RFP

CASE MANAGEMENT AND DENIALS MANAGEMENT INFORMATION SYSTEM

The New York City Health and Hospitals Corporation, has issued a Request for Proposal (RFP) to vendors to provide a case management and denials management software product for development, implementation, and support strategies. Proposers must demonstrate expertise and experience in providing similar services. A pre-proposal conference is scheduled for January 8, 2013 at 10AM at 346 Broadway, Conference Room 12 East. Proposals are due January 18, 2013 no later than 4 PM.

Prospective vendors wishing to view the RFP package should refer to New York City Health and Hospitals Corp.’s website at http://nyc.gov/hhc under “Resources - Contracting Opportunities”. Printed copies of the RFP may be obtained for $25, by visiting 346 Broadway, Room 506 New York, NY 10013 between the hours of 9 AM and 5 PM beginning December 21, 2012. To request a copy of the RFP by postal mail, send a check or money order for $25, paid to the order of NYC Health and Hospitals Corporation to the attention of Susan Fung c/o Boris Goltzman, Director, Procurement Systems and Operations, Materials Management 346 Broadway, Room 506 New York, NY 10013

Refer to Document Control Number 2043.
REQUEST FOR PROPOSALS

TO PROVIDE

THE INSTALLATION AND SUPPORT OF

A CASE MANAGEMENT AND DENIALS

MANAGEMENT INFORMATION SYSTEM

FOR THE

THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION
INTRODUCTION

The purpose of this RFP is to select a company to provide a case management and denials management information system for the acute care, rehab, skilled nursing and long term care facilities of the NYC Health and Hospitals Corporation.

The successful awardee (the “Vendor”) will be selected based on a thorough analysis of the ability of each “Proposer” to provide the Corporation with the highest quality software product and implementation services. The Corporation will only contract with firms that do not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions. The Corporation encourages women- and minority-owned businesses to submit proposals in response to this solicitation.

Proposers must meet the following minimum qualifications:

• The company must have installed its case management and denials management software product at a minimum of three (3) integrated delivery networks similar to the size and scope of New York City Health and Hospitals Corporation.

AND

• The company must be an application service provider that can deliver a web-based software product.

The ultimate decision for selecting a firm shall be made by the Evaluation Committee using the criteria included in this RFP to determine the ability of the firm to provide the product and services required.

Any questions regarding this RFP should be addressed to the following Contact Person:

Susan Fung
Director, Finance/Managed Care
New York City Health and Hospitals Corporation
Cumberland Diagnostic & Treatment Center
100 N. Portland Avenue, Room 510
Brooklyn, NY 11205
Fax: (718) 260-7765
Email: Susan.Fung@nychhc.org

All questions must be submitted in writing; email is preferred.

Proposals must be received by January 18, 2013 no later than 4:00 P.M. EST at the following address:

Susan Fung, Director, Finance/Managed Care
c/o Boris Goltzman, Director, Procurement Systems & Operations
Materials Management
New York City Health and Hospitals Corporation
346 Broadway, Room 506
New York, NY 10013
Late or unsealed proposals shall not be accepted or considered. An original and thirteen (13) paper copies of the proposal and all attachments must be included. In addition, two (2) electronic copies (on CD-ROM) of all documents must be included (in Adobe Acrobat or Microsoft Word file format), and all Microsoft Excel spreadsheet attachments must be returned in Microsoft Excel file format. Unsealed or late proposals, received after the proposal due date and time, will not be considered, except that the Corporation, in its sole discretion, reserves the right to accept late proposals when it is in the best interest of the Corporation and the lateness of the proposal is deemed non-material by the Corporation.
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SECTION I - BACKGROUND/PURPOSE OF THE RFP

The New York City Health and Hospitals Corporation ("the Corporation" or "HHC") is a public benefit corporation of the State of New York created in 1969 under the New York City Health and Hospitals Corporation Act, New York Unconsolidated Laws §7381 et seq. ("the Act"), for the purpose of assuming responsibility for the operation of the municipal hospital system of the City and providing comprehensive physical and mental health care and substance abuse services to the ill and infirm in the City. The Corporation is the largest municipal hospital system in the United States with over 35,000 employees and an annual operating budget of approximately $6.7 billion. The Corporation operates a facility-based network of more than 7,600 beds comprised of six care delivery networks that span eleven acute care hospitals, eight inpatient rehabilitation facilities, four long-term care facilities, six diagnostic and treatment centers ("D&TCs"), and a network of over seventy satellite clinics. In addition, the Corporation operates a Health Maintenance Organization and a Home Health Agency.

Given the challenges of the current fiscal environment, and the shift away from Medicaid and Medicare fee-for-service insurance coverage towards an expansion of the managed care market, strong utilization management, discharge planning and denials management tools are critical. In FY12, more than fifty percent of the Corporation’s inpatient discharges were managed care patients. The Corporation seeks a software system that will enable its facilities to optimize the tracking and case management of patients, to provide effective care coordination and referral options, to meet the administrative requirements of payers, and to effectively manage denials and appeals processes.

HHC requires a case management and denials management information system to assist facilities with the following:

1. Case Management of Patients
2. Denials and Appeals Management
3. Discharge Planning, Bed Flow, and Referrals Management

The Corporation seeks to enter into an agreement for a period of three years with two one year renewal options exercisable by the Corporation with a company with demonstrated expertise and extensive experience in the design, configuration, and implementation of a case management and denials management information system for acute-care, rehab, skilled nursing, and long term care facilities.

The Corporation’s vision for its information technology is to leverage systems as tools for extensive redesign, improvement, and transformation of clinical care and operations. Preferred Vendors will provide:

• Vision – for both product and company
• Resources to achieve vision, including appropriate investment in research & development of their product to meet changes in the industry or regulatory requirements.
• Successful implementations in an integrated health care delivery organization, such as HHC
• Consulting experience available for transformation, implementation, and product support
• An intuitive user interface
• Strong reporting and exporting capabilities to support performance improvement

The system must interface with the Corporation’s financial system (Siemens UNITY and Soarian Financials) and electronic medical record system (QuadraMed CPR/EPIC).

The system must be a web-based system that will allow authorized users to access the application from any computer that has access to the internet from within the HHC intranet, including from wireless devices, such as laptops or hand-held devices. Limited IT support at the facility will be available for maintenance and support.

BACKGROUND

HHC Facilities

The following table provides a breakdown by hospital of the Corporation’s bed capacity as of August 28, 2012 and discharges for Fiscal Year 2012 (July 1, 2011 – June 30, 2012).

<table>
<thead>
<tr>
<th>Acute Facilities</th>
<th>Network</th>
<th>Beds</th>
<th>Discharges (FY12)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bellevue</td>
<td>South Manhattan</td>
<td>912</td>
<td>25,018</td>
</tr>
<tr>
<td>Coney Island</td>
<td>Southern Brooklyn/SI</td>
<td>371</td>
<td>16,747</td>
</tr>
<tr>
<td>Elmhurst</td>
<td>Queens</td>
<td>545</td>
<td>24,451</td>
</tr>
<tr>
<td>Harlem</td>
<td>Generations Plus/Northern Manhattan</td>
<td>288</td>
<td>10,650</td>
</tr>
<tr>
<td>Jacobi</td>
<td>North Bronx</td>
<td>457</td>
<td>19,857</td>
</tr>
<tr>
<td>Kings County</td>
<td>North Central Brooklyn</td>
<td>700</td>
<td>23,932</td>
</tr>
<tr>
<td>Lincoln</td>
<td>Generations Plus/Northern Manhattan</td>
<td>347</td>
<td>23,229</td>
</tr>
<tr>
<td>Metropolitan</td>
<td>South Manhattan</td>
<td>356</td>
<td>11,814</td>
</tr>
<tr>
<td>North Central Bronx</td>
<td>North Bronx</td>
<td>213</td>
<td>7,938</td>
</tr>
<tr>
<td>Queens</td>
<td>Queens</td>
<td>244</td>
<td>12,972</td>
</tr>
<tr>
<td>Woodhull</td>
<td>North Central Brooklyn</td>
<td>394</td>
<td>13,851</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>4,827</td>
<td>190,459</td>
</tr>
</tbody>
</table>
Skilled Nursing Facilities | Beds* | Discharges |
--- | --- | --- |
Coler-Goldwater | 2,016 | 594,487 |
Dr. Susan Smith McKinney | 320 | 115,036 |
Gouveauer | 210 | 66,594 |
Seaview | 304 | 109,037 |
**Total Long-Term Care** | 2,850 | 885,154 |

*As of August 24, 2012*

Seventy-five percent of admissions are through the emergency department. See Attachment C for a complete breakdown of bed capacity by service line for each hospital and long term care facility.

While there is standardization across facilities in some areas, all clinical and administrative operations, including Utilization Review, Discharge Planning, and Denials Management are managed at the facility level. A case management software system has been implemented across all facilities for the past four years which has improved the standardization across each facility. The system also functioned as a denials management system which has allowed acute facilities for a more standard approach to track and respond to denials and appeals. In addition to implementation at each acute facility, long term care facilities have also implemented the referral management functionality and there is interest in expanding to inpatient rehabilitation facilities (IRFs).

**Payor Mix**

Historically, HHC hospitals had been paid fee-for-serve rates, primarily by Medicaid and Medicare. Since 1999, when New York State initiated Mandatory Managed Care for Medicaid recipients, the payer mix has been shifting away from fee-for-service towards managed care. In Fiscal Year 2012, 40% of all discharges were Medicaid and Medicare fee-for-service, 43% were Medicaid and Medicare Managed Care, 9% were commercial, and 8% were self-Pay or other.

HHC currently has Medicaid managed care contracts with 5 health plans, Medicare managed care contracts with 10 health plans, and more than 15 commercial insurance contracts with health plans. In addition, the Corporation serves many patients of non-contracted plans due to the high volume of emergency admissions. It is also important to note that part of the Corporation’s mission is to provide medical care to patients regardless of their ability to pay.
SECTION II - RFP TIMETABLE

- Release Date of the RFP: December 21, 2012
- Proposal Due Date and Time: January 18, 2013 on or before 4:00 PM EST

**LATE OR UNSEALED PROPOSALS WILL NOT BE ACCEPTED,** unless it is determined that it is in the Corporation’s best interest to accept such proposals.

- Sealed proposals are to be delivered to:
  
  Susan Fung, Director, Finance/Managed Care  
  c/o Boris Goltzman, Director, Procurement Systems & Operations  
  Materials Management  
  New York City Health and Hospitals Corporation  
  346 Broadway, Room 506  
  New York, NY 10013

- Pre-proposal Conference Date: January 8, 2013  
  346 Broadway, 12E Conference Room

- Projected Vendors’ Demonstration Date: week of February 4, 2013
- Projected Contractor Selection Date: February 8, 2013
- Projected Contract Start Date: May 1, 2013
SECTION III - SCOPE OF SERVICES/SCOPE OF WORK

The Corporation seeks to enter into an agreement with a software services firm with demonstrated expertise in the provision of a case management, denials and appeals management, and discharge planning and referral management software solution for integrated healthcare delivery system. The agreement will be negotiated for a three-year period with two one-year renewal options exercisable by the Corporation. The firm will work under the supervision of the HHC Corporate Chief Information Officer or designees. The firm will work with administrative leaders throughout HHC, from departments of Finance, Utilization Review, Discharge Planning, Social Work, Health Information Management, HHC Health and Home Care, and Corporate Planning.

The Corporation currently has a system that provides some of these services. If the successful vendor is not the Corporation’s current vendor, the successful vendor will work with the Corporation, and the Corporation’s current vendor to provide a seamless transition of data from the Corporation’s current system.

Implementation of the system may occur across all facilities at one time. However, there is the potential to stagger implementation of the system at the Acute facilities, Long Term Care Facilities (LTCs) and Inpatient Rehab Facilities (IRFs). If the implementation is conducted in a phased approach, then the Corporation recommends implementation to occur at 4 HHC Acute Hospitals, 1 Rehab Facility and 1 Long Term Care Facility. If the first phase meets the Corporation’s needs and standards, then implementation will be rolled out to the remaining acute, LTCs and IRF facilities at the Corporation’s discretion. Despite the potential staggered implementation, the Corporation would expect the implementation at all acute hospitals, LTCs and IRFs to occur within 12 months or less. The vendor will provide a detailed implementation plan with key milestones, demonstrating best practices and standards for implementing across an integrated healthcare delivery system.

It is anticipated that the selected company will be called upon to provide a case management, denials and appeals management, and discharge planning and referrals management software application that will offer a standardized set of functions across the Corporation. Discharge planning and referral management capability should enable HHC facilities to connect with post-acute facilities, including rehab, skilled nursing facilities, long term care facilities, and HHC Health and Home Care. However, the system should allow for additional customization, as needed, by each facility, as long as it does not interfere with the initial standards set for the Corporation.

The vendor will provide project planning and management, workflow analysis, implementation, training, go-live support, future product maintenance and upgrades in order to keep the application up-to-date and consistent with most recent release. The Corporation reserves the right to purchase all or individual modules of a selected information system.

**Functional Requirements**
HHC requires a case management and denials management information system to assist facilities with the following functions:
1. Case Management of Patients
2. Denials and Appeals Management
3. Discharge Planning and Bed Flow and Referrals Management

In each of the functional areas, the Corporation seeks an information system that will provide real-time access to patient information, minimize duplicate data-entry, and automate processes such as notifications and other communication with payers through an intuitive and user-friendly interface. Worklists and reports should be easy to use. A standard set of reports should be available to all the facilities and these reports can be interfaced with our financial and electronic medical record systems. The system should also allow for additional, customized reports and analyses to be created by facilities and/or vendor at the request of HHC.

The primary departments that will use the system include Case Management, Utilization Management (UM), Discharge Planning, Health Information Management, Social Work, Hospital-based Physicians and Physician Advisors, Patient Accounts and Admitting. Other hospital departments that may also use this system include: Behavioral Health, Nursing, Managed Care, Ambulatory Care and other departments as determine by HHC to manage and coordinate patient care.

**Required Responses from Vendors:**

All proposals should provide narrative and/or visual detail to address the specific features of the functional requirements, and other requirements, as outlined below:

**Functional Requirement #1: Case Management**

HHC requires an automated system to assist in effectively managing care. Facilities need a system that can support daily patient care reviews, electronic faxing of authorizations, email and scanning capabilities, case manager specific worklists, and seamless integration of external UM guidelines (e.g., Milliman and InterQual). The system should support alert for high length of stay (LOS), track potentially avoidable admissions and readmissions and adverse and sentinel events. The case management software should have the capacity to interface with on-line authorization systems being developed or licensed by the managed care companies or allow for two-way communication to minimize the need for multiple systems. In addition, the system should have the ability to:

1. Track case status in real-time workflow process and history of case activity must be visible;
2. Notes or tools to track level of care assignments with dates (ie. alternate level of care (ALOC) and Observation);
3. Calculate acute and non-acute days for billing purposes;
4. Select and view information sent to payer (option to include or modify review criteria);
5. Have different levels of security based on staff functions; and
6. Automate departmental forms, regulatory notices and clinical pathways.
7. Have templates for clinical protocols based on diagnosis, utilization review status for case management and payers, Centers for Medicare and Medicaid Services (CMS) guidelines, State/Federal rules and regulations, and clinical testing should be available;
8. Have email alert notification to clinical and affected areas to take appropriate actions.

**Functional Requirement #2: Denials and Appeals Management**

HHC seeks an integrated system that will increase recovery rates on denied claims, DRG/Coding adjustments, and payment errors by improving the tracking and follow-up of appeals and accounts receivable. The software should support electronic correspondence with payers for authorizations, clinical information, denials and appeals, and provide verification of payers’ receipt correspondence. There should be an alert system embedded for multiple denials for the same services. The system should produce daily worklists of review requests, denials and appeals. The system should provide template appeal letters that can be customized with patient information and be able to support electronic correspondence with the payors for denial and appeals management. The system should be able to track to all levels of appeal processes including the five levels of Medicare audits with due dates for all activities, and associated with the appropriate providers. The system should have the capability to store all denials and appeals correspondence at the patient encounter level.

The system should allow for sharing of relevant information between the UM, HIM and Patient Accounting Departments. Finally, the system should have alert notification to clinical staff and stakeholders for preparation of appeals.

**Functional Requirement # 3: Discharge Planning, Bed Flow, and Referrals Management**

The Corporation seeks a software system that has an integrated discharge planning function to enable acute facilities to discharge patients as efficiently as possible. The system should allow for customization of assessment screens, online tracking of current vs. expected length of stay, linkages to web-based resources (e.g., approved nursing home facilities, or rehab facilities, for a particular payer), and easy access to patient’s prior placement history from the facility. The ability to make online referrals to residential, home care and other community-based resource providers should be built into the system. The system should also facilitate transmission of regulatory mandated referral documentations such as, but not limited to, the Patient Review Instrument (PRI) and SCREEN form. The system should have the ability to create discharge and relevant information packets for patients. In addition, the information system should identify patients who are nearing discharge and provide worklists of patients whose discharges are pending particular tests, results or other interventions.

