPB Rules"). The procedure for resolving all disputes of the kind delineated herein will be the exclusive means of resolving any such disputes.

1. This section does 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.

2. For construction and construction-related services this section will apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the supplier's work to the contract, and the acceptability and quality of the supplier's work; such disputes arise when the Engineer makes a determination with which the supplier disagrees.

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 will be deemed a non-determination without prejudice that will allow application to the next level.

B. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms will remain in full force and effect and the supplier shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer ("ACCO") or Engineer. Failure of the supplier to continue the work as directed will constitute a waiver by the supplier 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 supplier 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 may not be read to replace any other notice requirements contained

in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the supplier relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the supplier in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, 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 will be final. Willful failure of the supplier to produce any requested material whose relevancy the supplier has not disputed, or whose relevancy has been affirmatively determined, will constitute a waiver by the supplier of its claim.

2. Agency Head Inquiry. The Agency Head will examine the material and may, in his or her discretion, convene an informal conference with the supplier and the ACCO and, in the case of construction or construction-related services, the Engineer, 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 deems 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, must compel the participation of any other supplier with a contract related to the work of this contract and that supplier will be bound by the decision of the Agency Head. Any supplier thus brought into the dispute resolution proceeding will have the same rights and obligations under this section as the supplier 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 will make his or her determination and will deliver or send a copy of such determination to the supplier and ACCO and, in the case of construction or construction-related services, the Engineer, together with a statement concerning how the decision may be appealed.

4. Finality of Agency Head Decision. The Agency Head's decision will 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 supplier take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the supplier 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 supplier to the CDRB, the supplier shall 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 supplier 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 supplier 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 supplier to the agency, including the Notice of Dispute. The supplier 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 will 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 sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party will provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the supplier. Willful failure of the supplier to produce within fifteen (15) days any material requested by the Comptroller will constitute a waiver by the supplier of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller has forty-five (45) days from his or her receipt of all materials referred to in 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the supplier and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The supplier may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

F. Contract Dispute Resolution Board. There will 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/her designated OATH administrative law judge, who will 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/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated , and

3. A person with appropriate expertise who is not an employee of the City. This person will 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 supplier, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by Supplier. The supplier 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 supplier 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 supplier 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 supplier to, the Comptroller's Office. The supplier 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 supplier 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 must respond to the statement of the supplier and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the agency response must be submitted to the CDRB at OATH's offices and one to the supplier. Extensions of time for submittal of the agency response may 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 Board must permit the supplier to present its case by submission of memoranda, briefs, and oral argument. The Board must also permit the agency to present its case in response to the supplier by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller must provide reasonable assistance in the preparation of the agency's case. Neither the supplier 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 deems appropriate and may seek, on it own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB must 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 must so advise the parties at the commencement of this period. The CDRB's decision must be

consistent with the terms of the contract. Decisions of the CDRB may only resolve matters before the CDRB and have no precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB must send a copy of its decision to the supplier, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer. A decision in favor of the supplier will be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date must 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 will 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 may be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with Section 4-09 of the PPB Rules.

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

16. CONTRACT CHANGES.

(a) Changes may be made to this contract only as duly authorized by the Agency Chief Contracting Officer ("ACCO") or his/her designee. Vendors deviating from the requirements of an original purchase order or contract without a duly approved change order document or a written contract modification or amendment, do so at their own risk. Any and all such changes, modifications and amendments will become a part of the original contract.

(b) Contract changes will be made only for work necessary to complete the work included in the original scope of the contract and for non-material changes to the scope of the contract. Changes will not be permitted for any material alteration in the scope of work. Contract changes may include any contract revision deemed necessary by the ACCO.

(c) The Contractor may be entitled to a price adjustment for extra work performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the Contractor may be entitled to an extension of time for performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

(d) Except in the case of a requirements contract, any contract increases that cumulatively exceed the greater of ten percent (10%) of the contract amount or one hundred thousand dollars ($100,000.00) must be approved in writing by the City Chief Procurement Officer ("CCPO"). Any contract amendment that amends a unit price, cancels required units, or adds a new type of unit item to the contract, must be approved in writing by the ACCO.

17. NO DAMAGES FOR DELAY.

The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim will be fully compensated for by an extension of time to complete the performance of the work provided for herein.

18. PROMPT PAYMENT.

(a) The Prompt Payment provisions set forth in Chapter 4, Section 4-06 of the Procurement Policy Board Rules, as amended, apply to payments made under this contract. Such provisions require the payment to contractors of interest on payments made after the required payment date, except as set forth under Section 4-06 of the Rules.

(b) The Contractor shall submit a proper invoice to receive payment, except where the contract provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

(c) Determinations of interest due will be made in accordance with the provisions of Section 4-06 of the Procurement Policy Board Rules and General Municipal Law Section 3-a, as amended.