The Corporation seeks a software system that enables it to track referrals from acute facilities to acute rehab facilities, long term care facilities and home care, both within and outside of the HHC system. It should allow the Corporation to respond to and receive referrals electronically and collect marketing information to streamline the intake process.
Other Requirements: Reporting and Analytical Functionality

In addition to the system’s functional requirements listed above, the system must be able to provide the Corporation with a robust reporting capability. A standard set of reports for each of the four functional areas outlined above should be available to the HHC Central Office and all the facilities. These reports can be interfaced with the Corporation’s electronic medical record and financial systems. The reports must produce actionable data that can be used for daily management improvements and corporate leverage for managed care contract negotiations. Data elements must be clearly defined resulting in reporting that is consistent throughout the Corporation. The standard functionality must produce summary and detailed reports that can be run daily, and aggregated monthly, quarterly, and annually, including

- Managerial reports showing admissions, readmissions, and discharge referrals.
- Managerial reports to track the progress of denials and appeals activities by denial type, payor, hospital service, DRG, level of appeal, and physician.
- Additional reports associated with denials and appeals should include multiple level appeal outcomes, and associated costs (i.e. track and trend dollars at risk, recovered, lost dollars and cases pending internal or external decisions).
- Managerial reports showing department and employee-level productivity and outcome measures.
- Managerial reports showing turnaround time reports (i.e. clinical review completion, medical record request and submission, time elapsed from submission of appeal to payor decision).
- Reports showing billing status (ALOC) and billing status change (i.e. inpatient to observation/outpatient).

The system should also have the capability to produce:

- Facility-specific and corporate quarterly reports, which include comparisons between HHC facilities and national “like facility” data.
- A comprehensive annual report of performance by level of care in both narrative and graphic formats.

In addition, the system should allow for customized reports and analyses to be created by the facilities and exporting of information to Excel and other applications. The vendor will be expected to provide ongoing assistance to the Corporation in data interpretation.

Proposals will be evaluated based on the ability to meet HHC’s reporting needs.

Technical Requirements

The case management and denials management information system must interface with HHC’s financial system (Unity and Soarian Financials) which is or will be used by all HHC facilities. Note that each hospital uses a unique medical record number to identify patients, but a patient will have a different medical record number for each HHC facility.
they have visited. The system must support an Enterprise Master Patient Index coming from Soarian when implemented. In addition, all facilities currently use QuadraMed CPR for the electronic medical record. The case management and denial management system must interface using integration standards with the Corporation’s electronic medical record system (QuadraMed CPR and EPIC). Vendor should outline how its solution would work and support these systems.

Data from the case management and denials management information system shall be available for extraction. The Corporation will develop specifications for certain data to be downloaded into a Siemens Data Warehouse and/or other corporate data warehouse(s) that contains billing and/or clinical information to allow for seamless reporting on denial and payment practices.

The system must be a web-based product which will allow authorized users to access the application from any computer that has access to the internet, including wireless devices, such as laptops or hand-held devices. Limited IT support at the facility will be available for maintenance and support. The system must be HIPAA- compliant, ICD-10 compliant by October 1, 2014 and be compliant with any regulatory requirements.

The Scope of Services shall include the following:

Project Planning and Design Requirements
The Vendor will work with each HHC facility to develop a project timeline and implementation plan. The Vendor will develop an understanding of each facility’s unique workflow and customize the software product accordingly.

Technical Implementation Requirements
The Vendor will work with HHC’s Enterprise Information Technology Services, as well as with any other staff as necessary, to develop the interfaces with the Siemens-Unity, Soarian, QuadraMed CPR and EPIC systems. Interfaces will include patient financial and demographic registration information, and Admission, Discharge and Transfer (ADT) transactions. Both the financial information system (Siemens-Unity Soarian) and electronic medical record system (QuadraMed CPR, EPIC) are HL7 interfaced and standard across the Corporation. The vendor must indicate all associated cost to support integration.

The Vendor will provide detailed specifications for minimal and optimal networking requirements and will work with the facilities to ensure that those specifications have been met prior to implementation. The vendor will also provide testing scenarios and integrated testing services for the configured system at each facility.

As noted above, the Corporation currently has a system that provides some of these services. If the successful vendor is not the Corporation’s current vendor, the successful vendor will work with the Corporation, and the Corporation’s current vendor to provide a seamless transition of data from the Corporation’s current system.
Training Requirements
The Vendor will develop a training plan and schedule for each facility. It is expected that all initial users will be trained, with the level and type of training dictated by how the trainee will be using the system. In addition, super-users and administrators will be provided with additional levels of training. Initial training costs should be included in the implementation price outlined in the proposed budget. Any ongoing and future training and support that is included in the price should be outlined.

Maintenance & Upgrade Requirements
The Vendor will provide ongoing technical support and maintenance services for each facility. Full support should be available during the week, with 24/7 on-call support. The Vendor should track issues by site, at both the detail and aggregate level. In addition, the Vendor will provide the Corporation with release notes and upgraded versions of the software system through the term of the contract, provided that such upgrades have successfully completed an established testing protocol. Prior notification and approval from HHC will be required prior to promoting an upgrade affecting the production system. The vendor will provide details of what is included as part of their maintenance and support model. Limited IT support at the facility will be available for maintenance and support.
SECTION IV - PROPOSAL PROCEDURES AND REQUIREMENTS

A. PROPOSAL PACKAGE REQUIREMENTS

Firms interested in responding to this solicitation must submit a proposal package with the following elements in the order listed below:

1. **Cover Letter**: The proposer shall submit a cover letter transmitting its Proposal Package to the contact person and the stated address identified in Section II of this RFP. The Cover Letter shall be signed and dated by an individual authorized to enter into a contract with the Corporation on behalf of the Proposer, and shall acknowledge receipt of all addenda, if applicable.

2. **Title Page**: The title page should include the proposal title, the document control number (DCN), name, address, tax ID number and phone number of the proposer and its principal contact.

3. **Executive Summary**: The 1-2 page summary should encapsulate the plan of action and timeline or approach to the requirements of this solicitation, deliverables, and a summary of the cost information.

4. **Table of Contents**: The table of contents should facilitate locating all key points in the proposal.

5. **Firm’s Background and Organization**: Describe in detail how the firm’s history, mission and experience supports and qualifies the organization for successfully completing and implementing the proposed project. This must include (1) the size of the company and number of years in existence, (2) a list of completed projects and clients for the last five years; (3) a description of any past projects similar to the requirements of this RFP and their dollar amount; (4) a discussion of the organizational structure that demonstrates the firm’s ability to provide oversight to the project; (5) a description of the key management staff, their qualifications and experience; identify the number of personnel based in the New York Metropolitan area; (6) a copy of audited financial statements for the last three years; and (7) client references where services are provided which are similar in complexity and scope to that required by HHC.

6. **Technical Proposal**
   a. The narrative will include a description of the proposed strategies, methods and management plan for the project. Proposers will describe in detail how they will meet the functional and technical requirements as laid out in the Scope of Services (Section III). Despite the potential staggered implementation, the Corporation would expect the implementation at all acute hospitals, LTCs and IRFs to occur within 12 months or less. The
Vendor should explain how they will meet this timeline and if not, why not.

The description will include the following components:

i. Goals and Objectives
ii. Overview of approach to implementing the plan
iii. Description of activities and tasks
iv. Deliverables
v. Timetables
vi. Management Plan – Include key personnel responsible for the contract, and those who will implement the plan. Also identify any subcontractors that may be used, and for which aspects of the project.
vii. Resumes of key personnel

b. Functional Specifications of the Proposer’s Case Management and Denials Management Information System Product: The Proposer must complete the Functional Specifications Spreadsheet (Attachment D). In addition, the proposer may provide a narrative description of its product modules and their functionality.

c. Proposer’s Technical Specifications: The Proposer must complete the Technical Specifications Spreadsheet (Attachment E).

7. Budget Proposal: A three year budget plus a two one year option is required for this RFP, presented as follows:

**Phase 1**: The initial system implementation will occur at 4 acute facilities, 1 designated LTC, and 1 designated IRF.

**Phase 2**: Upon satisfactory completion of the first phase, subsequent addition of remaining facilities on a per facility basis at the Corporation’s discretion. Note: Costs for Phase 2 should reflect appropriate volume discounts; please indicate the volume discount per additional rehab facility or long term care facility.

Please describe the costs and fees for this project in narrative form using the attached spreadsheets (Attachment F). Each spreadsheet provides space for the hospital, rehab, and LTCs pricing for each of the above phases. One spreadsheet tab should include a total price for each entity, assuming all modules are purchased. Separate spreadsheet tabs are provided for separate pricing for each functional module (i.e. case management), where such modules may be purchased separately.

The narrative should outline exactly which components of the scope of service are 1) one-time costs and 2) recurring fees. The narrative should also provide detailed information on the estimated number of hours of on-site training, webinar training and implementation support per site. Finally, if modules of the software may be
purchased separately, the specific functions included in each module must be described.

The Expected Dates of implementation at the hospitals, rehab, and long term care facilities indicated in the cost proposal should follow the timeline described by the vendor in the Technical Proposal.

Note: Installation and training costs will be paid to the Vendor in-full after the completion of the installation and training at each site, and the completion has been accepted by HHC; monthly licensing and maintenance fees for a particular site will go into effect after installation has been completed, and will be paid monthly.

8. Acknowledgment of any Addenda: Proposer shall acknowledge in the transmittal letter the number of addenda issued.

9. Exceptions to the Contract Terms and Conditions: Exceptions to the Contract Provisions must be stated in this section. The General Terms and Conditions are included as Attachment B. Any provisions to which the Vendor cannot comply must be noted and explained.

10. Confidential/Proprietary Information: This RFP may contain information about HHC that is proprietary, privileged, and/or confidential. Any information provided by HHC in this RFP is for the purpose of responding to this RFP. All information provided by the Corporation to the Proposers in the process of negotiating a contract relating to this RFP is confidential and proprietary to the Corporation.

Proposers may specifically include in their response a section entitled “Confidential, Proprietary Information or Trade Secrets.” This section shall indicate the exact location in the proposal of all information claimed by the firm to be confidential or trade secrets. The firm shall also provide a justification as to why such material, upon request, should not be disclosed by the Corporation. Such information deemed by the proposer to be confidential/proprietary shall be easily separable from the non-confidential or non-proprietary sections of the proposal.

11. Doing Business Data Form (DBDF) – The proposer must submit an accurate and complete DBDF, enclosed in a separate envelope, see Section VI (M) for an explanation of this requirement.

12. Vendex Questionnaires (Vendor and Principal) and the Supply and Service Employment Report must be submitted at the same time as the proposals. Only the original and one (1) copy of these forms are necessary. The Vendex Questionnaires and the Supply and Service Employment Report are available on the HHC Website www.nyc.gov/hhc under Resources Section “Contracting Opportunities”.
B. PROPOSAL PACKAGE SUBMISSION REQUIREMENTS

1. Proposals are due on or before January 18, 2013 at or before 4:00 P.M. EST at the location prescribed in SECTION II - RFP TIMETABLE. Proposals that are unsealed will not be considered. The Corporation reserves the right to accept late proposals when it is in the best interest of the Corporation and the lateness of the proposal is deemed non-material by the Corporation.

2. Proposers shall be responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the information required in item 5, below, appears on the outer envelope used by such service.

3. Proposers shall deliver one (1) original and 13 copies of the Proposal Package. Please see Attachment A for the required items. Only one (1) original DBDF needs to be submitted (no additional copies are necessary) but must be provided in an envelope separate from the rest of the proposal.

4. Proposers are advised that there is a 15 page limit for proposals. This limitation does not include the Executive Summary, exhibits or other attachments.

5. The outer envelope, which must be sealed and enclose any materials submitted in response to this RFP, shall be addressed as follows:

<table>
<thead>
<tr>
<th>FROM:</th>
<th>Proposer Name/Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO:</td>
<td>Susan Fung, Director, Finance/Managed Care</td>
</tr>
<tr>
<td></td>
<td>c/o Boris Goltzman, Director, Procurement Systems &amp; Operations</td>
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<tr>
<td></td>
<td>Materials Management</td>
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<tr>
<td></td>
<td>New York City Health and Hospitals Corporation</td>
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<tr>
<td></td>
<td>346 Broadway, Room 506</td>
</tr>
<tr>
<td></td>
<td>New York, NY 10013</td>
</tr>
</tbody>
</table>

RFP TITLE: Case Management and Denials Management Information System
Document Control # 2043

6. Attachment A: Proposal Package Checklist, which itemizes each component/document that is to be submitted as part of the Proposal Package, has been attached for the proposer's convenience.

C. PROPOSAL EVALUATION PROCEDURES
1. **Evaluation Committee**
   a. The Evaluation Committee shall be comprised of eleven persons who will evaluate the components of this RFP. The Evaluation Committee shall evaluate and rate all proposals meeting the Minimum Qualification Requirements. All proposals will be evaluated in accordance with the criteria described in Section IV(C)(3) below.

   b. The Evaluation Committee will make a determination to: 1) award a contract based on initial proposals from all or a "short list" of proposers; or 2) conduct discussions/negotiations with all or a "short list" of proposers.

   c. The Corporation may require proposers to give oral or visual presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein. If presentations are required, they will be held on the week of February 4, 2013.

   d. If it is in the best interest of the Corporation, the Evaluation Committee reserves the right to waive or modify any mistakes in proposals that are deemed by the Evaluation Committee to be non-material.

   e. A contract shall be awarded to the highest rated proposer based on the evaluation factors set forth in the RFP subject to the Corporation’s right to reject all proposals.

2. **Minimum Qualification Requirements (Pass/Fail):** The Evaluation Committee shall evaluate all proposals received on or before the Proposal Due Date and Time and at the location specified in the RFP to determine whether the proposers meet the Minimum Qualification Requirements as set forth below.

   - The company must have installed its case management and denials management software product at a minimum of three (3) integrated delivery networks similar to the size and scope of the New York City Health and Hospitals Corporation.

   AND

   - The company must be an application service provider that can deliver a web-based software product.

3. **Evaluation Criteria:** Proposals must be responsive to all the material requirements of the RFP. The Committee will evaluate and rate the proposals of qualified firms on their technical merits by applying the Evaluation Criteria listed below:

   a. Understanding of Work and Soundness of Approach (30%)
      i. Understanding of HHC’s needs
      ii. Understanding of Project Requirements and Outcomes
iii. Project Management Plan
iv. Sequence/Timeline for Implementation

b. Organizational Capacity and Qualifications (25%)
i. Firm’s Experience (including Hospital projects) and Resources
ii. Client References
iii. Proposed Staff Qualifications and Staffing Level

c. Technical Qualifications (25%)
i. Overall technical qualifications
ii. Interfaces to other systems
iii. Ongoing Maintenance and Support
iv. Access to future upgrades

d. Cost of Proposal (10%)
i. Reasonableness of prices, as itemized in the proposal
ii. Cost-effectiveness of proposed budget
iii. Ability of vendor to complete deliverable within proposed budget

e. Software Functional Qualifications
   (10%)
i. Case Management
ii. Denials and Appeals Management
iii. Discharge Planning, Bed Flow, and Referral Management
v. Quality of User Interfaces
vi. Report Writer
SECTION V - CONTRACT AND PAYMENT

A. **TERM OF CONTRACT:**

1. The term of the contract shall be for a three year period with two options to renew for a period of one year each.

2. The exercise of all options shall be at the sole discretion of the Corporation.

B. **CONTRACT PROVISIONS:** The contract to be entered into between the selected proposer and the Corporation shall contain negotiated provisions based upon the specific requirements set forth in this RFP and the selected firm’s proposal, as well as the Corporation’s General Contract Provisions. Articles 1-3 will reflect the business terms as finally negotiated. Articles 4, et seq., are the Corporation’s required legal terms; proposers must identify any exceptions to any of these terms (see Section IV.A.9., above). In addition, the contract will include a business associate agreement (“BAA”) if the Corporation determines that it is required for compliance with the privacy standards and other requirements relating to protected health information as defined in the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

C. **PAYMENT:** The selected firm shall be paid upon completion of the installation and training at each facility, and on a monthly basis for the licensing and maintenance fees.
SECTION VI - GENERAL INFORMATION

A. STATUS OF INFORMATION

1. The Corporation shall not be bound by any oral or written information released prior to the issuance of the RFP.

2. The Corporation shall not be bound by any oral or written representations, statements or explanations other than those made 1) in this RFP, or 2) in formal written addenda issued to this RFP.

B. COMMUNICATION WITH THE CORPORATION

Proposers are advised that, from the date this RFP is issued until the award of the contract, no contact with Corporation or other Corporation personnel related to this solicitation is permitted, except with Susan Fung, Director, Finance/Managed Care Department, Central Office, who has been designated as the contact person.

C. PROPOSER INQUIRIES

1. All inquiries regarding this solicitation shall be addressed to the contact person named in this proposal. All substantive questions should be sent in writing to the contact person. The contact person may orally respond to inquiries of a non-substantive nature.

2. Proposers are advised that there will be a Pre-proposal Conference held on January 8th at 10:00 A.M., 346 Broadway, 12 East Conference Room. The conference is not mandatory but interested proposers are urged to attend. Please confirm attendance by submitting Attachment “G” on or before January 4, 2013.

3. Proposers are advised that the Corporation cannot ensure a response to inquiries received later than ten (10) calendar days prior to the Proposal Due Date.

D. ADDENDA TO THE RFP

1. The Corporation shall issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFP it deems necessary prior to the Proposal Due Date in the form of written addenda.

2. It is the proposer's responsibility to assure receipt of all addenda. The proposer should verify with the designated contact person prior to submitting a proposal that all addenda have been received, and shall acknowledge in the transmittal letter the number of addenda issued.
E. MODIFIED PROPOSALS

1. A proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the Proposal Due Date and Time.

2. The Evaluation Committee shall consider only the latest timely version of the proposal.

F. PROPOSER’S OFFER

1. A proposal may be withdrawn in writing only prior to the Proposal Due Date and Time.

2. A proposer’s offer shall be irrevocable until contract award.

G. LATE PROPOSALS, LATE MODIFICATIONS AND LATE WITHDRAWALS

1. Proposals received after the Proposal Due Date and Time are late and shall not be considered, except that the Corporation reserves the right to accept late proposals if the lateness of the proposal is deemed non-material.

2. Modifications and Withdrawals received after the Proposal Due Date and Time are late and shall not be considered.

H. COSTS INCURRED BY PROPOSERS

The Corporation shall not be liable for any costs incurred by proposers in the preparation of proposals or for any work performed in connection therewith.

I. ORAL PRESENTATIONS AND INTERVIEWS

The Corporation may require proposers to give oral presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein. Vendors must be available to present on the demonstration date on the week of February 4, 2013. Vendors will be notified by close of business on January 28, 2013, if they are required to present.

J. DISCUSSIONS/NEGOTIATIONS

The Corporation reserves the right to award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer must contain the proposer’s best terms from a programmatic and cost standpoint.

K. PROPOSER ACCEPTANCE OF RFP AND CONTRACT PROVISIONS
1. Submission of a proposal signifies to the Corporation the proposer’s intention to compete for the award of a contract to provide a Web-based case management and denials management information system and that the proposer understands and accepts that the terms and conditions as specified in this RFP and in the Contract Provisions (Attachment B), shall become part of the final contract.

2. Proposers shall specifically include in their RFP response a section titled “Exceptions to Terms and Conditions Specified in the RFP and Attachment B, Contract Provisions,” in which the company shall explicitly indicate all terms and conditions specified in Attachment B, Contract Provisions, to which the company takes exception. This section shall be listed in the Table of Contents.

L. CONTRACT AWARD

1. The Corporation reserves the right to award a contract to a firm other than the proposer offering the lowest overall cost.

2. The contract resulting from this solicitation shall be awarded to the highest-rated responsible proposer based on the evaluation factors set forth in the RFP. The award of a contract does not commit the Corporation to use the equipment or services of the selected firm.

3. Any proposed contract award shall be subject to all required oversight approvals. To obtain the following required documents, please visit http://www.nyc.gov/html/hhc/html/contracting/contracting.shtml Complete and attach them to your submitted proposal.
   - MacBride Principles;
   - VENDEX Questionnaires;
   - Submission of an accurate and complete Doing Business Data Form;
   - Supply and Services Employment Report;
   - Compliance with New York State Executive Law, Article 15-A; the Corporation’s Contact Review Committee and Board of Directors approval, the firm’s execution of the contract, and approval by the Corporation’s President.

M. NOTICE TO PROPOSERS: LOCAL LAW 34 OF 2007 REQUIREMENTS

Pursuant to Local Law 34 of 2007, amending the City of New York’s Campaign Finance Law, the City is required to establish a computerized database containing the names of any “person” that has “business dealings with the City” as such terms are defined in the Local Law. The Corporation must collect accurate, up-to-date information about vendors that have business dealings with the City of New York. In order for the City to obtain necessary information to establish the required database, each vendor responding to this solicitation must complete a Doing Business Data Form (“DBDF”) and return it with its proposal, regardless of whether the vendor
or anyone associated with it have made or intend to make campaign contributions. No required sensitive personal information will be disclosed to the public. Completion of a DBDF is required both upon the submission of a proposal and prior to execution of a contract. Submission of an inaccurate or incomplete DBDF may result in appropriate sanctions. Proposals with missing DBDFs will be found to be non-responsive.

N. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS AND MINORITY/ WOMEN BUSINESS ENTERPRISE PARTICIPATION FOR THIS RFP

1. In accordance with the New York State Executive Law, Article 15-A, Section 310, service contracts awarded with fees in excess of twenty-five thousand dollars ($25,000) must comply with the Minority Business Enterprise (MBE) and Women’s Business Enterprise (WBE) program. The firm is required to utilize New York State-certified MBEs and WBEs as subcontractors to complete the work under this contract. The Corporation has established goals of M/WBE participation for this contract, as follows: 12% MBE and 13% WBE. Although the Corporation has established levels of M/WBE participation for this contract as shown above, HHC encourages firms to exceed these goals.

2. Failure to meet these goals may result in administrative action by the Corporation. However, where it appears that a contractor/consultant cannot, after a good faith effort, comply with the M/WBE participation goals established above, the firm may apply for a partial or total waiver of these requirements prior to or during the contract period. Requests must be made to the President, through the Assistant Vice President for Affirmative Action/Equal Employment Opportunity during solicitation or prior to submission of the final payment requisition. Requests must satisfy the requirements of New York State Executive Law, Article 15-A, 5 NYCRR Section 543.7 (“Waivers”) and Section 543.8 (“Good Faith Efforts”).

   Should the request for waiver be denied, the Consultant/Contractor may request an administrative hearing within seven (7) calendar days of receipt of denial.

   The successful proposer is required to complete the Supply and Service Employment Report (HHC Form 978-R Sep. 96) and return it to the requesting party within the specified time. Failure to supply this form will result in the proposer being declared non-responsive. Copies of this form are available on request.

O. BACKGROUND CHECKS FOR CONTRACTOR’S EMPLOYEES; AGENTS; AND INDEPENDENT CONTRACTORS

Unless waived by the Corporation in writing, prior to assigning any employee, agent or independent contractor to perform services on-site at a Corporation health care facility or administrative office, the Contractor shall conduct a criminal history background check on such person covering the three years prior to such proposed assignment. Such record check must include, for New York State residents, a search of the NYS Office of Court
Administration’s records for all 62 New York State counties, and, in addition, a search of the records of any other state in which the person resided in the last three (3) years. The Corporation may require the Contractor to perform a more extensive background check on direct service providers working with mentally ill, elderly or minor patients or in certain other special situations.

P. RFP POSTPONEMENT/CANCELLATION

The Corporation reserves the right to postpone or cancel this RFP and to reject all proposals.
ATTACHMENT A

PROPOSAL PACKAGE CHECKLIST

I. Sealed Envelope (addressed as set forth on page 9 of the RFP)

One (1) set of originals and thirteen (13) sets of copies of the Proposal Package that include each of the following documents:

† Proposal Cover Letter
† Title Page
† Executive Summary
† Table of Contents
† Technical Proposal - Narrative
† Technical Proposal - Functional Specifications Spreadsheet (Attachment D)
† Technical Proposal – Technical Specifications Spreadsheet (Attachment E)
† Cost Proposal (Attachment F)
† Acknowledgment of Addenda, if any
† Exceptions to Terms and Conditions Specified in the RFP and Attachment B, Contract Provisions
† Doing Business Data Form (1 original in separate envelope)
† Vendex Questionnaires & Supply and Service Employment Report (original and 1 copy only)

II. Outer Sealed Envelope (Addressed as set forth on page 9 of the RFP).

The outer sealed envelope shall be addressed as follows below:

FROM: Proposer Name/Address

TO: Susan Fung, Director, Finance/Managed Care
c/o Boris Goltzman, Director, Procurement Systems & Operations
Materials Management
New York City Health and Hospitals Corporation
346 Broadway, Room 506
New York, NY 10013

RFP TITLE: Case Management and Denials Management Information System
Document Control # 2043

LATE OR UNSEALED PROPOSALS WILL NOT BE CONSIDERED
GENERAL TERMS AND CONDITIONS
FOR ALL HHC SOFTWARE SYSTEM CONTRACTS
GENERAL CONTRACT PROVISIONS – ATTACHMENT B

Contract between

NEW YORK CITY
HEALTH AND HOSPITALS
CORPORATION

and

_____________________

DATE

Term: _______________________
Expiration Date: ____________
Renewal: Yes ______ No _____
Amended: ___________________
GENERAL CONTRACT PROVISIONS – ATTACHMENT B

Agreement made as of this ____ day of ____, by and between the New York City Health and Hospitals Corporation (the "Corporation"), a public benefit corporation created under the laws of the State of New York, having its principal place of business at 125 Worth Street, New York, New York 10013, acting on behalf of its member-facilities and health care networks (referred to collectively herein as the “Facilities”) and ___________________________ the “Contractor”), a corporation with its principal place of business at ___________________________.

WITNESSETH:

WHEREAS, the Corporation conducted a competitive selection process to acquire consulting services in connection with the installation and support of a denials and case management information system (the “System”), using a Request for Proposals (“RFP”); and

WHEREAS, as a result of the Corporation's evaluation process, the Corporation determined that the Contractor's proposal best meets the requirements of the RFP and would be most advantageous to the Corporation; and

WHEREAS, the Contractor wishes to enter into an agreement with the Corporation to provide such services and the Corporation's Board of Directors has approved of the retention of Contractor to perform such services.

NOW THEREFORE, the parties agree as follows:

ARTICLE FIRST: TERM OF AGREEMENT

1.1 TERM

This Agreement, when signed by an authorized representative of the Contractor and the President of the Corporation, shall be deemed effective as of the date first above written (the “Effective Date”), and continue in effect for ____ years thereafter, unless earlier terminated. This Agreement may be renewed by the Corporation for [one or two additional terms] of [one year each] at the Corporation’s sole option and discretion.
1.2 RIGHT TO TERMINATE

Notwithstanding the foregoing, the Corporation shall have the right to terminate this Agreement, with or without cause, by giving Contractor at least thirty days' prior written notice of termination at the business address first above stated.

1.3 LICENSE GRANT

The Contractor hereby grants to the Corporation a non-exclusive, non-transferable license for access to the System on the website hosted by the Contractor. Such license, together with any and all updates, upgrades, new versions and new releases thereof, is referred to collectively herein as the “Licensed Software.” Initially, such license shall be granted to the following Facilities: _______________________. Such license may be extended in accordance with Section 6.25 to include additional Facilities (referred to collectively herein as the “Additional Facilities”).

1.4 PERMITTED USE

1.4.1 Authorized Users may use the Licensed Software only in the manner and for the purposes for which the Licensed Software was designed and only with Corporation’s own Patient Data. Subject to the foregoing, the Authorized Users shall have the right under this Agreement to use the Licensed Software for (i) all applicable internal business purposes relating to the operation of the municipal hospital system of the City of New York and the Corporation’s mission of providing comprehensive physical and mental health care and substance abuse services to the ill and infirm; (ii) teaching health care personnel employed by or under contract with the Corporation’s affiliated health care institutions; and (iii) purposes of clinical research, operational and financial administration of the Facilities and patient population management. The Authorized Users may use the Licensed Software only in the care of Emergency Department patients at Elmhurst Hospital or any and all additional Facilities to which use of the license granted hereunder may be extended in accordance with Section 6.25. The rights granted hereunder shall include the right to grant remote access to the Licensed Software to any Authorized User for the purpose of accessing some or all of the Corporation’s Patient Data. The term “Authorized User” (collectively, “Authorized Users”) shall mean the Corporation, its directly and indirectly wholly-owned subsidiaries, and “affiliates” as defined in the next sentence. “Affiliate” shall mean (i) any entity controlled or owned by the Corporation, one that controls or owns the Corporation or one under common control or ownership with the Corporation and (ii) the Corporation’s
affiliated hospitals, medical centers, professional corporations and other affiliated institutions that provide direct medical services to Corporation patients through their employed and contracted physicians. For purposes of this Agreement, “Patient Data” includes clinical and demographic information (including without limitation, symptoms, test results, and historical information) about or relating to all patients of the Corporation.

1.4.1 Corporation may use the Licensed Software on a reasonable number of servers to provide for production and backup. Each such server shall (a) conform to the Licensed Software and hardware configuration requirements set forth in Exhibit C, (b) operate only Licensed Software, Custom Software (as defined below) and third-party software recommended by Contractor, and (c) allow remote access by Contractor through a modem or other telecommunications means agreed upon by Contractor and Corporation.

1.5 ALL NON-PERMITTED USES PROHIBITED.

All uses not permitted under Section 1.4 are prohibited. By way of example and without limitation, in making the uses permitted in Section 1.4, Corporation may not

1.5.1. copy, disassemble, decompile, reverse engineer, or modify the Licensed Software or otherwise create any derivative work from the Licensed Software;

1.5.2. sublicense, rent, or otherwise convey or grant any right to use the Licensed Software;

1.5.3. transmit an electronic copy of the Licensed Software by any means (except as necessary for the Corporation to install or reinstall the Licensed Software on its servers or in-house personal computers); or

1.5.4. use the Licensed Software in the operation of a service bureau or time-sharing arrangement or to provide outsourcing services.

ARTICLE TWO: SCOPE OF SERVICES

2.1 SERVICES

The Contractor is to provide to the Corporation services including, but not limited to, the following: implementation, training and maintenance support in accordance with Exhibits ___.

2.2 EXHIBITS INCORPORATED

The Contractor's services shall meet the requirements outlined in the request for proposals (RFP), entitled “Request for Proposals to Provide the Installation and Support of a Denials and Case Management
GENERAL CONTRACT PROVISIONS – ATTACHMENT B

Information System for the New York City Health and Hospitals Corporation,” dated ________________ ("Exhibit A") and shall perform in accordance with Exhibit B, which is the Contractor’s proposal, entitled “Response to the NYC Health and Hospitals Corporation Request for Proposal ____________,” dated ________________ ("Exhibit B"). (Exhibits A and B are attached hereto and made a part of this Agreement.) To the extent that any term or condition of Exhibit A or Exhibit B is inconsistent with any of the terms or conditions of any Article of this Agreement, then, and in that event, such term or condition of such Article shall control. In the event that Exhibit A is inconsistent with Exhibit B, Exhibit A shall control over Exhibit B.

2.3 TASKS AND DELIVERABLES

The nature of the services to be performed by the Contractor under this Agreement shall be at all times subject to the direction and control of the Corporation. The scope of work encompasses all tasks set forth in this Agreement and the Contractor’s Proposal. No tasks shall be undertaken by the Contractor without the prior written approval of the Corporation’s designated project manager. The Contractor shall perform such tasks within the time frames specified in the implementation plan set forth in Exhibit __, annexed hereto and made a part hereof.

An extension or extensions of time for completion by Contractor of its obligations under this Agreement may be granted by the Corporation, and solely at the option of the Corporation, provided that written application therefor is made by the Contractor. An application for such extension of time shall set forth in detail the nature of each alleged cause of delay in the completion of such obligations, the date upon which each such cause of delay began and ended and the number of days' delay attributable to each such cause, and shall be submitted prior to completion of such obligations. If such an application is made, the Contractor shall be entitled to an extension of time from that set forth in the work schedule for delay in completion of the Contractor's obligations caused: (1) by the acts or omissions of the Corporation, its officers, agents or employees; or (2) by supervening conditions entirely beyond the control of either party hereto (such as acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or illegal or strikes or labor disputes not brought about by any act or omission of the Contractor.) The Contractor shall, however, be entitled to an extension of time only upon approval of the Corporation for such causes and only for the number of days of delay that the Corporation may determine to be due solely to such causes. In addition, for other good cause, the Corporation, in its discretion, may grant the Contractor application for an extension of time from that set forth in the work schedule.

2.4 STAFFING

The principal staff of the Contractor carrying out the responsibilities under this Agreement is listed in the Contractor's proposal. No substitution of personnel shall be made by the Contractor
without the prior written consent of the Corporation. Before any such substitution is permitted hereunder, the Contractor shall submit to the Corporation a detailed written justification supported by the qualifications of any proposed replacement. The description of qualifications shall include a current resume of academic training and professional experience, salary history and the names, addresses and telephone numbers of references who are familiar with recent performance of the individual and such other information as the Corporation may require.

2.5 SUBCONTRACTORS

Several tasks, in whole or in part, will be performed by subcontractors. Contractor may use only those subcontractors listed in Exhibit __ (if any), annexed hereto and made a part hereof. Work performed by the subcontractors is subject to the same review and approval process as the Contractor's work. The Contractor is fully responsible to the Corporation for the satisfactory completion of all work performed by the subcontractors. The subcontracts shall comply with the terms of Section 6.13.2 of this Agreement. The Contractor shall be responsible for any subcontractor's failure to comply with any such subcontract.