19. POLITICAL ACTIVITY.

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

20. RELIGION.

There shall be no religious worship, instruction or proselytization as part of or in connection with the performance of this Agreement, except that recipients of the services herein may be allowed access to religious instructions or worship of their own persuasion.

21. REDUCTION IN FEDERAL, STATE OR CITY FUNDING.

(a) The Contractor, acknowledging that this Agreement is funded wholly or partially with funds secured from the Federal, New York State or City Government, agrees that if such funds are reduced or discontinued by the Federal, New York State or City Government, the City of New York and the Department will have, in their sole discretion, the right to terminate this Agreement, wholly or partially, or to reduce the funding and level of services hereunder caused by such Federal, State or City Government action, including, in the case of reduction, but not limited to, reducing or eliminating programs, services or service components, reducing or eliminating contract-reimbursable staff or staff-hours, and corresponding reductions in the Agreement budget and the total amount payable under the Agreement.

(b) In the case of termination, referred to in paragraph a, above, such termination will take effect immediately upon written notice thereof to the Contractor. In the case of reduction, referred to in paragraph a, above, such reduction will be effective as of the date set forth in a written notice thereof to the Contractor, which must be not less than thirty (30) calendar days after the date of such notice. Prior to sending such notice of reduction, the Department must advise the Contractor that such option is being exercised and must afford the Contractor an opportunity to make, within seven (7) calendar 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 Contractor expressly understands and agrees that the Department will not be bound to utilize any of the Contractor's suggestions, and that the Department will have sole and exclusive discretion to decide how to effectuate the reductions.

(c) The termination and reduction options of the Department and City set forth in paragraphs a. and b. above are independent and separate rights, in addition to any other rights of termination or modification provided by this Agreement, by law or by relevant regulation, and supersede any and all rights or actions the Contractor may have under any contrary provision of this Agreement.

22. COST ALLOCATION.

(a) HRA reserves the right to require the Contractor to fairly and accurately allocate costs attributable to the operation of two or more programs among such programs by a method representing the benefit of such costs to each program. In the event HRA determines that cost allocation is advisable, the Contractor shall, within thirty (30) days of notification by HRA, or, in the event that HRA has so notified the Contractor more than thirty (30) days prior to the effective date of this Agreement, by the effective date of this Agreement, develop and deliver a cost allocation plan for HRA's approval.

(b) No cost allocation plan will be approved by HRA unless such plan:

(i) relates to allowable costs as defined in applicable laws, regulations and policies of the federal, state and city governments;

(ii) relates to costs necessary for the Contractor's performance pursuant to this Agreement;

(iii) fairly and accurately reflects the actual allocable share of such cost with respect to this Agreement;

(iv) is developed in accordance with generally-accepted accounting principles; and

(v) is accompanied by such supporting documentation as HRA deems necessary to evaluate the plan.

(c) Notwithstanding any provision in this Article 8.22. to the contrary, HRA further reserves the right to withhold any payments to the Contractor for allocated costs, in the event HRA deems the cost allocation plan unsatisfactory, wholly partially, or determines that such allocated costs have been incorrectly determined, are not allowable or necessary, or are not properly allocable pursuant to this Agreement and an approved cost allocation plan.

(d) All books and records regarding allocated costs are subject to audit pursuant to this Article 8.22.of the Agreement, as are all other costs, and are further subject to the provisions of Article 5.7 of Part 2 of the Agreement regarding the maintenance of separate and accurate books and records, and Article 5.8 of Part 2 of the Agreement regarding the retention period of books and records.

23. PROCUREMENT REQUIREMENTS.

(a) The Contractor shall retain proper and sufficient bills, vouchers, duplicate receipts and documentation for any payments or refunds made to or received by the Contractor in connection with this Agreement.

(b) For any payment made or obligation undertaken in connection with this Agreement, three written estimates shall be solicited and documented for the purchase of services, including without limitation, consulting services, and equipment valued in excess of one thousand dollars ($1,000.00) and for security related services valued in excess of one thousand five hundred dollars ($1,500.00). The above-stated amounts apply to payments made or obligations undertaken in the course of a one (1) year period with respect to any one person or entity. Records must be maintained which detail the method of procurement, the basis for selection or rejection of a contractor and the basis for the contract price.

(c) The Contractor agrees to make positive efforts to utilize small businesses, women's business enterprises and minority owned businesses as sources for supplies and services.

(d) Detailed records shall be maintained as to the acquisition, use, and disposition of property, on forms acceptable to the Department.

(e) In addition, any payments made for consultant services shall be pursuant to a written agreement between the Contractor and the consultant, which must contain provisions specifying:

(i) the scope of the work to be performed under the contract;
(ii) the rate of compensation which the consultant will receive pursuant to the contract;
(iii) the term of the consultant agreement; and
(iv) the date or dates of the deliverables under the contract.