2.6 OWNERSHIP OF MATERIALS

All right, title and interest in the Licensed Software shall be owned by the Contractor. Except with respect to the licenses granted to the Corporation set forth in Section 1.3, the Contractor reserves all rights with respect to the Licensed Software. In the event that this Agreement is terminated for any reason, all information and data in Contractor’s system or otherwise in the possession or in the control of the Contractor that was supplied by the Corporation shall be returned to the Corporation, including any program, program deck, tape, disk, card, card deck, printout, listing, specifications, layout manual and other material related thereto. If and to the extent applicable, and notwithstanding the foregoing, all (i) modifications to and custom configurations of the Licensed Software by or for the Corporation, (ii) all other computer programs developed as part of the Contractor’s engagement hereunder, and (iii) all designs, flow charts, drawings, educational materials and other technical documents of any nature, and copies thereof prepared as part of the services herein (collectively with all items described in clause (ii) above, the “Custom Software”) shall be the property of the Corporation, shall be treated as confidential and shall be delivered to the Corporation in accordance with the schedule set forth in Section 2.3 hereof. (The Custom Software and the Licensed Software shall be collectively referred to herein as the “Software.”) The Custom Software shall constitute "work made for hire" under the copyright laws of the United States. If for any reason, the Custom Software does not qualify as "work made for hire" under the copyright laws of the United States, Contractor hereby irrevocably assigns all of its right title and interest in and to such Custom Software immediately as of the vesting of such right, title and interest in Contractor. Contractor agrees to execute and deliver any assignments or
other documents reasonably requested by the Corporation in order to provide the Corporation with the contemplated benefits set forth in this Section 2.6 and the Contractor hereby appoints the Corporation as its attorney-in-fact in order to execute and deliver such assignments and other documents on the Contractor's behalf in the event Contractor does not do so.

2.7 EQUIPMENT

As part of the Services the Contractor shall recommend to the Corporation the equipment (the “Equipment”) to be procured by the Corporation in order to satisfy the functional requirements set forth in the RFP. Notwithstanding the foregoing, the Corporation shall make the final determination as to any Equipment procurement. The Equipment that the parties mutually agree shall be procured as part of the System shall be set forth on a mutually executed Addendum to be attached to this Agreement.

2.8 ACCEPTANCE CRITERIA

Exhibit ___ contains the acceptance criteria agreed by the parties hereto (the "Acceptance Test Criteria") that shall be used by the Corporation in determining acceptance of the deliverables under this Agreement. All deliverables must meet the Corporation’s system security requirements.

2.9 SYSTEM MAINTENANCE

The Contractor shall perform maintenance and support with respect to the system during the period (the “Software Maintenance Period”) and pursuant to the description set forth in Exhibit ___ attached hereto and made a part hereof.

ARTICLE THREE: FEE FOR SERVICES

The Contractor agrees to accept for the complete and satisfactory performance of all services and the granting of all licenses required to be performed and granted pursuant to this Agreement the amounts specified in this Article Three, which shall not exceed $______. The Contractor acknowledges that the sums specified in this Article Three represent the total cost for the Licensed Software, the Custom Software (if any) and any and all services to be rendered under this Agreement, and that in no event shall such sums be exceeded unless otherwise agreed by the Corporation, and subject to approval by the Corporation’s Board of Directors, if applicable.

3.1 NON-RECURRING FEES

The Corporation shall pay non-recurring fees in accordance with the milestone schedule set forth in Exhibit __Additional fees will be due by Corporation for additional Facilities upon exercise of Extension Rights, in accordance with Section 6.25.

3.2 RECURRING FEES
GENERAL CONTRACT PROVISIONS – ATTACHMENT B

The Corporation shall pay recurring fees in accordance with provisions set for in Exhibit __. Additional fees will be due by Corporation for additional Facilities upon exercise of Extension Rights, in accordance with Section 6.25.

3.3 INVOICES

The Contractor will submit invoices to the Corporation for payment of fees for services rendered hereunder. Each invoice shall be consistent with the terms set forth on Exhibits __ and ___. Accompanying each invoice shall be sufficient detail to allow the Corporation to verify the adequacy, accuracy and reasonableness of the charges. The Contractor shall provide whatever additional information the Corporation deems necessary. The Corporation shall make its best efforts to pay the invoices submitted in the form required by this Article within thirty days of receipt thereof.

3.4 EXPENSES

The Corporation will not reimburse the Contractor for out-of-pocket expenses.

3.5 DISALLOWANCES

The Contractor agrees to accept for the complete and satisfactory performance of all services and the granting of all licenses required to be granted pursuant to this Agreement, the amounts specified in this Article Three. The Contractor acknowledges that the sums specified in this Article Three represent the total cost for the Licensed Software and any and all services to be rendered and any other items purchased or licensed from the Contractor, and that in no event shall such sum be exceeded unless otherwise agreed by the Corporation, and subject to approval by the Corporation’s Board of Directors. The Corporation reserves the right to disallow any amount claimed by the Contractor not in accordance with this Agreement. The Contractor will be notified, in writing, of any disallowances and shall be given the opportunity to resubmit any charges, with explanations, within thirty days of receipt of such notice.

ARTICLE FOURTH: REPRESENTATIONS AND WARRANTIES

4.1 PROCUREMENT OF AGREEMENT

The Contractor represents and warrants that no person, entity or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingency 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 Corporation to enter into this Agreement and the Corporation relies upon such representations and warranties in the execution hereof.
4.2 CONFLICT OF INTEREST

The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further represents and warrants that in the performance of or the rendering of services under this Agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the Corporation or City of New York (the "City"), nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects such person's personal interest or the interest of any corporation, partnership or association in which such person is, directly or indirectly, interested; nor shall any such person have an interest, direct or indirect, in this Agreement or in the proceeds thereof.

4.3 NO DEFAULTS

The Contractor represents and warrants that it: (a) is not in arrears to the Corporation or City upon debt or contract, and is not a defaulter, as surety or otherwise, upon any obligation to the Corporation and the City of New York, and has not been declared not responsible or disqualified, by any agency of the City or State of New York nor is there any proceeding pending relating to the responsibility or qualification of the Contractor to enter into any public contract; and (b) has paid all applicable City income, excise, and other taxes due from all years it has conducted business activities in the City.

4.4 FAIR PRACTICES

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

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

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

c. No attempt has been made or will be made by the Contractor to induce any other person, partnership, corporation or other entity to submit or not to submit a proposal with the intent of restricting competition.
d. The fact that the Contractor has (i) published price lists, rates, or tariffs covering items being procured; (ii) informed prospective customers of proposed or pending publication of new or revised price lists for such items; or (iii) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraphs (a) or (b) above.

4.5 TERMINATION FOR BREACH OF REPRESENTATIONS AND WARRANTIES

For a breach or violation of the representations or warranties set forth above in Sections 4.1, 4.2, 4.3 and 4.4, the Corporation shall have the right to annul this Agreement immediately without notice or liability, entitling the Corporation to recover all monies paid hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due or paid under this Agreement. This remedy, if effectuated, shall not constitute the sole remedy afforded the Corporation for the violation or breach of said representations and/or warranties, nor shall it constitute a waiver of the Corporation's right to claim damages or refuse payment or to take any other action provided for by law or equity or pursuant to this Agreement.

4.6 LOWEST FEE

The Contractor represents and warrants that the direct fees for services and license fees charged to the Corporation for those services and licenses which the Corporation receives pursuant to the terms of the Agreement shall be the lowest fees for services which are charged by the Contractor to any of the Contractor's similarly-sized health facility customers for like services, as determined based on number of discharges at all Facilities ordering modules, and the number of modules provided. This representation and warranty includes those customers of the Contractor who are, as of the date of this Agreement, under contract with the Contractor and under any subsequent renewal of any such contract. Should the Corporation, at any time, determine that the representation and warranty above has been breached, then in that case, payment to the Contractor by the Corporation shall be modified to reflect payment only at the aforesaid "lowest fees."

4.7 BACKGROUND QUESTIONNAIRES

The Contractor represents and warrants that (a) all questions in the appropriate Principal and Vendor Questionnaires (the "Questionnaires") have been fully answered in accordance with the Vendor’s Guide to Vendex, (b) such information is in no respect misleading, and (c) the Questionnaires have been duly executed and submitted to the Corporation. The Contractor may obtain copies of the Questionnaires and the Vendor’s Guide to Vendex from the City’s website. The Contractor understands that the Corporation's reliance upon the completeness of the Contractor’s answers and veracity of the information stated therein are material conditions to the
Corporation’s execution of this Agreement. The Contractor shall submit the appropriate Questionnaires, or if applicable, a "Certification of No Change" upon the extension or renewal of this Agreement. The Contractor shall submit newly completed Questionnaires to the Corporation every three (3) years. This Agreement shall be a nullity until the Contractor submits fully completed, signed and notarized Questionnaires to the Corporation. If, for any reason, final review of the Questionnaires and the Contractor's background by the Corporation cannot be obtained prior to full execution of this Agreement, the Corporation may terminate this Agreement immediately upon written notice to the Contractor after receipt of information from the Corporation's Office of the Inspector General of the kind that would typically be used as a basis for finding a contractor not responsible to receive a contract award. Such notice will provide the Contractor with an opportunity to contest the accuracy of the information at a hearing before a panel of Corporation officials, at which the Contractor may be represented by counsel.

4.8 PROHIBITION ON GIFTS AND GRATUITIES

The Contractor agrees that neither it nor any of its directors, officers, members, partners, employees or agents shall directly or indirectly give any gift in any form, including but not limited to money, service, loan, travel, entertainment, hospitality, thing or promise, to members of the Corporation’s Board of Directors, Officers, employees, Community Advisory Boards, Hospital Auxiliaries and professional and academic affiliate personnel. In the event that the contractor, its employees or agents do give a gift to any said person, such act will constitute a material breach of the contract and the Corporation shall have a right to terminate the agreement upon 10 days notice to the contractor.

4.9 OWNERSHIP WARRANTY.

Contractor represents and warrants that it is the owner of the Licensed Software and the documentation and training materials related thereto and that it has the right to modify the same and to grant the licenses granted in this Agreement and (iii) that the Corporation shall own the Custom Software in accordance with the terms of Section 2.6 of this Agreement. Contractor warrants that the Software does not and shall not, during the term of this Agreement, infringe any right of any third party, including, without limitation, any right under the laws of copyright, patent, trademark or trade secret.

4.10 SYSTEM WARRANTIES.

During the period commencing on the Acceptance Date of the System and terminating one calendar year after such date (the “Warranty Period”), the Contractor warrants to the Corporation
that the Software on the Equipment shall continue to meet the Acceptance Test Criteria when operating on the Equipment in the operating environment specified in the Agreement.

4.11 TERMINAL RESPONSE TIME WARRANTY.

During the Warranty Period, the Contractor warrants that, with respect to each transaction initiated on the System, the System shall be capable of receiving, processing and responding to transactions in accordance with the respective response times identified in Exhibit ___ (the “Response Time Schedule”), utilizing the Equipment identified in Exhibit C. Response time will be measured from the time the transaction is completely keyed to the time that the correct next complete screen with the “transaction line” appearing at the bottom of the screen appears on the terminal.

The System response time criteria listed in the Response Time Schedule shall be deemed to be satisfied if 95% of all System responses are within the response time criteria given and if 99% of the System responses are within two (2) times the response time criteria given.

4.12 THROUGHPUT WARRANTY.

During the Warranty Period, the Contractor warrants that the System, operating in the operating environment set forth in the Agreement, can accommodate the volume and transactional mix of transactions per day, given the volumes set forth in Exhibit ___ attached hereto and an additional fifteen percent (15%) increase in such volumes and continue to meet the terminal response time warranty without requiring upgrade to the Equipment. The Contractor further warrants during the Warranty Period that the on-line Software processing on the combination of computer hardware, system software and telecommunications equipment comprising the System, including all upgrades, shall be available twenty-four (24) hours per day except for the scheduled downtime as set forth in Exhibit ___. In addition, the Contractor warrants that backup or batch processing may be scheduled via the use of utilities and operator control to operate so that they do not cause noncompliance with the terminal response time warranty.

4.13 CONFIGURATION WARRANTIES.

The Contractor represents that it has reviewed the Corporation’s qualifications as set forth in the RFP for the System (as defined in Section 2.7). The Contractor represents and warrants that the Software and each module or component and function thereof shall be capable of operating in accordance with Acceptance Test Criteria on the System.

4.14 COMMUNICATIONS AND EQUIPMENT CONFIGURATION REVIEW.

At the Corporation’s request, during the Warranty Period, and the Maintenance Service Period, but no more than one (1) time per year, the Contractor shall, at no cost to the Corporation,
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(i) review the number, speed and configuration of all communications lines, modems, multiplexors, and other communications equipment and the number of terminals served by each communications line and each communications device to promote optimum System performance in accordance with the Acceptance Test Criteria set forth herein, and provide to the Corporation a written report on any changes it recommends, including, any changes to improve System performance and (ii) review the configuration of Equipment to help assure that the configuration provides for optimal System performance and meets the Acceptance Test Criteria set forth herein which review shall include, but not be limited to, the manner in which the processing units are interconnected within individual subsystems, the number of terminals attached to each network serviced by each central processing unit, configuration and number of disk controllers and disk drives, the distribution of files on physical access devices, and the number and capacity of data transmission lines for terminals and host-to-host communication. The Corporation shall fully cooperate in providing resources, personnel or facilities that are reasonably necessary for the Contractor to complete the foregoing communication and equipment configuration reviews. The Contractor shall also review with the Corporation staff the manner in which the Corporation's operating environment and the Software and the Equipment are configured and installed, and the manner in which transaction and access tasks are assigned to each central processing unit.

4.15 REGULATORY REQUIREMENTS WARRANTY.

Contractor warrants that on the Acceptance Date of the System and during the Warranty Period and the Software Maintenance Period, the information and reports generated by the Software will conform with the requirements of the Acceptance Test Criteria and with the then current federal, state and local laws to which the Corporation is subject (“Laws”).

During the Warranty Period and the Software Maintenance Period, any modifications required in order to comply with changes in Laws shall be made at no cost to the Corporation.

Contractor’s obligations under this Section 4.15 shall be limited to such Laws and changes to Laws as Contractor has actual knowledge of including changes advised to it by the Corporation.

During the Warranty Period and the Software Maintenance Period, in the event the Software requires modifying or updating due to changes in Laws, the Contractor shall give the highest priority to the implementation of such updates to meet the effective date of such changes. Such changes shall be made prior to the effective date of the Law(s), provided that the Contractor has at least thirty (30) days notice. Such changes shall be made within thirty (30) days of notice if the effective date is earlier than thirty (30) days from the date of notice.

4.16 SOFTWARE INTERFACE WARRANTY.
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During the Warranty Period and the Software Maintenance Period, the Contractor represents and warrants that the Licensed Software shall functionally interface with the Corporation’s legacy systems in as described in Exhibit ____.

4.17 SERVICE PERSONNEL WARRANTIES.

The Contractor represents and warrants that each of its employees, agents or subcontractors assigned to perform any work hereunder, shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that all work will be so performed.

4.18 DOCUMENTATION WARRANTY.

The Contractor represents and warrants that the documentation provided hereunder with respect to the System will accurately reflect the operation of the System.

4.19 RELIABILITY WARRANTY.

During the Warranty Period and the Software Maintenance Period, the Contractor shall be responsible for the reliability of the System and warrants that during such period the System shall be fully and properly operational, measured on monthly basis, for an average of [ninety-nine and five tenths percent (99.5%)] (“Uptime Standard”) as to each Facility for which the Contractor is required to provide warranty or maintenance coverage. For the purposes of determining Uptime as to each Facility, the following formula shall be used:

\[
\text{Uptime (to be expressed) as a percentage} = \frac{\text{Hours of Operation (minus) Downtime}}{\text{Hours of Operation}}
\]

“Hours of Operation” shall mean the total hours per month during which the Contractor is obligated to provide warranty or maintenance coverage at each Facility, but does not include periods during which the System is unavailable for use due to failures of System equipment or Licensed Software not under Contractor warranty or maintenance. “Downtime” shall be computed based upon the period of time when any functional module or a majority of the hardware devices are inoperable (unavailable) at a Facility due to a defect, failure, error or malfunction in the Licensed Software or the Equipment. Downtime for each incident shall commence from the time the Corporation makes a bona fide attempt to notify the Contractor that any part of the System is inoperable, and shall continue until the System is restored to a fully operable condition.

If the frequency and/or duration of a specific malfunction seriously impacts the Corporation’s normal business operations, the Corporation may request, and the Contractor shall arrange, at no cost to the Corporation, for a trained software engineering specialist to visit the
affected Facilities in order to assist in resolving such malfunctions, and to develop a plan of action to prevent their recurrence.

If the System fails to meet the Uptime Standard for any month during the Warranty Period or Software Maintenance Period at a Facility, for each failure during such month, the Corporation shall be entitled to, in addition to any other remedies the Corporation may be entitled to hereunder, a five (5) day extension of the Warranty Period as to such Facility, and if such failure occurs during the Software Maintenance Period, then the Corporation shall be entitled, for [each one-hundredth of one (0.01%) percent] below the required Uptime Standard, to a credit of [five percent (5%)] of the amount of the monthly maintenance charge that is attributable, on a pro-rated basis, to that Facility. Maintenance credits due the Corporation hereby shall be applied as a credit against outstanding and future maintenance invoices submitted by the Contractor hereunder. Notwithstanding any provision to the contrary in this Section 4.19, Contractor shall not be required to pay maintenance credits with respect to any failure to meet the Uptime Standard caused by the failure of any hardware included in the System to function substantially in accordance with the specifications therefor.

4.20 DISCLAIMER.

EXCEPT AS SET FORTH IN THIS AGREEMENT, CONTRACTOR MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY WARRANTIES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT ARE DISCLAIMED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No representation or other affirmation of fact which is not expressly contained in this Agreement shall be deemed to be a warranty by Contractor for any purpose.

ARTICLE FIFTH: AUDIT BY THE CORPORATION AND CITY

5.1 DOCUMENTATION SUBJECT TO AUDIT

All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Corporation and also by the Comptroller of the City of New York (the "Comptroller") pursuant to the powers and responsibilities as conferred upon said Comptroller by the Charter and Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.
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5.2 SUBMISSION OF DOCUMENTATION

The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Corporation and the Comptroller so that they may evaluate the reasonableness of the charges.

5.3 MAINTENANCE OF RECORDS

The Contractor agrees to maintain separate and accurate accounts, books, vouchers, invoices, documents and records in accordance with standard accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. The Contractor agrees to retain such documents for six (6) years after the final payment or termination of this Agreement, whichever is later. The Contractor shall make available all such records for periodic inspection, audit and review by the State of New York, Federal Government and other persons duly authorized by the Corporation or City of New York, including the Corporation's Office of the Inspector General, upon request of the Corporation.

5.4 WITHHOLDING OF PAYMENT

If an investigation, inspection or audit is commenced, the Corporation has the right to withhold payment, if any payment is due, until all the requirements set forth above have been satisfactorily met by the Contractor.

ARTICLE SIXTH: COVENANTS OF THE CONTRACTOR

6.1 CONTRACTOR's EMPLOYEES; AGENTS; AND INDEPENDENT CONTRACTORS

6.1.1 All officers, agents or employees of the Contractor, and all independent contractors engaged by the Contractor to perform work under this Agreement, are neither employees of the Corporation nor the City nor under contract to either the Corporation or the City of New York and the Contractor alone is responsible for their work, direction, compensation and personal conduct while performing pursuant to this Agreement. Except under the circumstances when Contractor's employee or agent is directed by the Corporation or the City to perform services in a manner contrary to that which Contractor, in its reasonable judgment deems appropriate, nothing in this Agreement shall impose any liability or duty on the Corporation or the City for: (a) 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 or agent; or (b) taxes of any nature.
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6.1.2 Prior to assigning any employee, agent or independent contractor to work at a Corporation site, the Contractor shall conduct a criminal history background check (a “Background Check”) on such person covering the three years prior to such proposed assignment. A Background Check must include, for New York State (“NYS”) residents, a criminal history record search of the NYS Office of Court Administration’s records for all 62 NYS counties. In addition, the Contractor shall conduct a Background Check through the records for any other state in which the person resided in the last three (3) years. The Corporation may require the Contractor to perform a more extensive Background Check on workers who will have direct contact with mentally ill or minor patients, provide nursing home or home health care services or in certain other situations. Contractor shall also comply with all applicable federal, state or local statutes or regulations requiring Background Checks. After reviewing an individual’s Background Check report, Contractor shall provide a written, signed certification to the Corporation stating that there is nothing in such person’s background that would render him or her unsuitable to work in a health care setting or Corporation administrative office. The Contractor shall maintain these reports for six (6) years. The Corporation may audit the Contractor’s records to verify compliance with this Section.

6.2 LIABILITY

6.2.1 The Contractor shall be solely responsible for all physical injuries to, or death of, its officers, agents, or employees, or any other person arising during the period of performance or the rendering of services under this Agreement and for all damage to any property sustained during its operations and under this Agreement resulting from any negligence, fault, act or omission or error in judgment of any of its officers, trustees, employees, agents, or independent contractors. The Contractor shall hold harmless and indemnify the Corporation and the City from liability upon any and all claims for damages on account of such injuries to or death of any such person or damages to such property on account of any neglect, fault, act of commission or omission or error in judgment of the Contractor, its officers, trustees, employees, agents, or independent contractors, except to the extent such claims are due to the sole negligence of the Corporation or City. The Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of the Contractor or not.

6.2.2 In the event that any claim is made or any action is brought against the Corporation or City arising out of the negligence or careless acts of an employee of the Contractor, either within or without the scope of this employment, or arising out of the Contractor's negligent performance of this Agreement, then the Corporation or City shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said claim or action.
6.3 INSURANCE

The Contractor shall procure and maintain insurance against any and all claims, loss or damage that may arise in connection with the performance of the work hereunder by the Contractor, its employees, officers, trustees, agents, independent contractors, or subcontractor at the minimum level noted in Exhibit J, “Minimum Insurance Requirements,” annexed hereto and made a part hereof.

6.3.1 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

General and Professional Liability Coverages

a. The Corporation, the City, its officers, officials and employees are to be covered as additional insureds with respect to the following: (i) liability arising out of activities performed by or on behalf of the Contractor; and (ii) products and completed operations of the Contractor.

b. The Contractor's insurance coverage shall name the Corporation and the City as additional insureds.

c. The Contractor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.3.4.2 Workers' Compensation and Employers' Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Corporation, the City, its officers, officials and employees for losses arising from work performed by the Contractor for the Corporation.

6.3.4.3 All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after sixty (60) days' prior written notice by certified mail, return receipt requested, has been given to the Corporation.

6.3.5 Acceptability of Insurers
Insurance is to be placed with insurers with a Best's rating of no less than A:X unless specific written approval has been granted to accept a company with a lower rating by the Corporation's Office of Legal Affairs.

6.3.6 Verification of Coverage

The Contractor shall furnish the Corporation with Certificates of Insurance effecting coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by the Corporation before work commences. The Corporation reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

6.3.7 Subcontractors

The Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates for each subcontractor. The coverages for subcontractors shall be subject to all of the requirements stated herein.

6.4 MINIMUM WAGES

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 as prescribed by law. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

6.5 INDEPENDENT CONTRACTOR STATUS

The Contractor and the Corporation agree that the Contractor is an independent contractor, and not an employee of the Corporation or the City of New York and that in accordance with such status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Corporation or the City of New York, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Corporation or the City of New York including, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

6.6 PROTECTION OF CORPORATION PROPERTY

6.6.1 The Contractor assumes the risk of, and shall be responsible for, any loss or damage to Corporation property, including property and equipment leased by the Corporation, used in the performance of this Agreement, and caused by the acts, conduct or omissions or lack of good faith
of the Contractor, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Contractor as expert, consultant, specialist or subcontractor hereunder.

6.6.2 In the event that any such Corporation property is lost or damaged, except for normal wear and tear, or to the extent that such property is consumed in the performance of this Agreement then the Corporation shall have the right to withhold further payments hereunder for the purpose of set-off, in sufficient sums to cover such loss or damage.

6.7 RIGHTS OF CORPORATION

The rights and remedies of the Corporation provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

6.8 COMPLIANCE WITH LAW

The Contractor shall obtain all required approvals and licenses from appropriate Federal, State, and City authorities and render all services under this Agreement in accordance with applicable Federal, State and local laws, rules and regulations.

6.9 FEDERAL EMPLOYMENT PRACTICES

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

6.10 NON-DISCRIMINATION AGAINST THE HANDICAPPED

The Contractor agrees that it will comply with the provisions of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1994, and all regulations, guidelines and interpretations issued pursuant thereto.

6.11 INVESTIGATIONS

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

6.11.2 a. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal
proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the Corporation, 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. 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 the Corporation, City or State or other 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 seeking testimony concerning the interest in, and seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the Corporation, City the State, or any political subdivision thereof or any local development corporation within the City; then:

6.11.3 a. The President of the Corporation shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if penalties should attach for the failure of a person to testify.

b. If any non-governmental party to the hearing requests an adjournment, the President of the Corporation may, upon granting the adjournment, suspend any contract, lease, permit or license of the party granted the extension pending the final determination pursuant to Section 6.11.5, below, without the Corporation or City incurring any penalty or damages for delay or otherwise.

6.11.4 The penalties which may attach after a final determination by the President may include but shall not exceed:

a. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the Corporation or City; and/or
b. The cancellation or termination of the rights or interest of the person or entity it represents in any and all such existing Corporation or 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 have been pledged to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the Corporation or City incurring any penalty or damages on account of such cancellation or termination. Monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

6.11.5 The President shall consider and address in reaching his or her determination and in assessing an appropriate penalty, the factors in paragraphs a and b, below. The President may also consider, if relevant and appropriate, the criteria established in paragraphs c and d, below, in addition to any other information which may be relevant and appropriate:

a. The parties' good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought;

b. The relationship of the person who refuses to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity;

c. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the Corporation or City; and

d. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 6.11.4, 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 Section 6.11.3 (a), above, gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
6.11.6 Definitions

6.11.6.1 License

The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

6.11.6.2 Person

The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

6.11.6.3 Entity

The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the Corporation, City or otherwise transacts business with the City.

6.11.6.4 Member

The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

6.11.7 In the event that the Corporation or City promulgates new "standard form language" for the "Investigations Clause", also, then the Contractor may, at its option, elect to substitute such new "standard form language" nunc pro tunc into this Agreement or, in the event that the Corporation or City agree in any instance to any material change regarding the penalties described in Section 6.11.4 hereof, the Corporation or City shall advise Contractor of such revision, and the Contractor at its option, may elect to substitute such revised penalties nunc pro tunc in the Agreement, in whole or in part, for those contained in Section 6.11.4.

6.11.8 In addition to and notwithstanding any other provision of this agreement, the President of the Corporation 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 report promptly 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.

6.12 ASSIGNMENT
6.12.1 The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or of the Contractor's right, title, interest, obligations or duties herein, in whole or in part, or any of its rights to receive monies due or to become due under this Agreement, unless prior written notice to the President of the Corporation shall be given and consent obtained from the Corporation. If the Contractor wishes to assign and transfer its rights hereunder to a purchaser of all or substantially all of the assets or capital stock of Contractor, whether by merger, consolidation or otherwise, the Corporation shall give the Contractor its written consent to such assignment, provided that the Corporation has determined that the assignee (i) has the requisite experience and ability to perform fully and properly the Contractor’s obligations under this Agreement, to the same standards to which the Contractor is held hereunder, and (ii) complies with the Corporation’s VENDEX contractor responsibility and equal employment opportunity requirements. Failure of the Contractor to obtain any required consent to any assignment shall be grounds for termination for cause, at the option of the Corporation. The Corporation shall be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may thereafter become due under the Contract shall be forfeited. The provisions of this clause shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.

6.12.2 Upon written notice to the Contractor, this Agreement may be assigned by the Corporation to any corporation, agency or instrumentality having authority to accept such assignment upon prior written notice to Contractor.

6.12.3 In the event that the Corporation exercises its rights pursuant to Section 6.12.2 hereof, Contractor has the right to terminate the remainder of its performance under this Agreement, and shall incur no further obligations hereunder.

6.13 SUBCONTRACTING

6.13.1 The Contractor agrees not to enter into any subcontracts, beyond those included in the Request for Proposals and known to be extant at the time of the effective date of this Agreement (a list of such subcontracts are attached hereto as Exhibit ___), for the performance of its obligations, in whole or in part, under this Agreement without prior written approval of the Corporation. A copy of each subcontract listed on Exhibit ___ and any proposed subcontract shall be submitted to the Corporation with the Contractor's written request for approval.

6.13.2 All such subcontracts shall contain provisions specifying:

a. That the work performed by the subcontractor must be in accordance with the terms of this Agreement;
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b. That nothing contained in such agreement shall impair the rights of the Corporation;  
c. That nothing contained herein, or under the Agreement between the Corporation and the Contractor, shall create any contractual relationship between the subcontractor and the Corporation; and  
d. That the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the Agreement between the Corporation and the Contractor.

6.13.3 The Contractor agrees that it is fully responsible to the Corporation for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them on this project as it is for the acts and omissions of persons directly employed by it.

6.13.4 The aforesaid approval is required in all cases other than individual employer-employees contracts.

6.13.5 The Contractor shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

6.14 PUBLICITY AND PUBLICATION

6.14.1 The prior written approval of the Corporation is required before the Contractor or any of its employees, agents, or independent contractors may, at any time, either during or after termination or cessation of the services required by 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.

6.14.2 If the Contractor or any of its employees publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the Corporation shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use the publication.

6.15 PARTICIPATION IN AN INTERNATIONAL BOYCOTT

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

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

6.15.3 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 of the City thereunder.

6.16 BUSINESS DEALINGS WITH NORTHERN IRELAND

6.16.1 The Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor shall either: (a) have no business operations in Northern Ireland; or (b) take lawful steps in good faith to conduct any business operation in Northern Ireland in accordance with the MacBride Principles, as defined herein, and shall permit independent monitoring of their compliance with such principles.

6.16.2 "MacBride Principles" shall mean those principles related to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

a. Increase the representation of individuals from under represented 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 for under represented religious groups both at the workplace and while traveling to and from work;

c. Ban provocative religious or political emblems from the workplace;

d. Publicly advertise all job openings and make special recruitment efforts to attract applicants from under-represented religious groups;

e. Establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

f. Abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

g. Establish procedures to assess, identify and actively recruit employees from under-represented religious groups with potential for further advancement; and
Appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

6.16.3 The Contractor agrees that the representations in Section 6.16.1 are material conditions of this Agreement. If the Corporation receives information that the Contractor is in violation of Section 6.16.1, the Corporation shall review such information and give the relevant party opportunity to respond. If the Corporation finds that such a violation has occurred, the Corporation may declare the Contractor in default, and/or terminate this Agreement. In the event of any such termination, the Corporation may procure the supplies, services or work from another source in any manner the Corporation deems proper. The Contractor shall pay to the Corporation, the difference between the contract price for the uncompleted portion of this Agreement and the cost to the Corporation of completing performance of this Agreement either by itself or by engaging another contractor. In addition, the Contractor may be declared not to be a responsible proposer for up to three (3) years, following written notice to the Contractor, giving the Contractor the opportunity for a hearing at which the Contractor may be represented by counsel. The rights and remedies of the Corporation hereunder shall be in addition to, and not in lieu of, any rights and remedies the Corporation has pursuant to this Agreement or by operation of law or in equity.

6.17 INVENTIONS, PATENTS AND COPYRIGHTS

6.17.1 Any discovery or invention arising out of or developed in the course or performance of this Agreement shall be promptly and fully reported to the Corporation, and if this work is supported by a Federal grant of funds, it shall promptly and fully be reported to the Federal Government for determination as to whether patent protection of such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

6.17.2 No report, document or other data produced in whole or in part with contract funds may be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for this Agreement.

6.17.3 In no event shall Section 6.17.1 above be deemed to apply to any discovery or invention of the Contractor which existed prior to or was developed or discovered independently from its activities related to or funded by this Agreement.

6.17.4 The Contractor agrees that all Custom Software constitutes confidential information; is the sole property of the Corporation or City and the Corporation or the City retains all right, title and interest, in said software. The Contractor further agrees not to disclose to any third party any information obtained from the Corporation or the City concerning the Corporation's or the City's operations, existing or future computer programs or other record keeping procedures, except as such
disclosure may be required by law, or as otherwise authorized by the Corporation or the City. The Contractor will use reasonable commercial efforts to prevent unauthorized dissemination or disclosure of such information related to the development of said Custom Software. The Contractor further agrees that neither it nor any of its employees will transfer, lease, sell, assign, distribute, give, license, sublicense, publish, use, disclose or divulge the contents of or any aspect of said software to third parties unless specifically authorized in writing, in advance, by the Corporation or the City. This paragraph shall not apply if the Contractor, or an employee thereof, develops independently of this Agreement similar software or such software as rightfully obtained by the Contractor from a third party whom the Corporation or the City has licensed or authorized to use it.

The Contractor agrees to return to the Corporation or the City, at the termination of this Agreement or at the request of the Corporation or City following a breach of the Agreement by the Contractor, all copies of such software, any improvements thereof and all information, data or material related thereto, including, without limitation, each and every copy or so much of every program, program deck, tape, disk, card, card deck, printout, listing, specifications, layout manual and other material with respect to such software or any part thereof then in the possession or in the control of, or obtained by others through or from the Contractor and its permitted transferee.

**6.18 INFRINGEMENTS**

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

**6.19 ANTITRUST**

The Contractor hereby assigns, sells, and transfers to the Corporation and the City of New York 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 Corporation under this Agreement.