(f) No payment may be made to or obligation undertaken in connection with this Agreement (including but not limited to consulting services) with (1) any person who is a relative of a director or officer or principal of the Contractor, or (2) any entity that has a director, officer or principal who is a relative of the director, officer or principal of the Contractor. As used herein, the term "relative" means husband, wife, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, cousin, and separated spouse unless such job or position is wholly voluntary and unpaid.

24. COMPENSATION OF KEY EMPLOYEES.

The Contractor shall submit to the Department within thirty (30) days after executing this Agreement and at the beginning of each new fiscal year a list of key personnel, which must include without limitation all officers, directors, fiscal staff and supervisory personnel involved directly or indirectly in the performance of this Agreement. For each such employee, the Contractor shall provide the current salary, all sources of the employee compensation, whether from this contract or another City, State, Federal or private source, and the dollar amount of compensation from each such source.

## ARTICLE 9. EQUAL EMPLOYMENT

A. MAYOR'S EXECUTIVE ORDER NO. 50.

This Agreement is subject to the requirements of Executive Order No. 50 (1980) as revised ("E.O. 50") and the Rules and Regulations promulgated thereunder. No Contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this Contract, the Contractor agrees that it:

1. Will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation 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, when it subcontracts, engage in any unlawful discrimination in the selection of subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation or that it is an equal opportunity employer;

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 regard to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation; or 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; and

5. Will furnish all information and reports including an Employment Report before the award of the Contract which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Division of Labor Services ("DLS"), and will permit access to its books, records and accounts by the DLS for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. Nothing contained in this Article may be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

C. 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 will 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 the DLS, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

(i) disapproval of the Contractor;
(ii) suspension or termination of the Agreement;
(iii) a declaration of default; or
(iv) in lieu of any of the foregoing sanctions, the imposition of an employment program.

D. The Director of the Bureau may recommend to the contracting agency head that a Board of Responsibility be convened for purposes of declaring a contractor who

has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be nonresponsible.

E. The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of fifty thousand dollars ($50,000.00) to which it becomes a party, unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Bureau of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

F. The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

2. WHERE REQUIRED BY NEW YORK STATE LABOR LAW SECTION 220-E THE CONTRACTOR AGREES, as to all operations performed within the territorial limits of the State of New York pursuant to every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies, that:

(a) in the hiring of employees to perform work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor will, by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(b) neither the Contractor, its subcontractor, or any person on their behalf, will in any manner discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, sex or national origin;

(c) there may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of five dollars ($5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

(d) this Agreement may be cancelled or terminated by the City and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Agreement.

3. WHERE REQUIRED BY NEW YORK CITY ADMINISTRATIVE CODE SECTION 6-108 THE CONTRACTOR AGREES THAT:

(a) It is 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 is unlawful for any person or any servant, agent, or employee of any person, described in subdivision (A) above, to ask, indicate or transmit orally or in writing, directly or indirectly, the race, color, or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

(c) Disobedience of the foregoing provisions will be deemed a violation 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 violates any of the provisions of this section, will, upon conviction thereof, be punished by a fine or not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

## ARTICLE 10. APPROVALS

1. PROCUREMENT POLICY BOARD RULES.

This contract is subject to the Rules of the Procurement Policy Board of the City of New York ("PPB Rules") dated August 1, 1990, as amended. In the event of a conflict between said Rules and a provision of this contract, the Rules will take precedence.

2. THE CITY OF NEW YORK.

This Agreement will not become effective or binding unless:

(a) authorized by the Mayor; approved pursuant to New York City Charter and Procurement Policy Board Rules for contracts not subject to public letting; and endorsed by the Comptroller's certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable hereto sufficient to pay the estimated expense of executing this Agreement;

(b) approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975 in the event the Executive Order requires such approval;

(c) certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan;

(d) approved by the New York State Financial Control Board (Board) pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "Act), in the event regulations of the Board pursuant to the Act require such approval; and

(e) authorized by the Mayor and endorsed by the Comptroller's certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of carrying out this Agreement.

3. OTHER APPROVALS OR AUTHORIZATIONS.

The requirements of this Article 10 are 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.

## ARTICLE 11. MACBRIDE PRINCIPLES

1. NOTICE TO ALL PROSPECTIVE CONTRACTORS.

Local Law No. 34 of 1991 became effective on September 10, 1991 and added section 6-115.1 to the Administrative Code of the City of New York. The Local law provides for certain restrictions on City contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of opportunity in the work place. Pursuant to Section 6-115.1, prospective contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business operations in Northern Ireland conducted by the Contractor and individual or legal entity in which the Contractor holds ten percent or greater ownership interest and any individual or legal entity that holds ten percent or greater ownership interest in the contract will be conducted in accordance with the MacBride Principles of nondiscrimination in employment. Prospective Contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with

applicable laws and rules, that it is in the best interest of the City to award the contract to other than the lowest responsible bidder, pursuant to Section 313(b)(2) of the City Charter.

In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these conditions, no agency, elected official or the Council, may award the contract to the bidder, unless the entity seeking to use the goods, services or construction, certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

PART A

In accordance with section 6-115.1 of the Administration Code of the City of New York, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership in the Contractor either (a) have no business operations in Northern Ireland, or (b) take lawful steps in good faith, to conduct any business operations that they may have in Northern Ireland in accordance with the MacBride Principles, and permit independent monitoring of their compliance with such principles.

PART B

For purposes of this section, the following terms have the following meanings:

1. "MacBride Principles" means those principles relating to nondiscrimination in employment and freedom of opportunity in the workplace that require employers doing business in Northern Ireland to:

   (a) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
   (b) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the work place and while traveling to and from work;
   (c) ban provocative religious or political emblems from the work place;
   (d) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
   (e) establish layoff, recall and termination particular religious group;
   (f) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
   (g) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;

(h) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

(i) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

2. ENFORCEMENT OF ARTICLE 11.1

(a) The Contractor agrees that the covenants and representations in Article 11.1 above are material conditions to this contract. In the event the contracting entity receives information that the Contractor, who signed the stipulation required by this section, is in violation thereof, the contracting entity will review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity has the right to declare the Contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor will pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract. In the case of a requirements contract, the Contractor will be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract.

(b) In the case of a construction contract, the contracting entity also has the right to hold the Contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the entity hereunder are in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

## ARTICLE 12. CONTRACTOR'S COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

1. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. 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. To ensure 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 or activities set forth in the scope of services herein, readily accessible and usable by individuals with disabilities at such site(s) listed. In the event the program site is not readily accessible and usable by individuals with disabilities, 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 set forth herein, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, audial, or mobility disabilities. Contractor shall submit the Compliance Plan to the ACCO of the Agency for review within ten (10) days after execution of this Agreement. Upon approval by the Agency of the Compliance Plan, Contractor shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs or activities accessible and usable by the disabled. Implementation of the Compliance Plan shall be in accordance with the schedule for Compliance agreed upon by the Agency and the Contractor.

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

## ARTICLE 14. ENTIRE AGREEMENT

This written Agreement contains all of the terms and conditions agreed upon by the Parties hereto, and no other agreement, oral or written, regarding the subject matter of this Agreement will be deemed to exist, to bind either Party hereto, or to vary any of the terms contained herein.

[Intentionally left blank.]

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

Comptroller's Office
Central Imaging Facility
ORIGINAL

CITY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
HUMAN RESOURCES ADMINISTRATION

By: ____________________

Title: Commissioner

Corporate Contractor
Affix Corporate Seal:

FEGS Health and Human Services System
CONTRACTOR

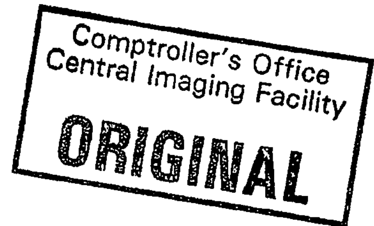
Comptroller's Office
Central Imaging Facility
ORIGINAL

By: ____________________ 11/04

Title: Chief Administrative Officer

EIN/SSN# 13-1624000
Fed. Employer I.D. No. or Soc. Sec. No.

YKWeCareFEGS
CBC Final Draft
August 18, 2004
PIN #




## ACKNOWLEDGEMENTS:

STATE OF NEW YORK )
:ss:
COUNTY OF NEW YORK )

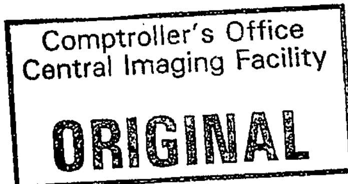
On this 10th day of November 20 04, before me personally came Verna Eggleston, known to me and known by me to be the Commissioner of the HUMAN RESOURCES ADMINISTRATION/ DEPARTMENT OF SOCIAL SERVICES of the CITY OF NEW YORK, the person described in and who is duly authorized to execute the foregoing instrument, and acknowledged to me that s/he executed the same for the purposes therein mentioned.

NOTARY PUBLIC

GERTIE KELLY-MOORE
Notary Public, State of New York
No. 01KE4528281
Qualified in Bronx County
Commission Expires 8/31/06

STATE OF N.Y. )
:ss:
COUNTY OF NY )

On this 8th day of December 2004, before me personally came [illegible], known to me, who, being duly sworn by me, deposed and said that s/he resides at [illegible], that s/he is the Chief Executive Officer of FEGS Health and Human Services System, the corporation described in and which executed the above instrument; that s/he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that s/he signed his name thereto by like order.




NOTARY PUBLIC

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