**6.20 HIPAA COMPLIANCE**

The parties shall take such actions as necessary to comply fully with the privacy standards and other requirements relating to protected health information as defined in the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) (“HIPAA”) and amendments thereto, and the rules and regulations promulgated thereunder, as well as guidance issued by the United States Department of Health and Human Services. If at any time the
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Corporation determines that a HIPAA-compliant business associate agreement is required to be executed by both parties to maintain such compliance, the Contractor shall comply with such requirement.

6.21 CONFIDENTIALITY

6.21.1 The Contractor agrees that all the reports, information, or data furnished or prepared, assembled or used by the Contractor under this Agreement are to be held confidential, and the Contractor agrees that the same shall not be made available to any individual or organization, or published without the prior written approval of the Corporation or as authorized or required by law.

6.21.2 The Licensed Software and all reports, information or data pertaining to the Contractor, its employees or customers which are disclosed to the Corporation or which are learned by the Corporation as a result of this Agreement shall be held as confidential and shall not be disclosed to third parties except on prior written consent of the Contractor or as authorized or required by law. Except to the extent such information is of a nature that would reasonably be understood to be confidential, the Contractor shall notify the Corporation of that such information is confidential. The Contractor shall label such information as confidential or, for confidential information disclosed orally, promptly follow-up such disclosure with a writing memorializing the confidential nature of such information. The Corporation shall only disclose such confidential information to its employees and contractors who have a need to know such information in order to perform their obligations under this Agreement, who have been made aware of the confidential nature of the information and who have agreed to confidentiality obligations with respect to such information that are substantially the same as the confidentiality obligations of the Corporation under this Section 6.19.2.

6.21.3 The provisions of this Section shall remain in full force and effect following termination of, or cessation of the services required by this Agreement.

6.22 MINORITY AND WOMEN OWNED BUSINESS ENTITY PROGRAM (M/WBE)

6.22.1 The Corporation is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("M/WBE Regulations") for all contracts with a value in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

6.22.2 The Contractor agrees, at no additional cost to the Corporation, to the extent it subcontracts any services performed under this Agreement that it will fully comply and cooperate with the Corporation in the implementation of the minority and women-owned business enterprises
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("M/WBEs") Regulations as they are described in New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 and this Article. These requirements include equal employment opportunities for minority group members and women and contracting opportunities for certified M/WBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these undertakings by the Contractor. The obligations undertaken by the Contractor in pursuant to this Article shall be deemed supplementary to, and not in lieu of, other applicable nondiscrimination provisions, if any, required by New York State Executive Law Article 15 or other applicable federal, state or local laws, provided, however, that in meeting such obligations, the Contractor shall not be obligated to violate any other applicable nondiscrimination provision.

6.22.3 The Contractor shall achieve these goals:

[MBE Goal (___%)]
[WBE Goal (___%)]

If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a request for waiver documenting good faith efforts by the Contractor to meet such goals. Requests for waiver must satisfy the requirements of New York State Executive Law, Article 15-A, and 5 NYCRR, Section 143.7. If the documentation included with the waiver request is complete, the Corporation shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt. Should the requested waiver be denied, the Contractor may request an administrative hearing within seven (7) calendar days of the Contractor's receipt of such waiver denial.

6.22.4 The Contractor's willful and intentional failure to comply with its obligations in this Article may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to administrative action by the Corporation, including without limitation the withholding of funds pending receipt of the required M/WBE documentation, suspension or termination of this Agreement or such other actions as allowed by this Agreement and applicable law.

6.23 SOURCE CODE DELIVERY AND ESCROW

Upon installation of the Software and at such other times as the Corporation deems necessary, the Contractor will deliver into escrow, pursuant to the terms hereof and of the Escrow Agreement attached as Exhibit L (the “Escrow Agreement”), to be held by Iron Mountain, the third party institution identified in the Escrow Agreement, the complete and correct source codes for the Software (the “Source Code”) and such additional proprietary information necessary to load
and execute the Source Code and such design specifications, flow charts, notes and other materials necessary for a computer programmer of ordinary skill to understand and maintain the Source Code. During the term of this Agreement and any subsequent Software Maintenance Period, the Contractor will update the Source Code within thirty (30) days after the Contractor makes any changes to the Software, or, at the Corporation’s expense, upon the Corporation’s request, but in no event less than once every twelve (12) months and also immediately upon termination of the Software Maintenance Period. Such escrow shall be maintained by the Contractor at its sole cost, which is set forth in the Escrow Agreement. Subject to the provisions of the Escrow Agreement, the Corporation shall be entitled to request a release of and obtain the Source Code for the Software from the Escrow Agent as provided in the Escrow Agreement. Contractor shall provide the Corporation with prior written notice as far in advance as practicable of its intent to cancel the Escrow Agreement. Upon the Contractor's receipt of a notice from the Escrow Agent of intent to terminate the Escrow Agreement, Contractor shall immediately notify the Corporation in writing of such intended termination. If the Escrow Agreement is terminated and the Contractor provides the Escrow Agent with written instructions authorizing it to forward the Source Code to another escrow company and/or agent or other designated recipient, the Contractor shall notify the Corporation in writing of such action, and keep it informed as to the identity of the new escrow agent. If a Release Condition occurs, the Contractor shall provide the Escrow Agent (or to any other escrow agent to which the Source Code has been forwarded, if applicable) with written instructions authorizing it to forward the Source Code to the Corporation. As used in this Agreement, "Release Condition" shall mean the existence of any one or more of the following circumstances:

(i) Entry of an order for relief under Chapter 11 of the United States Bankruptcy Code;

(ii) the making by the Contractor of a general assignment for the benefit of creditors;

(iii) the appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property;

(iv) action by the Contractor under any state or federal insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation;

(v) the Contractor ceases to provide maintenance, support and updates for the Licensed Software for any reason, including without limitation, because it no longer provides such services, or it has ceased to do business entirely;

(vi) the Contractor wishes to assign and transfer all its rights and obligations under this Agreement to a purchaser of all or substantially all of its assets or capital stock, whether by merger, acquisition, consolidation or otherwise, and the Corporation will not consent to such assignment and transfer because it has determined that the assignee does not comply with the Corporation's
6.24 BUDGET REPORTING

Progress reports for Services and Software solicited by the Corporation from the Contractor though work orders or service requests, other than defined in Section 3.2 and detailed in Exhibit B herein, shall be reported by the Contractor as according to a schedule outlined by the Corporation. Resource utilization actuals and projections are to be calculated to estimate, plan and manage and monitor project progress. Budget items consumed under such agreements will be reported no less frequently than monthly utilizing the CIS Budget Template (Exhibit M). Unless otherwise specified by the Corporation, all relevant items will be completed, and a copy forwarded to the Corporate Information Technology Budget Office, no later than the 15th of the month following the report month.

6.24 CHANGE MANAGEMENT PROCEDURES

All configuration changes made by the Contractor or any subcontractor, on behalf of the Corporation will comply with change management policies and procedures. Documentation of such changes will be made on the CIS Change Management Documentation forms (Exhibit _) and submitted upon completion and successful testing of the changes.

6.25 EXTENSION OF LICENSE TO OTHER FACILITIES

Notwithstanding any provision in this Agreement to the contrary, the Corporation shall have the right, but not the obligation, to extend the license to the Licensed Software granted in this Agreement to permit the Corporation to use such Licensed Software at Additional Facilities (the “Extension Right”). The Corporation shall provide Contractor not less than sixty (60) days written notice each time it elects to exercise its Extension Right with respect to an individual Additional Facility and Contractor shall provide a listing of fees based on Corporation’s scope of service desired for such Additional Facility(ies). In the event Corporation exercises its Extension Right, the Corporation shall pay Contractor such additional non-recurring and recurring fees applicable to such exercise at the then current prices in effect, less discounts as described in Exhibit _. Except as provided in Exhibit __, the provisions of the Agreement, including the maintenance services, shall apply to any and all Additional Facilit(y)(ies) to which the license to the Licensed Software has been extended pursuant to this Section 6.25.

ARTICLE SEVENTH: TERMINATION
7.1 CONDITIONS OF TERMINATION

7.1.1 The Corporation shall have the right to terminate this Agreement, in whole or in part:

a. Upon ten (10) days' written notice to the Contractor, if, in the opinion of the Corporation, the Contractor has materially breached this Agreement.

b. Upon (10) days' written notice to the Contractor, upon the failure of the Contractor to comply with any of the terms and conditions of this Agreement which have not been cured to the reasonable satisfaction of the Corporation within ten (10) days of the Corporation's request therefore.

c. Upon written notice to the Contractor, if the Contractor becomes insolvent, or in the event of the commencement under the Federal or State Bankruptcy Act of any proceeding by or against the Contractor, either voluntarily or involuntarily, or if a receiver has been appointed for the Contractor's assets.

d. Without cause, upon thirty (30) days written notice to the Contractor, if the Corporation deems that termination would be in the best interest of the Corporation or City of New York.

7.1.2 If the Contractor disputes the termination by the Corporation, the Contractor may seek review of the decision by requesting the Corporation, in writing, within ten (10) business days of receipt of the termination, to convene a review board. At any such hearing, the Contractor may be represented by counsel and present or refute evidence and testimony relevant to the issue of the Contractor's termination. The Corporation's decision shall be final and binding with respect to the termination of the Contractor if the Contractor does not request a review as herein provided.

7.1.3 The Contractor agrees to forebear from the commencement of any action or proceeding regarding the Corporation's termination, unless the Contractor has requested a review board pursuant to Section 7.1.2 above, and such board has issued a final decision.

7.2 NOTICE OF TERMINATION/CAUSES BEYOND CONTRACTOR'S CONTROL

The Contractor shall be entitled to apply to the Corporation to have this Agreement terminated by said Corporation by reason of any failure in the performance of this Agreement (including any failure by the Contractor to make progress in the prosecution of work hereunder which 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, but are not restricted to: Acts of God or of the public enemy; acts of the government in either its sovereign
or contractual capacity, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, or any other cause beyond the reasonable control of the Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of the Contractor shall be made by the Corporation which agrees to exercise reasonable judgment therein. If such determination is made and its Agreement terminated by the Corporation pursuant to such application by the Contractor, such termination shall be deemed to be without cause. Upon termination of this Agreement, the Contractor shall comply with the Corporation's close-out procedures, including but not limited to:

- Giving the Corporation or its designees access to all books, records, documents and materials specifically relating to this Agreement, during normal business hours upon reasonable notice or give the Corporation copies of such materials at the Corporation's option and cost; and
- Submitting, within ninety (90) days, a final statement and report relating to this Agreement, containing such information as the Corporation may request.

7.3 APPROPRIATION OF SIMILAR SERVICES

In the event the Corporation shall terminate this Agreement in whole or in part, the Corporation may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Contractor shall continue the performance of this Agreement to the extent not terminated thereby.

7.4 LIABILITY/SET-OFF

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

ARTICLE EIGHTH: REDUCTION OF FUNDING

8.1 REDUCTION OF FUNDING

The Contractor, acknowledging that this Agreement is funded in whole or in part by funds secured from the Federal, State and City Government, agrees that should there be a reduction or discontinuance of such funds by action of the Federal, State or City Government, the Corporation shall have, in its sole discretion the right to terminate this Agreement in whole or in part, or to reduce the funding and level of service of this Agreement to eliminate any adverse impact of such action upon the Corporation. Any such termination
due to discontinuance of the funds shall take effect immediately upon written notice thereof to the Contractor. In the case of reduction in funds, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) calendar days from the date of such notice.

8.2 TERMINATION OR REDUCTION: SEPARATION RIGHTS

The termination or reduction options of the Corporation set forth in Section 8.1 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 regulations, and supersede any and all rights or actions the Contractor may have under any provisions of this Agreement to the contrary.

ARTICLE NINTH: MISCELLANEOUS

9.1 INTERPRETATION

This Agreement shall be governed in all respects by the laws of the State of New York. The invalidity or unenforceability of any terms or conditions thereof shall in no way affect the validity or enforceability of any other terms or provisions. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof. The parties agree that any litigation arising from this Agreement will be brought before the appropriate State Court in New York County.

9.2 GENERAL RELEASE

The payment by the Contractor or its assignees of the final payment under this Agreement, whether by voucher, judgment or any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to the Corporation and the City of New York from any liability to the Contractor based on a contractual claim and arising out of the performance of this Agreement.

9.3 CLAIMS AND ACTIONS THEREON

9.3.1. No action at law or proceeding in equity against the Corporation shall lie or be maintained upon any claims based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and information with respect to such claims, all as herein provided.

9.3.2 No action shall lie or be maintained against the Corporation or City of New York by the Contractor upon any claims based upon this Agreement unless such action shall be commenced
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within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever is earliest.

9.3.3 In the event any claim is made or any action brought in any way relating to this Agreement, the Contractor shall diligently render to the Corporation and/or the City of New York any assistance that they may reasonably require of the Contractor.

9.3.4 The Contractor shall report to the Corporation 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.

9.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

9.5 NOTICES

The Contractor and the Corporation hereby designate the business addresses hereinabove specified as the places where all notices, direction or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by certified mail, return receipt requested, shall 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 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by law.

9.6 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 shall 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 shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice from such omission to the rights of either party hereunder.

9.7 POLITICAL ACTIVITY
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9.7.1 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.

9.7.2 No funds provided under this Agreement shall be used to pay the salary or expense of any person to engage in any activity designed to influence legislation or appropriations pending before the Congress of the United States.

9.8 MODIFICATION

This Agreement may be modified by the parties only in writing. It may not be altered or modified orally.

9.9 PARAGRAPH HEADINGS

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

9.10 MERGER

This written Agreement contains all the terms and conditions agreed upon by the parties hereto with respect to the subject matter hereof, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

9.11 NO REMOVAL OF RECORDS FROM PREMISES

Where performance of this Agreement involves use by the Contractor of any papers, files, data or records maintained at Corporation facilities or offices, the Contractor shall not remove any such papers, files, data or records therefrom without the prior approval of the Corporation's designated official.

9.12 INSPECTION OF SITE

The Corporation shall have the right to have representatives of the Corporation, the City or the State of New York or the Federal government present at the site of the engagement to observe the work being performed.

9.13 LIMITATION OF LIABILITY

The Corporation's liability to the Contractor for any losses or damages, direct or indirect, arising out of any of the provisions of this Agreement, shall not exceed the amount due the Contractor for services performed under this Agreement that remain unpaid at the time of such loss or damage. Neither party shall be liable to the other for incidental or consequential damages.
9.14 SECTION 400.4: NEW YORK STATE HOSPITAL CODE

If this Agreement is to be performed within a facility where health services are rendered, then, notwithstanding any other provision in this Agreement, the Corporation remains responsible for: (a) ensuring that any services provided pursuant to this Agreement complies with all pertinent provisions of Federal, State and local statutes, rules and regulations; (b) planning, coordinating and ensuring the quality of all services provided; and (c) ensuring adherence to the plan of care established for patients.

9.15 ACCESS TO RECORDS BY THE FEDERAL GOVERNMENT

9.15.1 The parties agree that until the expiration of four years after the furnishing of any services pursuant to this Agreement, the Contractor will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of this Agreement and any books, documents, records and other data of the Contractor that are necessary to certify the nature and extent of costs incurred by the Corporation for such services; and

9.15.2 If the Contractor carries out any of its duties under this Agreement through a subcontract with a related organization involving a value or cost of Twenty Thousand Dollars ($20,000) or more over a twelve (12) month period, the Contractor will cause such subcontract to contain a clause to the effect that, until the expiration of four (4) years after the furnishing of any services pursuant to said subcontract, the related organization will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States any books, documents, records and other data of such related organization that are necessary to certify the nature and extent of costs incurred by the Contractor for such services.

9.16 CLEAN AIR ACT

If the amount of this Agreement is in excess of One Hundred Thousand Dollars ($100,000), the Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 185b, et. seq.) and the Federal Water Pollution Act (33 U.S.C. 1251 et. seq.).

9.17 MONITORING AND EVALUATION

9.17.1 The Corporation shall monitor and evaluate the performance of the Contractor under this Agreement at such times and in such manner as the Corporation deems appropriate.

9.17.2 The Corporation shall provide the Contractor with information concerning the results of any monitoring.

9.18 RECOUPMENT OF DISALLOWANCES, QUESTIONED COSTS AND OVER-PAYMENTS
GENERAL CONTRACT PROVISIONS – ATTACHMENT B

The Corporation may, at its option, withhold for the purposes of set-off and monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audit of the Contractor conducted pursuant to Section 5.1 above with regard to this Agreement or any other Agreement between the parties hereto, including any Agreement for a term commencing prior to the commencement date of this Agreement, provided that Contractor has received written notice of any such disallowances or questioned costs thirty (30) days prior to any such offset. If Contractor believes that such offset was improper, the Contractor may submit to the Corporation any supporting documentation, and the Corporation shall review such documentation and reasonably reconsider its decision in light of such documentation.

9.19 SURVIVAL

The perpetual license to the Licensed Software and all representations, warranties, and indemnifications contained herein and all confidentiality provisions shall survive the termination or expiration of this Agreement.

ARTICLE TENTH: EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE

10.1 EXECUTIVE ORDER 50

The Contractor agrees that, in consideration of the award to it of this agreement, it will comply with the provisions of the Mayor's Executive Order 50, dated April 25, 1980 (as amended) ("E.O. 50") and the rules and regulations promulgated thereunder. This Agreement will not be effective unless the reporting requirements set forth below have been complied with in their entirety. The Contractor agrees that it:

a. Will not engage in any unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, citizenship status, sexual orientation or affectional preference in all employment decisions including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff and termination and all terms and conditions of employment except as provided by law;

b. When it subcontracts it will not 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, citizenship status, sexual orientation, or affectional preference;

c. Will state in all solicitations or advertisements for employees placed by or on behalf of the contract that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status, citizenship status, sexual orientation, or affectional preference or that it is an equal employment opportunity employer;
GENERAL CONTRACT PROVISIONS – ATTACHMENT B

**d.** Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder; and

**e.** 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 rules, regulations, and orders of the Director of the Corporation's Office of Equal Employment Opportunity (the "Director of the EEO Office"), and will permit access to its books, records and accounts by the EEO Office for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The Contractor understands that its non-compliance with the foregoing shall constitute a material breach of this Agreement, as well as non-compliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of EEO Office, the Director may impose any or all of the following sanctions:

**a.** Disapproval of the Contractor;

**b.** Suspension or termination of the contract;

**c.** Declaring the Contractor in default; or

**d.** An employment program.

The Director may recommend to the Corporation 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 (or promulgated by the EEO Office) to be non-responsible.

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), using funds provided hereunder, 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 EEO Office as a means of enforcing such provisions, including sanctions for non-compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modifications 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.

10.2 NEW YORK LABOR LAW SECTION 220-e
GENERAL CONTRACT PROVISIONS – ATTACHMENT B

Section 220-e of the New York Labor Law requires that:

10.2.1 In the hiring of employees for the performance of work under this contract or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such the Contractor or subcontractor shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform work to which the employment relates;

10.2.2 Neither the Contractor, subcontractor, nor any person on his behalf shall, in any manner discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, or national origin;

10.2.3 There may be deducted from the amount payable to the Contractor by the Corporation under this contract 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 contract; and

10.2.4 This contract may be canceled or terminated by the Corporation 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 contract.

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

10.3 NEW YORK CITY ADMINISTRATIVE CODE SECTION 6-108:

Section 6-108 of the New York City Administrative Code requires that:

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

10.3.2 It shall be 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 by or seeking employment from such person, firm or corporation.
10.3.3 Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this contract; and

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

10.4 ADHERENCE TO THE CORPORATION'S EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION POLICIES

The Contractor agrees to adhere to all terms, conditions and provisions of the Corporation's Equal Employment and Affirmative Action Policies as set forth by the Corporation's Board of Directors.

IN WITNESS WHEREOF, the Corporation has caused this Agreement to be executed in quadruplicate and the Contractor has caused this Agreement to be so executed by a duly authorized officer as of the day and year first above written.

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

___________________________
President
Alan D. Aviles, Esq.

___________________________
Contractor’s Authorized Representative

___________________________
Name
GENERAL CONTRACT PROVISIONS – ATTACHMENT B

Title

Contractor’s Federal Tax I.D. Number

APPROVED AS TO FINANCE:

By: _______________________________
Senior Vice President - Finance
New York City Health and Hospitals Corporation

APPROVED AS TO FORM:

________________________________
Senior Vice President/
General Counsel
New York City Health and Hospitals Corporation

APPROVED AS TO PROGRAM:

By: _______________________________
Senior Vice President/
Chief Information Officer
New York City Health and Hospitals Corporation
GENERAL CONTRACT PROVISIONS – ATTACHMENT B

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

On this _____ day of __________________, 20 , before me personally came_______________________________, to me known and known to me to be the President of the New York City Health and Hospitals Corporation, the person described in the attached agreement and who, as such President, executed the attached agreement on behalf of the New York City Health and Hospitals Corporation for the purposes therein mentioned.

___________________________________
Notary Public

STATE OF                              )
COUNTY OF                           ) ss.:

On this ______ day of ___________________20 , before me personally came_________________________, to me known, who being duly sworn, did depose and say that he/she is the________________________, of the _________________ ______ described in the attached agreement and who as such ________________________executed the attached agreement and duly acknowledged to me that he/she was duly authorized to and did execute same on behalf of the ____________________________________ for the purpose therein mentioned.

___________________________________
Notary Public
BUSINESS ASSOCIATE AGREEMENT (As Required by HIPPA)

This Business Associate Agreement ("Agreement"), effective ("Effective Date"), is entered into by and between , with principal place of business at ("Business Associate") and the New York City Health and Hospitals Corporation, with principal place of business at 125 Worth Street, New York, New York 10013 ("Covered Entity") (each a “Party” and collectively the “Parties”).

Business Associate (which, for the purposes of this Business Associate agreement, includes its directors, officers, employees, and third party workforce) is a , and Covered Entity is a public benefit corporation providing health care. The Parties have agreement, effective , (the “Agreement”) under which Business Associate may use, have access to, or discloses Protected Health Information ("PHI") in its performance of the Services described below. Both Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 (hereinafter, the “HIPAA Regulations”) and acknowledge the respective duties and obligations imposed on them by the privacy and security provisions of the HITECH Act, Title XIII, subtitle D, of the American Recovery and Reinvestment Act of 2009 (ARRA), codified at 42 U.S.C. § 17921 et seq. Citations herein to the Code of Federal Regulations refer to the HIPAA Privacy Regulations published on December 28, 2000 and amended on August 14, 2002 and the HIPAA Security Regulations published on February 20, 2003, and shall include all subsequent, updated, amended or revised provisions relating thereto. Terms not otherwise defined herein shall have the meanings ascribed to them in the HIPAA Regulations, including but not limited to 45 C.F.R. §§ 160.103, 164.103, 164.304, 164.402, & 164.501 and as provided in the HITECH Act, 42 U.S.C. § 17921. Unless otherwise noted, all references to PHI in this Agreement are to PHI that Business Associate, or its subcontractors or agents, receives from, creates for, or maintains or transmits on behalf of Covered Entity.

The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

1.1 Services. Pursuant to the Agreement, Business Associate provides services (“Services”) for Covered Entity that may involve the use, access to, or disclosure of PHI.

1.2 Permitted Uses and Disclosures by Business Associate. Except as otherwise specified herein and pursuant to 42 U.S.C. § 17934, Business Associate may make any and all uses and disclosures of PHI necessary to perform its obligations under the Agreement, provided that such uses or disclosures would not violate the HIPAA Regulations if made by Covered Entity, which may include disclosure of PHI (i) to its employees, subcontractors and agents, as set forth below, (ii) as directed by Covered Entity, or (iii)
as otherwise permitted by the terms of this Agreement. All other uses and disclosures of PHI are prohibited. Unless otherwise limited herein, Business Associate may use PHI of Covered Entity for the following purposes:

a. Disclosure for Management, Administration. Business Associate may use or disclose PHI for proper management and administration of Business Associate as set forth in 45 C.F.R. § 164.504(e)(4). Business Associate shall take appropriate corrective action in the event any employee or workforce member uses or discloses PHI in contravention of this Agreement.

b. Disclosure to Third Parties for Performance of Agreement. Business Associate may use or disclose the PHI in its possession to third parties for the purpose of performing its duties under the Agreement and this Agreement. The third party shall provide written assurances of its confidential handling of such PHI, which shall include adherence to the same restrictions and conditions on use and disclosure as apply to Business Associate herein.

c. As Required by Law/Legal Process. Business Associate may use or disclose PHI to fulfill any present or future legal responsibilities of Business Associate, provided that the disclosures are (i) required by law, as defined in 45 C.F.R. § 164.103, or (ii) required to carry out the legal responsibilities of Business Associate, as provided in 45 C.F.R. § 164.504(e)(4). To the extent permitted by applicable law, prior to disclosing PHI as required by law to a law enforcement, regulatory, administrative, or oversight agency, or in response to a subpoena, court order, civil investigative demand, or other compulsory document or lawful process, Business Associate shall notify Covered Entity of such pending disclosure and provide reasonable time for Covered Entity to oppose such disclosure, should Covered Entity deem such opposition necessary.

d. Aggregation of Data. Business Associate may aggregate the PHI in its possession with the PHI of other covered entities and provide Covered Entity with data analyses relating to the Health Care Operations of Covered Entity in accordance with 45 C.F.R. § 164.504 (e)(2)(i)(B). Under no circumstances may Business Associate disclose PHI of Covered Entity to any other party or covered entity pursuant to this paragraph without the explicit authorization of Covered Entity.

e. Use of De-identified Data. Business Associate may de-identify PHI and utilize de-identified PHI for purposes other than research, provided that Business Associate (i) de-identifies the PHI pursuant to the HIPAA requirements set out in 45 C.F.R. § 164.514(b) and (ii) provides Covered Entity with appropriate documentation if required by 45 C.F.R. § 164.514(b)(1)(ii). De-identified information does not constitute PHI and, with the exception of paragraph 1.2(f) below, is not subject to the terms of this Agreement.

f. Use of Data for Research Purposes. Business Associate agrees that it will obtain prior approval by Covered Entity for the use or disclosure of PHI or de-identified PHI for research purposes. Use or disclosure for research purposes that has not been approved by Covered Entity is strictly prohibited.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

2.1 Responsibilities of the Business Associate. With regard to the uses or disclosures of PHI permitted by this Agreement, Business Associate hereby agrees to the following:
PROTECTION OF PHI

a. Report Unauthorized Use. Business Associate agrees to report to Covered Entity any use or disclosure of PHI by Business Associate or its third party agents in violation of this Agreement of which Business Associate becomes aware, and any remedial action to be taken by Business Associate with respect to such unauthorized use or disclosure. Business Associate shall make said report to the designated Privacy Officer of Covered Entity, in writing, within 5 days of having been made aware of the unauthorized use or disclosure.

b. Safeguard PHI. Business Associate agrees to use commercially reasonable efforts to maintain the confidentiality and security of PHI regardless of media (including written, oral, and electronic) and to prevent unauthorized use or disclosure of such PHI by implementing and maintaining appropriate protection policies and procedures.

c. Mitigate. Business Associate agrees to mitigate, to the extent possible and commercially reasonable, any deleterious effects from any unauthorized use or disclosure of PHI by Business Associate or its third party agents.

d. Bind Subcontractors and Agents. Business Associate agrees to require all of its subcontractors and agents that receive, use, or have access to PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use or disclosure of PHI that apply to Business Associate pursuant to this Agreement.

e. Minimum Necessary Disclosure. Prior to the Secretary’s issuance of guidance on what constitutes “minimum necessary” for purposes of the HIPAA Regulations pursuant to 42 U.S.C. § 17935(b)(1), Business Associate agrees to disclose to its subcontractors, agents, or other third parties, and request from Covered Entity, only that PHI included in a Limited Data Set as that term is described in 45 C.F.R. § 164.514(e)(2), or, in the alternative if additional PHI is required, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder. Upon the effective date of the Secretary’s guidance, Business Associate agrees to comply with said guidance in disclosing, and requesting from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

f. Return or Destroy. Subject to paragraph 3.4 below, within 30 days of the termination of this Agreement, Business Associate agrees to return to Covered Entity or destroy the PHI in its possession and retain no copies (which for purposes of this Agreement shall mean destruction of all backup tapes or other media).

g. Breach Notification. In accordance with 42 U.S.C. § 17932(b)&(d) and 45 C.F.R. § 164.410, and subject to the possibility of delay afforded by 42 U.S.C. § 17932(g) and 45 C.F.R. § 164.412, Business Associate shall without unreasonable delay, and in no case later than 60 days after discovery by Business Associate thereof, notify Covered Entity of any breach of Covered Entity’s unsecured PHI. If Business Associate is functioning as agent of Covered Entity within the federal common law of agency, Business Associate shall notify Covered Entity of any breach no later than 5 business days after discovery thereof by Business Associate. “Breach” as used in this paragraph shall have the meanings provided in 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402. If Business Associate determines that a breach has occurred, Business Associate shall provide Covered Entity with the rationale, and all documentation in support thereof, for its assessment of “significant risk of financial, reputational, or other harm to the individual,” as provided in 45
C.F.R. § 164.402(1)(i). If Business Associate determines that a breach has not occurred, in that an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Regulations has taken place, and has been reported to Covered Entity as required by paragraph 2.1(a) of this Agreement, but has been determined by Business Associate not to compromise the security or privacy of the PHI, Business Associate shall nevertheless provide Covered Entity, within the applicable notification period specified above, with the rationale, and all documentation in support thereof, for its assessment resulting in a finding of less than “significant risk of financial, reputational, or other harm to the individual,” as provided in 45 C.F.R. § 164.402(1)(i). In the event of disagreement between the Parties as to whether or not a breach has occurred, the determination made by Covered Entity shall control.

h. Business Associate to Bear Costs Related to Breach. Business Associate shall bear all costs related to its assessment of risk to determine whether Business Associate has had a breach of PHI under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402. In the event such breach has occurred, Business Associate shall reimburse Covered Entity for all costs incurred by Covered Entity directly related to providing the notice required by 42 U.S.C. § 17932 and 45 C.F.R. §§ 164.404&164.406, including if applicable, but not limited to: written notice, substitute notice, additional notice in urgent situations, and notification to media.

i. Miscellaneous HITECH Provisions. Business Associate acknowledges applicability of the business associate contract requirements and additional security and privacy requirements imposed by the HITECH Act upon Business Associate pursuant to 42 U.S.C. §§ 17931 & 17934. Business Associate also acknowledges obligations imposed upon Business Associate and Covered Entity by 42 U.S.C. § 17935(d), and any implementing regulations thereunder, when effective and as applicable.

SECURITY REQUIREMENTS

j. Implement Safeguards. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

k. Bind Subcontractors and Agents. Business Associate agrees to require all of its subcontractors and agents to which it provides electronic PHI to agree, in writing, to implement reasonable and appropriate safeguards to protect such PHI.

l. Report Security Incident. Business Associate agrees to report to Covered Entity any security incident involving PHI experienced by Business Associate or its subcontractors and agents of which Business Associate becomes aware, and any remedial or other action to be taken by Business Associate with respect to such incident. Business Associate shall make said report to the designated Privacy Officer of Covered Entity, in writing, within 5 days of having been made aware of the security incident.


ACCESS AND AVAILABILITY OF PHI
n. **Access for Viewing, Inspection, and Copying by Individual Subject of PHI.** Business Associate agrees to make PHI maintained by Business Associate in a Designated Record Set available to Covered Entity for subsequent inspection and copying by the Individual subject thereof in accordance with applicable law (including, but not limited to, the HIPAA Regulations, 45 C.F.R. § 164.524).

o. **Amendment by Subject of PHI.** Upon 10 days’ written notice by Covered Entity, Business Associate agrees to make PHI maintained by Business Associate in a Designated Record Set available to Covered Entity for subsequent amendment by the Individual subject thereof and incorporate any amendments to PHI in accordance with applicable law (including, but not limited to, the HIPAA Regulations, 45 C.F.R. § 164.526). Business Associate shall create a process to permit and document such amendments.

p. **Access by the U.S. Department of Health and Human Services (HHS).** Subject to attorney-client and any other applicable legal privileges, and pursuant to 45 C.F.R. § 164.504 (e)(2)(ii)(H), Business Associate agrees to make available to the Secretary of HHS all records, books, agreements, policies, and procedures relating to the use or disclosure of PHI so that HHS may determine Covered Entity’s compliance with the HIPAA Regulations. Subject to the legal privileges referred to above and as otherwise permitted by law, Business Associate shall, within 5 days of receipt of such request, notify Covered Entity of any request for access by HHS and shall provide Covered Entity with a copy of the HHS request for access and all materials to be disclosed pursuant thereto.

q. **Access for Accounting Purposes.** Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI. Business Associate agrees to provide to Covered Entity, within 10 days of receiving a request in writing therefrom, such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an Individual for an accounting of the disclosures of the Individual’s PHI in accordance with 45 C.F.R. § 164.528.

**QUALIFIED SERVICE ORGANIZATIONS PROVISIONS**

r. **Business Associate Bound by 42 C.F.R. Part 2.** Business Associate acknowledges that in receiving, storing, processing, or otherwise dealing with any “patient identifying information” or “records” as defined in 42 C.F.R. § 2.11, from an alcohol/drug abuse “program,” as defined in 42 C.F.R. § 2.11, that is federally assisted in a manner described in 42 C.F.R. § 2.12(b), and that is operated by Covered Entity, Business Associate is fully bound by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

s. **Judicial Proceedings to Obtain Records Covered by 42 C.F.R. Part 2.** Business Associate agrees that it will resist in judicial proceedings any efforts to obtain access to “patient identifying information” or “records” as defined in 42 C.F.R. § 2.11 and as maintained by Business Associate, other than as permitted by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

**APPLICABILITY OF CERTAIN STATE CONFIDENTIALITY LAWS & REGULATIONS**
t. **New York State Confidentiality Laws and Regulations.** Business Associate agrees to comply with all applicable federal and state laws and regulations governing the confidentiality of information provided by Covered Entity including, without limitation, New York Public Health Law §§ 18 (Access to Patient Information) & 2780 et seq.; New York Mental Hygiene Law §§ 22.05 & 33.13; New York Civil Rights Law § 79-

u. **Breach Notification Under New York Law.** Pursuant to New York General Business Law § 899-aa(2)&(3) and in conformity with paragraph 2.1(a) of this Agreement, Business Associate shall, within 5 days of discovery thereof, notify Covered Entity of any “breach of the security of the system,” as defined in New York General Business Law § 899-aa(1)(c), that involves PHI containing individuals’ “private information,” as defined in New York General Business Law § 899-aa(1)(b), that was, or was reasonably believed to be, acquired from Business Associate by a person without valid authorization.

v. **Business Associate to Bear Costs Related to Breach.** Notwithstanding any other provision of this Agreement to the contrary, Business Associate shall bear all costs related to its breach of private information under New York General Business Law § 899-aa, including any and all applicable damages or losses identified in New York General Business Law § 899-aa(6). In the event such breach has occurred, Business Associate shall reimburse Covered Entity for all costs incurred by Covered Entity directly related to providing the notice required by New York General Business Law § 899-aa(5), including if applicable, but not limited to: written notice, electronic notice, telephone notification, substitute notice, and notification to major statewide media.

w. **HIV Confidentiality Education and Training.** Pursuant to New York State regulations, 10 NYCRR § 63.9(c), and to the extent that Business Associate has access to, uses, or creates confidential HIV-related information, as defined by New York Public Health Law § 2780(7), from or for Covered Entity, Business Associate agrees that only its employees, subcontractors, and agents who have received education and training on the confidentiality and disclosure requirements for confidential HIV related information shall have access to such information. Business Associate shall maintain documentation of such training and shall provide such documentation to Covered Entity upon request.

x. **Disposal of PHI Under New York Law.** In the event Business Associate chooses to destroy the PHI in its possession in compliance with paragraph 2.1(f) of this Agreement, and that PHI contains “personal identifying information” as defined in New York General Business Law § 399-h(1)(d), Business Associate shall dispose of such information in conformity with New York General Business Law § 399-h(2).

### 2.2 Responsibilities of the Covered Entity

With regard to the use or disclosure of PHI by Business Associate, Covered Entity hereby agrees as follows:

a. **Inform Business Associate of Changes in Privacy Notice.** Upon request, Covered Entity agrees to furnish Business Associate with a copy of the Notice of Privacy Practices that Covered Entity provides to Individuals pursuant to 45 C.F.R. § 164.520 and to inform Business Associate of any subsequent changes thereto, if such changes affect Business Associate’s permitted or required uses and disclosures of PHI.

b. **Inform Business Associate of Changes in Authorizations.** Covered Entity agrees to inform Business Associate of any changes in, or withdrawal of, any authorizations provided to Covered Entity by
c. **Inform Business Associate of Opt-out Election.** Covered Entity agrees to inform Business Associate of any opt-outs exercised by any Individual from marketing or fundraising activities of Covered Entity pursuant to 45 C.F.R. § 164.514(f), if such opt-outs affect Business Associate’s permitted or required uses or disclosures of PHI.

d. **Notify Business Associate of Additional Limitations.** Covered Entity agrees to notify Business Associate, in writing and in a timely manner, of any arrangements permitted or required of Covered Entity under 45 C.F.R. parts 160 and 164 that may affect in any manner the use or disclosure of PHI by Business Associate under this Agreement, including, but not limited to, restrictions on use or disclosure of PHI agreed to by Covered Entity as provided for in 45 C.F.R. § 164.522.

e. **Miscellaneous HITECH Provisions.** Covered Entity acknowledges applicability of the additional privacy and security requirements imposed by the HITECH Act upon Covered Entity pursuant to 42 U.S.C. §§ 17921 et seq.

### 3. TERM AND TERMINATION

3.1 **Term.** This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this section 3. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with paragraph 5.1 herein.

3.2 **Termination by the Parties.** Pursuant to 45 C.F.R. § 164.504(e) and 42 U.S.C. § 17934(b), the Parties hereby acknowledge and agree that in the event one party has or obtains substantial and credible evidence that the other party has violated a material term of this Agreement, non-breaching party shall have the right to investigate such violation, and breaching party shall cooperate fully with non-breaching party with respect to such investigation. As provided for under 45 C.F.R. § 164.504(e), non-breaching party may terminate this Agreement and any related agreements without penalty or recourse to non-breaching party if non-breaching party determines that breaching party has violated a material term of this Agreement. Non-breaching party shall: (i) provide breaching party with written notice of the existence of a material breach; and (ii) afford breaching party an opportunity to cure said material breach, to the satisfaction of non-breaching party, within 30 days of receipt of non-breaching party’s written notice. Failure to cure is grounds for the immediate termination of this Agreement by non-breaching party. The parties further acknowledge that where non-breaching party determines that breaching party has violated any material term of this Agreement and that it is not feasible to terminate this Agreement, non-breaching party will report such violation to HHS and to any other governmental agency as may be required by applicable law. Termination of this Agreement by either party shall be in writing.

3.3 **Automatic Termination.** This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Agreement.

3.4 **Effect of Termination.** Upon the event of termination pursuant to this section 3, Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii), if it is feasible to do so.
to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify Covered Entity in writing within 10 days of the termination of this Agreement. Said notification shall include: (i) a statement that Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement to Business Associate’s use or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is not feasible for Business Associate to obtain from subcontractors or agents any PHI in the possession of subcontractors or agents, Business Associate shall provide a written explanation to Covered Entity and require subcontractors and agents to agree to extend any and all protections, limitations, and restrictions contained in this Agreement to subcontractors’ or agents’ use or disclosure of any PHI retained after termination of this Agreement, and to limit any further uses or disclosures to the purposes that make return or destruction of the PHI infeasible.

4. **INDEMNIFICATION**

4.1 **Indemnification.** Business Associate agrees to indemnify, defend, and hold harmless Covered Entity and Covered Entity’s employees, directors, trustees, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as “indemnified party”) against all losses suffered by the indemnified party, and all liability to third parties, arising from or in connection with any material breach of this Agreement by Business Associate or its employees, directors, officers, subcontractors, agents, or other members of its workforce. Accordingly, Business Associate shall reimburse the indemnified party for any and all losses, liabilities, fines, penalties, costs, or expenses (including reasonable attorneys’ fees) that may for any reason be imposed upon indemnified party by reason of any suit, claim, action, proceeding, or demand by any third party that results from such material breach by Business Associate hereunder. Business Associate and its subcontractors or agents shall not be liable to Covered Entity under this Agreement for any special, incidental, indirect, punitive, or consequential damages, whether based on breach of contract, warranty, tort, or product liability, and whether or not Business Associate has been advised of the possibility of such damages. Business Associate’s obligation to indemnify Covered Entity/indemnified party shall survive the expiration or termination of this Agreement for any reason.

5. **MISCELLANEOUS**

5.1 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of paragraphs 2.1 (Responsibilities of the Business Associate, solely with respect to PHI Business Associate retains in accordance with paragraph 3.4 where it is not feasible to return or destroy such PHI), 3.4 (Effect of Termination), 4.1 (Indemnification), 5.3 (No Third Party Beneficiaries), and 5.9 (Governing Law) shall survive termination of this Agreement indefinitely.

5.2 **Amendments; Waiver.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. Notwithstanding the foregoing, in order to ensure that this Agreement at all times remains consistent with applicable law regarding use and disclosure of PHI (including, but not limited to, the HIPAA Regulations, the HITECH Act, and the provisions of federal and New York Law cited in paragraphs 2.1(r)-(x) herein), the Parties agree that this Agreement may be amended from time to
time upon written notice from a Party requesting such amendment to the other Party, and with the agree-
ment of the other Party, as to the revisions required to make this Agreement consistent with applicable law.

5.3 **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer,
nor shall anything herein confer, upon any person other than the Parties and the respective successors or
assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 **Interpretation.** To the extent that any terms or provisions of this Agreement are ambiguous, such
terms or provisions shall be interpreted to allow Covered Entity to comply with the HIPAA Regulations, the
HITECH Act and its implementing regulations, and, to the extent not inconsistent with that interpretation, to
allow Business Associate to comply with those provisions and, where applicable, with the federal and New
York State laws and regulations cited in paragraphs 2.1(r)-(x) of this Agreement.

5.5 **Effect.** The terms and provisions of this Agreement shall supersede any other conflicting or in-
consistent terms and provisions in the Agreement, including all documents incorporated therein by
reference and all exhibits or other attachments thereto.

5.6 **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or overnight
courier to such Party’s address given below, or via facsimile to the facsimile telephone numbers, if any,
listed below. Notice shall be deemed given 3 business days after depositing into U.S. Mail postage prepaid,
the next business day if sent by overnight courier, and the same day if sent by facsimile.

If to Business Associate, to:

Phone: 
Fax:

With a copy, which shall not constitute notice, to:

Phone: 
Fax:
If to Covered Entity, to:

Phone:         Fax:

With a copy, which shall not constitute notice, to:

HIPAA Privacy Officer
New York City Health and Hospitals Corporation
160 Water Street, 8th Floor
New York, New York  10038
Phone:  (646) 458-3727  Fax:  (646) 458-3705

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

5.7  Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.8  Integration. This Agreement embodies and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, applies with full force to any PHI remaining in Business Associate’s possession that is subject to the survival provision of any previous business associate agreement between the Parties, and supersedes all prior oral or written agreements, commitments, and understandings pertaining to the subject matter hereof.

5.9  Governing Law.

a. Any action, claim, dispute, or litigation (each hereafter referred to as “action”) regarding performance, non-performance, breach, or interpretation of this Agreement or otherwise arising out of or relating to this Agreement shall be governed by the laws of the State of New York.

b. Any action of whatever nature commenced by or asserted against Covered Entity arising out of or relating to this Agreement shall be brought, heard, and determined exclusively in the City of New York, in the county within the City of New York in which the cause of action arose or, if the cause of action arose outside the City of New York, in the County of New York.

c. If for any reason any action arising out of or related to this Agreement is removed from a court, the venue of which is described in paragraph 5.9(b), to the jurisdiction of a court of the United States, such action shall be heard and determined exclusively in a court of the United States located in the State of New York.
York and the County of New York.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf:

New York City
Health and Hospitals Corporation

By: ___________________________    By: ___________________________

Date: ___________________________
# New York City Health & Hospitals Corporation
## Certified Beds by Acute Facility per NYS DOH Website

**As of August 28, 2012**

**Attachment C**

<table>
<thead>
<tr>
<th>Medical/Surgical</th>
<th>Coronary Care</th>
<th>Intensive Care</th>
<th>Pediatric Intensive Care</th>
<th>Burns</th>
<th>AIDS</th>
<th>Respiratory</th>
<th>Bel Air</th>
<th>Harlem</th>
<th>Lincoln</th>
<th>Metropolitan</th>
<th>Jacobi</th>
<th>NCB</th>
<th>Coney Island</th>
<th>Kings County</th>
<th>Woodhull</th>
<th>Elmhurst</th>
<th>Queens</th>
<th>All HHC</th>
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</thead>
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<tr>
<td>Medical/Surgical</td>
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<td>124</td>
<td>177</td>
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<tr>
<td>Burns</td>
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<td>74</td>
</tr>
</tbody>
</table>

### Med/Surg Subtotal

| Maternity       | 25            | 13             | 35                        | 23    |      |             | 26      | 26     |          |              | 14     |      | 30          | 15           | 44      | 20       |        | 271    |
| Neonatal Intensive Care | 5       | 5              | 5                        | 7     |      |             | 10      | 7      |          |              | 10     |      | 10          | 4             | 9       | 6        |        | 68     |
| Neonatal Intermediate Care | 15      | 9              | 5                        | 7     |      |             | 10      | 3      |          |              | 10     |      | 3           | 9             | 4       | 85       |        |        |
| Neonatal Continuing Care | 5       | 1              | 10                       | 4     |      |             | 5       | 2      |          |              | 10     |      | 3           | 12            |         |          |        | 52     |
| Pediatric        | 22            | 12             | 32                       | 14    |      |             | 33      | 6      |          |              | 15     |      | 28          | 23            | 22      | 20       |        | 207    |

### General Care Subtotal

| Psychiatric      | 339           | 57             | 45                        | 122   |      |             | 107     | 70     |          |              | 64     |      | 266         | 133          | 177     | 71       |        | 1,451  |
| Alcohol Detoxification | 20       | 14             |                          |       |      |             | 16      |        |          |              | 10     |      | 5           | 19            |         |          |        | 92     |
| Drug Detoxification |            |                |                          |       |      |             |         |        |          |              |        |      |             |                |         |          |        | 43     |
| Detox Subtotal   | 20            | 14             | 19                       | 16    |      |             | 15      | 10     |          |              | 15     |      | 30          | 21            |         |          |        | 135    |
| Physical Medicine & Rehab | 34       | 19             | 20                       | 24    |      |             | 24      | 23     |          |              | 14     |      | 18          | 10            |         |          |        | 178    |

### Rehab Subtotal

| Prisoner        | 34            |                |                          |       |      |             |         |        |          |              |        |      |             |                |         |          |        | 34     |

**Total Acute Care**

| 912            | 288           | 347            | 356                       | 457   | 213  | 337         | 700     | 394   | 545       | 244           | 4,827  |

**Acute Care (excl Psy/Rehab)**

| 537            | 222           | 302            | 214                       | 326   | 143  | 281         | 411     | 247   | 350       | 163            | 3,186  |

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1. Additional med-surg (5) and psychiatric (6) beds; and the decertification of pediatric (2), physical medicine & rehabilitation (5) and critical care unit (2) beds approved by SDOH on 1/5/09. Prepared by HHC Corporate Planning, 9/12
DCN# 2043

<table>
<thead>
<tr>
<th>Medical/Surgical</th>
<th>Coler¹,²</th>
<th>Goldwater¹,²</th>
<th>Gouverneur³</th>
<th>McKinney</th>
<th>Sea View</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>150</td>
<td>201</td>
<td></td>
<td></td>
<td></td>
<td>351</td>
</tr>
<tr>
<td>AIDS</td>
<td>96</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>96</td>
</tr>
<tr>
<td>Physical Medicine &amp; Rehab</td>
<td>60</td>
<td>120</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Traumatic Brain Injury</td>
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<td>21</td>
<td>21</td>
<td>42</td>
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<tr>
<td>Residential Health Care</td>
<td>815</td>
<td>374</td>
<td>210</td>
<td>320</td>
<td>283</td>
<td>2,202</td>
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<tr>
<td><strong>Total Long-Term Care</strong></td>
<td><strong>1,025</strong></td>
<td><strong>991</strong></td>
<td><strong>210</strong></td>
<td><strong>320</strong></td>
<td><strong>304</strong></td>
<td><strong>2,850</strong></td>
</tr>
</tbody>
</table>

¹ Received contingent approval on 12/8/11 to renovate former North General Hospital building to house 201 long term acute care beds which will be transferred from Roosevelt Island to the new facility (Henry J. Carter Specialty Hospital and Nursing Facility). Project is under construction and will be completed by December 2013. At project completion, 216 LTACH beds at Goldwater and 210 LTACH beds at Coler will be decertified. Facility will receive new operating certificate when project is complete.

² Received contingent approval on 2/2/12 to construct a 164 bed residential health care facility on the former North General Hospital parking lot which will be transferred from Roosevelt Island to the new facility (Henry J. Carter Specialty Hospital and Nursing Facility). Project is under construction and will be completed by December 2013. At project completion, 410 Skilled Nursing Facility beds will be decertified at Goldwater. Facility will receive new operating certificate when project is complete.

³ Received contingent approval to add 91 residential health care facility beds on 10/24/08. Project is under construction. Facility will receive new operating certificate when project is complete.

Prepared by HHC Corporate Planning, 9/12
ATTACHMENT G

CONFIRMATION OF ATTENDANCE AT PRE-PROPOSAL CONFERENCE

This will confirm my attendance at the Pre-Proposal Conference to be held at 10AM on Tuesday, January 8, 2013 at 346 Broadway, Conference Room 12 East regarding the Case Management and Denials Management Information System RFP.

NAME OF FIRM: ____________________________________________________________

ADDRESS: ___________________________________________________________________

NAME OF CONTACT PERSON: ________________________________________________

TELEPHONE NUMBER: ______________________________________________________

FAX NUMBER: _______________________________________________________________

NAME(S) OF ATTENDEE(S): ___________________________________________________

This form should be faxed to 718-260-7765 on or before Friday, January 4, 2013 at 4PM EST.

Attn:    Susan Fung

    Director, Finance/Managed Care Department

    New York City Health and Hospitals Corporation

    Cumberland Diagnostic & Treatment Center

    100 N. Portland Avenue, Room 510

    Brooklyn, NY 11205